



## Unemployment Insurance Advisory Council

### Meeting Agenda

May 20, 2021, 10:00 a.m. – 3:00 p.m.

The public may attend by teleconference:

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)

Meeting Number (Access Code): 145 556 2079 Meeting Password: DWD1

Meeting Materials: <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

1. Call to Order and Introductions
2. Approval of Minutes of the April 15, 2021 Council Meeting
3. Department Update
4. Trust Fund Update – Tom McHugh
5. 2021 Financial Outlook
6. 2019-2020 UIAC Activities Report
7. Legislation Update
  - Unemployment insurance work-share programs ([AB 307](#) / [SB 320](#))
  - Unemployment insurance contribution rates ([AB 328](#) / [SB 338](#))
8. Rulemaking Update
  - [Emergency Rule 2106](#), DWD Chs. 127 & 128 (Eff. 2/11/21–7/10/21)
    - Work search waivers, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic.
  - [Emergency Rule 2108](#), DWD Ch. 113 (Eff. 3/1/21 – 7/28/21)
    - Waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.
  - [Emergency Rule 2112](#), DWD Ch. 123 (Eff. 5/6/21 – 10/2/21)
    - Benefit charges for initial claims related to the public health emergency declared by Executive Order 72.
  - [Scope Statement 046-21](#), Emergency Rule related to employer contribution rates for 2022 (DWD 102).

<https://dwd.wisconsin.gov/uibola/uiac/>

9. Department proposals for the Wisconsin Unemployment Insurance Law
  - D21-01: Creation of Unemployment Administration Fund
  - D21-02: Minor and technical changes
  - D21-03: Reimbursable Employer Debt Assessment
  - D21-04: DWD Reports to Legislature
  - D21-05: Prohibit DOR Collection
  - D21-06: Department Error
  - D21-07: Effect of Criminal Conviction
  - D21-08: Fiscal Agent Election
  - D21-09: Employee Status Clarification
  - D21-10: SUTA Dumping Penalties
  - D21-11: Work Share Revisions
  - D21-12: Department Flexibility for Federal Funding
  - D21-13: Construction Employer Initial Contribution Rates
  - D21-14: DWD 140 - Permanent Rule Scope
  - D21-15: Camp Counselor Exclusion
  - D21-16: Repeal Pre-employment & Occupational Drug Testing
  - D21-17: Repeal Substantial Fault
  - D21-18: Amend Quit Exception for Relocating Spouses
  - D21-19: Repeal the Waiting Week
  - D21-20: Repeal Statutory Work Search & Registration Waivers
  - D21-21: Repeal Wage Threshold for Receipt of Benefits
  - D21-22: Increase Maximum Weekly Benefit Rate
  - D21-23: Flexibility for Finding Suitable Work
  - D21-24: Amend SSDI Disqualification
  - D21-25: Electronic Communications and Filing
  - D21-26: Amend Worker Classification Penalties
10. Labor and Management Proposals for the Unemployment Insurance Law
11. Research Requests
12. Future Meeting Dates: June 17, 2021; July 15, 2021; August 19, 2021
13. Adjourn

### Notice

- ❖ 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 teleconference.
- ❖ The employee or employer representative 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 Wis. Stat. § 19.85(1)(ee). The Council may then reconvene again in open session after the closed session.
- ❖ This location is accessible to persons with disabilities. If you 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.

# UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

## Meeting Minutes

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

April 15, 2021

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, Mike Gotzler, John Mielke, Susan Quam, Theresa Hillis, Sally Feistel, Shane Griesbach, Terry Hayden, Dennis Delie and Diann Fechter.

**Department Staff:** Mark Reihl, Andrew Rubsam, Danielle Williams (Assistant Deputy Secretary), Pamela McGillivray (Chief Legal Counsel), Jennifer Wakerhauser (Legal Counsel), Samantha Ahrendt (Legal Counsel), Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Robert Usarek, Jason Schunk, Emily Savard, Mike Myszewski, Joe Brockman, and Robin Gallagher.

**Members of the Public:** Anita Krasno (General Counsel, Labor & Industry Review Commission), BJ Dernbach (office of Representative Warren Petryk), Tyler Longsine (office of Representative James Edming), Margit Kelley (Wisconsin Legislative Council), Matt Terpstra (Legislative Audit Bureau), Lisa Kasel (Legislative Audit Bureau), Chris Reader (Wisconsin Manufacturers & Commerce), Victor Forberger (Attorney, Wisconsin UI Clinic), and Jason Childress (Foley & Lardner LLP).

### 1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:03 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department UI leadership staff in attendance.

### 2. Approval of Minutes

Motion by Mr. Hayden, second by Mr. Mielke, to approve the minutes of the March 18, 2020, meeting without correction. The motion passed unanimously by roll call vote.

### 3. Department Update

Mr. Reihl stated that Linda Hendrickson has accepted the position of Director of the Benefits Operations Bureau, succeeding Jason Schunk, who is serving as the Deputy Administrator of the Unemployment Insurance Division

Mr. Reihl stated that \$5.85 billion in UI benefits have been paid to 637,100 claimants since March of last year. The Trust Fund balance was \$816,934,226 as of April 12, 2021. The new Claims Portal has gone into operation. The department is paying PUA extensions and has paid \$27,613,898 to 18,141 claimants. The department is paying PEUC benefits and has paid \$13,333,150 to 35,965 claimants.

Mr. Reihl stated that work on the Plain Language Initiative continues, as do IT modernization efforts. The 2021 Financial Outlook Report is being published today. The financial outlook briefing will take place at the May 2021 Council meeting.

#### **4. 2021 Financial Outlook**

Ms. Knutson reiterated that 2021 Financial Outlook Report will be published today. Rob Usarek is planning on providing a presentation at the May 2021 Council meeting.

#### **5. State Legislation Update**

##### Unemployment insurance waiting period (AB 206 / SB 224)

Senator Smith introduced this bill. Ms. Knutson stated that the Legislature has not held a hearing on the bill, and perhaps the Council will want to discuss the bill in caucus today.

##### Temporary tax exemption for unemployment compensation (SB 267)

Ms. Knutson stated that no hearing has been held on the bill. The temporary exemption mirrors the federal law.

##### Deposits into the UI reserve fund (AB237 / SB 276)

This bill would permit the use of federal money to be deposited to the UI Trust Fund to allow the Trust Fund to remain in Schedule D. The bill has passed and been sent to Governor Evers for his consideration.

#### **6. Rulemaking Update**

##### Emergency Rule 2044, DWD Ch. 123 (Eff. 12/7/20 – 5/5/21)

Ms. Knutson stated that this rule concerns benefit charges for initial claims related to the public health emergency declared by Executive Order 72. This emergency rule expires on May 5, 2021.

Ms. Knutson stated that the department has decided to promulgate a different emergency rule rather than request an extension of the current rule to be in compliance with the changes with regard to non-charging in 2021 Wis. Act 4.

Emergency Rule 2106, DWD Chs. 127 & 128 (Eff. 2/11/21 – 7/10/21)

Ms. Knutson stated that this emergency rule concerns work search waivers, availability for work, and work available for people filing claims with the unemployment insurance program during the COVID-19 pandemic. This emergency rule expires on July 10, 2021.

Emergency Rule 2108, DWD Ch.113 (Eff. 3/1/21 – 7/28/21)

Ms. Knutson stated that this emergency rule waives interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19. This rule expires July 28, 2021.

**7. Department proposals for the Wisconsin Unemployment Insurance Law**

D21-02 Technical Corrections

Mr. Manley asked whether there are changes in the proposal that make it slightly different from last year's proposal.

Mr. Rubsam stated that this proposal are the same as the 2019 proposal.

D21- 01 through D21-08

Mr. Rubsam stated that these department proposals are the same as the 2019 department proposals except that the proposal related to federal government shutdowns is not included. Proposal D21-02 involves technical changes to the UI law. There may be one or two additional corrections added at a later date.

Ms. Knutson asked if the members had any further questions or if they were ready to take action on D21-01 through D21-08.Mr. Manley responded that recommended that Management caucus after hearing the new department proposals.

Ms. Knutson stated there 18 additional department proposals:

D21-09 Clarification of Employee Status Statute

Mr. Rubsam stated that the department proposes to amend sections 108.09(2) and 108.09(4) to provide that all issues of unemployment insurance employee status may only be determined under Wisconsin unemployment statutes and rules. This proposal will provide consistency in determining individuals' eligibility for unemployment insurance benefits and employers' unemployment insurance tax liability by limiting the employee status inquiry to the provisions of the unemployment insurance law.

### D21-10 SUTA Dumping Penalty

Mr. Rubsam stated that the federal SUTA Dumping Prevention Act requires states to enact “meaningful civil and criminal penalties” for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to “dump” their unemployment insurance experience. Current law penalizes individuals for making false statements to the Department regarding a mandatory successor investigation and for advising others to do so. The current penalty is \$5,000. The Department recommends a \$10,000 civil penalty and a class A misdemeanor criminal penalty for knowingly violating or attempting to violate mandatory successor requirements in amounts that the Council chooses. The Department also proposes to modify the \$5,000 forfeiture for making false statements or advising someone to make false statements to be a civil penalty of \$5,000 that will be deposited into the program integrity fund. This will make the treatment of the existing forfeiture provision consistent with the new proposed penalty.

Mr. Gotzler asked why the department is asking for the increase in penalties.

Mr. Rubsam responded that the law change will bring the Wisconsin UI statute into conformity with the federal law and to deter SUTA dumping.

### D21-11 Work Share Revisions

Mr. Rubsam stated that the Department proposes that the temporary changes to the work share statutes during the pandemic should be made permanent, as well as a permanent law change to permit plans to extend up to 12 months in a 5-year period. These changes will give employers greater flexibility when creating work share plans and may encourage more employers to use work share, which would reduce layoffs while preserving employee work benefit.

### D21-12 Department Flexibility for Federal Funding

Mr. Rubsam stated that the Department proposes a law change that would permit the Department’s Secretary to issue an order (which is not a rule), published in the Register, waiving or suspending any part of chapter 108 to facilitate full federal funding of unemployment benefits. This proposal would also permit the Department’s Secretary to issue an emergency rule without the requirement of showing an emergency to waive, suspend, or amend any part of chapter 108 to facilitate full or partial federal funding of benefits or to receive additional program administration funding. These changes would ensure that Wisconsin maximizes its receipt of federal funding.

#### D21-13 Construction Employer Initial Contribution Rates

Mr. Rubsam stated that the Department proposes amending the initial tax rate for construction employers to be the greater of the initial rate for non-construction employers or the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate.

Ms. Feistel asked if the initial rate would be 2.5% or lower. Mr. Rubsam responded that the initial contribution rate would be 2.5% or higher.

#### D21-14 Amend Administrative Rules Regarding UI Hearings

Mr. Rubsam stated that the Department proposes to amend chapter DWD 140 to provide that, while parties may continue to request in-person hearings, it is the hearing office's discretion whether to grant that request. The Department also proposes to clarify language in DWD chapter 140 regarding hearing records, Department assistance for people with disabilities at hearings, and to correct minor and technical language in DWD chapter 140.

#### D21-15 Exclusion for Certain Camp Counselors

Mr. Rubsam stated that this proposal would add an exclusion for the services of camp counselors meeting certain requirements to Wisconsin's unemployment insurance law. Employees whose services are excluded under this proposal would not qualify for unemployment benefits based on their wages from the camps but may qualify for benefits based on services performed for other employers. Employers would not be taxed on the wages paid to camp counselors whose services are excluded. The wages of camp employees whose services are not excluded under this proposal would continue to be taxable for state and federal unemployment tax purposes.

Ms. Knutson stated that Department proposals D21-16 through D21-26 are part of Governor Evers' budget.

#### D21-16 Repeal-Pre-employment & Occupational Drug Testing

Ms. Knutson stated that no claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules and denied benefits because of the employers' reports of a failed or refused drug test as a condition of an offer of employment. Because no claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules, no claimants have maintained benefit eligibility by enrolling in and complying with a substance abuse treatment program and completing a job skills assessment. The Governor's Budget Bill (AB 68 / SB 111) proposes to repeal the UI pre-employment and UI occupational drug testing statutes and to provide that the GPR funding for drug testing and treatment be used for administration of the UI program instead of drug testing and treatment.

#### D21-17 Repeal Substantial Fault

Ms. Knutson stated that the 2013 Budget, 2013 Wis. Act 20, repealed section 108.04(5g) and replaced it with the disqualification for substantial fault. Wisconsin appears to be the only state that has a disqualification for substantial fault. Act 20 also created several enumerated types of misconduct under section 108.04(5)(a)-(g). The Governor's Budget Bill (AB 68 / SB 111) proposes to repeal the substantial fault disqualification. The substantial fault statute has been the subject of litigation to the courts, including the Supreme Court. Repealing that provision would result in more predictability for claimants and employers.

#### D21-18 Quit Exception for Relocating Spouse

Ms. Knutson stated that the 2013 Budget Act, 2013 Wis. Act 20, amended and repealed several quit exceptions, including amending the "quit to relocate" exception in Wis. Stat. § 108.04(7)(t). The amended quit exception, effective January 2014, was narrowed to cover only a claimant whose spouse is on active duty with the U.S. Armed Forces, is required to relocate by the U.S. Armed Forces and it is impractical for the claimant to commute to work. The Governor's Budget Bill (AB 68 / SB 111) modifies the changes to this quit exception made by 2013 Wis. Act 20 and provides that the quit exception covers all spouses who move with a relocating spouse, not just those serving in the U.S. Armed Forces. This proposal broadens this quit exception to apply to claimants whose spouses are required by any employer to relocate, not just the U.S. Armed Forces.

#### D21-19 Repeal Waiting Week

Ms. Knutson stated that the 2011 Budget, 2011 Wis. Act 32, recreated a waiting week for unemployment insurance benefits, effective January 2012. For every new benefit year, no benefits are payable for the first week a claimant would otherwise be eligible for benefits. The waiting week may be a week in which full or partial benefits are payable. The waiting week does not reduce a claimant's maximum benefit amount. About 42 states have a waiting week during non-pandemic times. The one-week delay in benefit payments does not reduce a claimant's total amount of benefits that they are eligible for. During the 2020-2021 COVID-19 pandemic, Wisconsin suspended the waiting week for the period of March 15, 2020-March 13, 2021 because the federal government funded benefits for the first week of unemployment for states that did not have a waiting week. The Governor's Budget Bill (AB 68 / SB 111) would permanently repeal the waiting week.

#### D21-20 Repeal Work Search and Work Registration Waivers from Statute

Ms. Knutson stated that the Governor's Budget Bill (AB 68 / SB 111) would repeal the work search waiver provisions in statute as created by 2017 Wis. Act 370, restore the applicable statutes to their pre-Act 370 language, and direct the Department to establish work search waivers by administrative rule.



### D21-21 Wage Threshold for Receipt of Benefits

Ms. Knutson stated that the Governor's Budget Bill (AB 68 / SB 111) would repeal the \$500 weekly maximum earned income disqualification but would not amend the partial benefit formula. Under this proposal and the current partial UI benefit formula, a claimant with a \$370 weekly UI benefit rate could receive a partial UI benefit of \$5 if they earn \$574 per week or less in wages. Claimants who earn \$575 per week or more in wages would continue to be ineligible for benefits based on the partial benefit formula and current maximum weekly benefit rate of \$370 weekly.

### D21-22 Increase Maximum Weekly Benefit Rate

Ms. Knutson stated that 2013 Wis. Act 36 increased the maximum weekly benefit rate for unemployment insurance benefits from \$363 to \$370 starting January 2014, which was the last time Wisconsin increased the maximum weekly benefit rate. The Governor's Budget Bill (AB 68 / SB 111) would increase the maximum weekly benefit rate from \$370 to \$409 per week to reflect increases in the average weekly wage since 2014. This change would be effective for payments made for weeks of unemployment beginning January 2, 2022. For weeks of unemployment beginning January 1, 2023, the maximum would be 50% of Wisconsin's average weekly wage. For weeks of unemployment beginning on December 31, 2023, the maximum would be the greater of the maximum for the prior year or 75% of Wisconsin's average weekly wage. In 2019, the state's average weekly wage was \$951. Under this proposal but using 2019 data for reference, the maximum UI benefit rate for 2023 would be \$475.50 weekly; for 2024, it would be \$713.25 weekly.

### D21-23 Flexibility for Finding Suitable Work

Ms. Knutson stated that for jobs refused after the sixth week of becoming unemployed, suitable work is defined as "any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department." The work must still meet labor standards. The Governor's Budget Bill (AB 68 / SB 111) amends the suitable work statutes so that claimants are not required to accept less favorable work until the 11th week of unemployment.

Under current Wis. Stat. § 108.04(7)(e), an employee is eligible for UI if they quit a job within the first 30 days based on "the same grounds for voluntarily terminating work if the employee could have failed to accept the work when it was offered, regardless of the reason articulated by the employee for the termination." The Governor's Budget Bill (AB 68 / SB 111) amends the quit exception so that claimants may quit a job within 10 weeks of starting it if they could have refused the job as unsuitable. This change to the quit exception may make unemployment claimants more likely to try jobs that they might otherwise refuse; it may also encourage them to try the jobs for a longer period before quitting.

#### D21-24 Amend Social Security Disability Insurance Disqualification

Ms. Knutson stated that currently recipients of federal Social Security Disability Insurance (“SSDI”) payments are ineligible for unemployment insurance benefits. Recipients of pension payments are eligible for unemployment insurance benefits, but the unemployment benefit is reduced by the pension payment. The Governor’s Budget Bill (AB 68 / SB 111) proposes to amend the prohibition on receipt of UI for SSDI recipients by reducing the amount of weekly UI benefits by the proportionate amount of the claimant’s SSDI payment. Under this proposal, a claimant who receives \$1,000 monthly in SSDI and would otherwise be eligible for \$300 weekly in UI, would receive a weekly UI payment of \$69.

#### D21-25 Electronic Communications and Filing

Ms. Knutson stated that the Governor’s Budget Bill (AB 68 / SB 111) proposes that the electronic filing, electronic communication, and electronic payment provisions be mandatory for employers and claimants unless the employer or claimant demonstrates good cause for being unable to use the electronic method. The Department would determine good cause by administrative rule. The proposal also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it. The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements while safeguarding the rights of those whose access to electronic means is severely limited or unavailable

#### D21-26 Worker Misclassification Penalties

Ms. Knutson stated that the Joint Task Force on Payroll Fraud and Worker Misclassification recommended that the penalties for intentional worker misclassification be structured to deter repeat violations. The Governor’s Budget Bill (AB 68 / SB 111) proposes to amend the civil penalty statutes by having the penalties potentially apply to all employers. The proposal also eliminates the \$7,500 and \$10,000 caps on the civil penalties and doubles the penalties for subsequent violations. The proposal makes no changes to the criminal penalties.

### **8. Research Requests**

There were no new research requests.

### **9. Future Meeting Dates**

Ms. Knutson stated that the dates for the next three meetings are:

May 20, 2021

June 17, 2021

July 15, 2021

Mr. Mielke moved that the Council convene in closed session to deliberate the items on the agenda including the department proposals. The motion was seconded by Ms. Feistel. The vote was taken by roll call and passed unanimously.

The Council convened in closed session at 11:51 am.

The Council reconvened in open session at 2:01 pm.

Members Diann Fechter and Theresa Hillis were no longer in attendance. A quorum was still present.

Mr. Manley reported that Management reviewed D21-1-26 individually. Generally, Management agrees with proposals D21-1 through 8. Management wants additional time for review and will approve all, or almost all, of proposals D21-1 through 8.

Mr. Hayden stated that Labor also reviewed all the department proposals, including proposals D 21-1 through 8. Mr. Hayden stated that Labor will hold off on recommendations until the next Council meeting.

Mr. Manley stated that he would like to see the completed fiscal estimates for the department proposals by the next meeting.

## **10. Adjourn**

Motion to adjourn by Mr. Manley, second by Mr. Delie. The motion passed unanimously by voice vote.

The Council adjourned at 2:06 pm.

## UI Reserve Fund Highlights

May 20, 2021

- Benefit payments through April 2021 declined by \$53.2 million or 13.9% when compared to benefits paid through April 2020.

<b>Benefits Paid</b>	<b>2021 YTD*</b> <i>(in millions)</i>	<b>2020 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(percent)</i>
Total Regular UI Paid	\$328.2	\$381.4	(\$53.2)	(13.9%)

- Tax receipts through April 2021 declined by \$41.9 million or 13.3% when compared to taxes paid through April 2020. Since both tax years were rated in Schedule D, any change reflects the improvement of individual employers' tax rates.

<b>Tax Receipts</b>	<b>2021 YTD*</b> <i>(in millions)</i>	<b>2020 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(percent)</i>
Total Tax Receipts	\$273.3	\$315.2	(\$41.9)	(13.3%)

- The April 2021 Trust Fund ending balance was slightly under \$1.1 billion, a decrease of 42.9% when compared to the same time last year.

<b>UI Trust Fund Balance</b>	<b>April 2021</b> <i>(in millions)</i>	<b>April 2020</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(percent)</i>
Cash Analysis Statement	\$1,096.1	\$1,918.4	(\$822.3)	(42.9%)

- Interest earned on the Trust Fund is received quarterly. Interest for the first quarter of 2021 was \$6 million compared to \$11.9 million for the same period last year. The U.S. Treasury annualized interest rate for this quarter is 2.4%.

<b>UI Trust Fund Interest</b>	<b>2021 YTD*</b> <i>(in millions)</i>	<b>2020 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(percent)</i>
Total Interest Earned	\$6.0	\$11.9	(\$5.9)	(49.6%)

\*All calendar year-to-date (YTD) numbers are based on the April 30, 2021 Financial Statements.

# FINANCIAL STATEMENTS

For the Month Ended April 30, 2021



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
BALANCE SHEET  
FOR THE MONTH ENDED April 30, 2021

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
<b>CASH:</b>		
U.I. CONTRIBUTION ACCOUNT	6,274,421.28	7,975,497.32
U.I. BENEFIT ACCOUNTS	(4,334,918.49)	9,597,512.49
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,079,545,565.32</u>	<u>1,922,898,715.32</u>
TOTAL CASH	1,081,485,068.11	1,940,471,725.13
<b>ACCOUNTS RECEIVABLE:</b>		
BENEFIT OVERPAYMENT RECEIVABLES	113,064,044.41	65,673,293.19
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(27,959,392.75)</u>	<u>(32,776,852.17)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	85,104,651.66	32,896,441.02
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	29,967,576.20	32,025,262.48
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(15,833,973.99)</u>	<u>(15,328,767.84)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	14,133,602.21	16,696,494.64
OTHER EMPLOYER RECEIVABLES	58,963,230.71	37,632,373.37
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(8,389,693.40)</u>	<u>(7,227,513.14)</u>
NET OTHER EMPLOYER RECEIVABLES	50,573,537.31	30,404,860.23
TOTAL ACCOUNTS RECEIVABLE	<u>149,811,791.18</u>	<u>79,997,795.89</u>
<b>TOTAL ASSETS</b>	<u><u>1,231,296,859.29</u></u>	<u><u>2,020,469,521.02</u></u>
<b><u>LIABILITIES AND EQUITY</u></b>		
<b>LIABILITIES:</b>		
CONTINGENT LIABILITIES (7)	63,214,417.18	25,898,705.84
OTHER LIABILITIES	18,529,169.15	12,873,608.88
FEDERAL BENEFIT PROGRAMS	(3,378,811.04)	11,206,947.72
CHILD SUPPORT HOLDING ACCOUNT	120,880.00	108,902.00
FEDERAL WITHHOLDING TAXES DUE	655,529.00	4,815,538.00
STATE WITHHOLDING TAXES DUE	7,987,728.00	9,192,673.91
DUE TO OTHER GOVERNMENTS (8)	<u>2,377,245.15</u>	<u>2,485,947.36</u>
TOTAL LIABILITIES	89,506,157.44	66,582,323.71
<b>EQUITY:</b>		
RESERVE FUND BALANCE	1,550,007,298.57	2,354,400,888.87
BALANCING ACCOUNT	<u>(408,216,596.72)</u>	<u>(400,513,691.56)</u>
TOTAL EQUITY	<u>1,141,790,701.85</u>	<u>1,953,887,197.31</u>
<b>TOTAL LIABILITIES AND EQUITY</b>	<u><u>1,231,296,859.29</u></u>	<u><u>2,020,469,521.02</u></u>

1. \$20,806,685 of this balance is for administration purposes and is not available to pay benefits.
2. \$1,863,992 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$83,187,062 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.
4. The allowance for uncollectible benefit overpayments is 50.2%. The allowance for uncollectible delinquent employer taxes is 46.3%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.
5. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$2,821,628. Deferrals for the prior year were \$5,184,772.
6. \$9,173,289, or 30.6%, of this balance is estimated.
7. \$49,297,126 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$13,917,291 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.
8. This balance includes SAFI Payable of \$638. The 04/30/2021 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$42,530. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,501,460.

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RESERVE FUND ANALYSIS  
FOR THE MONTH ENDED April 30, 2021

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	1,895,400,921.95	2,067,917,022.31	2,909,863,506.12
BALANCING ACCOUNT	<u>(918,241,567.10)</u>	<u>(896,424,588.78)</u>	<u>(916,159,078.07)</u>
TOTAL BALANCE	977,159,354.85	1,171,492,433.53	1,993,704,428.05
<b>INCREASES:</b>			
TAX RECEIPTS/RFB PAID	148,820,214.50	187,271,727.93	220,382,981.73
ACCRUED REVENUES	785,001.89	2,341,180.76	4,576,806.39
SOLVENCY PAID	72,149,281.12	86,015,205.68	94,782,371.92
FORFEITURES	1,363.00	5,738.00	41,516.00
BENEFIT CONCEALMENT INCOME	87,963.06	226,182.36	308,143.49
INTEREST EARNED ON TRUST FUND	0.00	6,022,942.91	11,873,952.51
FUTA TAX CREDITS	0.00	7,113.23	2,686.15
OTHER CHANGES	<u>3,463,764.63</u>	<u>16,626,481.83</u>	<u>9,573,268.95</u>
TOTAL INCREASES	225,307,588.20	298,516,572.70	341,541,727.14
<b>DECREASES:</b>			
TAXABLE EMPLOYER DISBURSEMENTS	46,693,012.30	258,629,242.23	329,827,447.43
QUIT NONCHARGE BENEFITS	8,456,817.84	50,374,953.15	42,215,477.11
OTHER DECREASES	46,555.40	257,673.58	21,605.45
OTHER NONCHARGE BENEFITS	<u>5,479,855.66</u>	<u>18,956,435.42</u>	<u>9,294,427.89</u>
TOTAL DECREASES	60,676,241.20	328,218,304.38	381,358,957.88
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	1,550,007,298.57	1,550,007,298.57	2,354,400,888.87
BALANCING ACCOUNT	<u>(408,216,596.72)</u>	<u>(408,216,596.72)</u>	<u>(400,513,691.56)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,141,790,701.85</u></u>	<u><u>1,141,790,701.85</u></u>	<u><u>1,953,887,197.31</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,096,060,547 because of non-cash accrual items.

10. \$20,806,685 of this balance is set up in the Trust Fund in three subaccounts to be used for administration purposes and is not available to pay benefits.

11. \$1,863,992 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$83,187,062 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

**DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RECEIPTS AND DISBURSEMENTS STATEMENT  
FOR THE MONTH ENDED 04/30/21**

<u>RECEIPTS</u>	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE</u>	<u>PRIOR YEAR TO DATE</u>
TAX RECEIPTS/RFB	\$148,820,214.50	\$187,271,727.93	\$220,382,981.73
SOLVENCY	72,149,281.12	86,015,205.68	94,782,371.92
ADMINISTRATIVE FEE	51.95	256.58	215.46
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	1,839,663.77	2,156,853.88	2,192,114.41
UNUSED CREDITS	3,329,959.98	3,718,106.11	1,787,619.90
GOVERNMENTAL UNITS	2,815,840.55	12,891,243.13	4,014,540.66
NONPROFITS	1,890,402.29	10,879,827.15	3,652,175.29
INTERSTATE CLAIMS (CWC)	890,614.20	4,406,091.81	926,215.38
ERROR SUSPENSE	130,131.34	123,205.34	127,859.63
FEDERAL PROGRAMS RECEIPTS	228,175,722.93	970,318,197.75	101,631,117.13
OVERPAYMENT COLLECTIONS	4,020,814.01	16,788,985.70	6,654,595.13
FORFEITURES	1,363.00	5,738.00	41,516.00
BENEFIT CONCEALMENT INCOME	87,963.06	226,182.36	308,143.49
EMPLOYER REFUNDS	(191,147.21)	(2,026,073.41)	(1,676,755.58)
COURT COSTS	44,027.24	144,881.43	163,059.82
INTEREST & PENALTY	341,326.90	1,266,018.77	1,180,828.46
CARD PAYMENT SERVICE FEE	3,264.17	11,181.93	5,287.70
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	135,299.11	355,532.92	486,490.79
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	1,500.00	10,259.09	1,897.31
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	8,081.97	12,582.11	0.00
SPECIAL ASSESSMENT FOR INTEREST	637.71	4,895.91	6,701.02
LOST WAGES ASSISTANCE (LWA) ADMIN	0.00	350,579.89	0.00
EMERGENCY ADMIN GRANT-EUISAA 2020	0.00	0.00	9,457,386.00
EMERGENCY UC RELIEF (EUR)	2,543,348.00	14,455,360.00	0.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	6,022,942.91	11,873,952.51
MISCELLANEOUS	16,483.27	33,502.06	13,848.12
TOTAL RECEIPTS	<u>\$467,054,843.86</u>	<u>\$1,315,443,285.03</u>	<u>\$458,014,162.28</u>
<b><u>DISBURSEMENTS</u></b>			
CHARGES TO TAXABLE EMPLOYERS	\$53,711,435.64	\$282,371,198.61	\$334,489,899.44
NONPROFIT CLAIMANTS	1,958,054.15	9,490,867.06	12,833,899.95
GOVERNMENTAL CLAIMANTS	1,787,762.29	9,766,816.53	7,984,421.69
INTERSTATE CLAIMS (CWC)	750,763.35	3,419,507.96	2,673,626.83
QUITS	8,456,817.84	50,374,953.15	42,215,477.11
OTHER NON-CHARGE BENEFITS	5,550,741.22	19,094,630.08	9,030,505.94
CLOSED EMPLOYERS	892.54	2,191.79	(217,528.45)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	373,428.46	1,820,538.28	636,951.67
EX-MILITARY (UCX)	133,694.92	684,664.11	309,197.82
TRADE ALLOWANCE (TRA/TRA-NAFTA)	8,416.00	(253,015.96)	365,884.09
WORK-SHARE (STC)	277,750.30	328,462.88	0.00
FEDERAL PANDEMIC UC (FPUC)	153,168,139.76	688,187,113.07	90,354,733.00
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	1,110,024.93	8,269,650.02	0.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	21,577,207.56	75,225,554.56	0.00
PANDEMIC EMERGENCY UC (PEUC)	42,547,331.76	196,756,539.76	0.00
EMER UC RELIEF REIMB EMPL (EUR)	9,894.00	45,578.80	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(708.01)	(2,846.14)	(6,945.12)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(22,527.44)	(76,348.49)	(86,089.63)
FEDERAL EMERGENCY UI (EUC)	(209,249.41)	(586,585.99)	(869,052.54)
FEDERAL EXTENDED BENEFITS (EB)	719,657.90	3,526,683.77	(78,266.94)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	14,151.00	19,058.88	0.00
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(430.00)	2,974.96	(1,666.67)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	6,262.47	51,593.40	(2,346.22)
INTEREST & PENALTY	330,519.45	1,143,900.36	1,083,228.26
CARD PAYMENT SERVICE FEE TRANSFER	3,027.72	10,070.72	4,372.31
PROGRAM INTEGRITY	184,245.37	594,247.44	780,139.02
SPECIAL ASSESSMENT FOR INTEREST	4,258.20	9,479.95	11,336.04
COURT COSTS	57,681.25	124,469.04	166,558.38
ADMINISTRATIVE FEE TRANSFER	97.99	249.15	289.44
LOST WAGES ASSISTANCE (LWA) ADMIN TRANSFER	0.00	350,579.89	0.00
FEDERAL WITHHOLDING	3,429,215.00	(297,383.00)	(4,658,260.06)
STATE WITHHOLDING	19,869,881.09	15,778,714.48	(7,451,050.66)
FEDERAL LOAN REPAYMENTS	0.00	(7,113.23)	(2,686.15)
TOTAL DISBURSEMENTS	<u>\$315,808,437.30</u>	<u>\$1,366,226,995.89</u>	<u>\$489,566,628.55</u>
NET INCREASE(DECREASE)	<u>151,246,406.56</u>	<u>(50,783,710.86)</u>	<u>(31,552,466.27)</u>
BALANCE AT BEGINNING OF MONTH/YEAR	\$930,238,661.55	\$1,132,268,778.97	\$1,972,024,191.40
BALANCE AT END OF MONTH/YEAR	<u>\$1,081,485,068.11</u>	<u>\$1,081,485,068.11</u>	<u>\$1,940,471,725.13</u>



DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
CASH ANALYSIS  
FOR THE MONTH ENDED April 30, 2021

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$935,985,211.16	\$1,137,108,896.48	\$1,960,524,402.01
INCREASES:			
TAX RECEIPTS/RFB PAID	148,820,214.50	187,271,727.93	220,382,981.73
U.I. PAYMENTS CREDITED TO SURPLUS	71,931,362.75	93,868,171.04	107,011,438.65
INTEREST EARNED ON TRUST FUND	0.00	6,022,942.91	11,873,952.51
FUTA TAX CREDITS	0.00	7,113.23	2,686.15
TOTAL INCREASE IN CASH	<u>220,751,577.25</u>	<u>287,169,955.11</u>	<u>339,271,059.04</u>
TOTAL CASH AVAILABLE	<u>1,156,736,788.41</u>	<u>1,424,278,851.59</u>	<u>2,299,795,461.05</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	46,693,012.30	258,629,242.23	329,827,447.43
BENEFITS CHARGED TO SURPLUS	13,973,334.90	69,543,483.35	51,531,510.45
TOTAL BENEFITS PAID DURING PERIOD	<u>60,666,347.20</u>	<u>328,172,725.58</u>	<u>381,358,957.88</u>
EMER UC RELIEF REIMB EMPL EXPENDITURES	9,894.00	45,578.80	0.00
ENDING U.I. CASH BALANCE (13) (14) (15) (16) (17)	<u><u>1,096,060,547.21</u></u>	<u><u>1,096,060,547.21</u></u>	<u><u>1,918,436,503.17</u></u>

13. \$1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

14. \$284,585 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

15. \$18,914,772 of this balance was set up in 2020 in the Trust Fund as an Emergency Admin Grant (EUISAA) subaccount to be used for administration of the Unemployment Compensation Program and is not available to pay benefits.

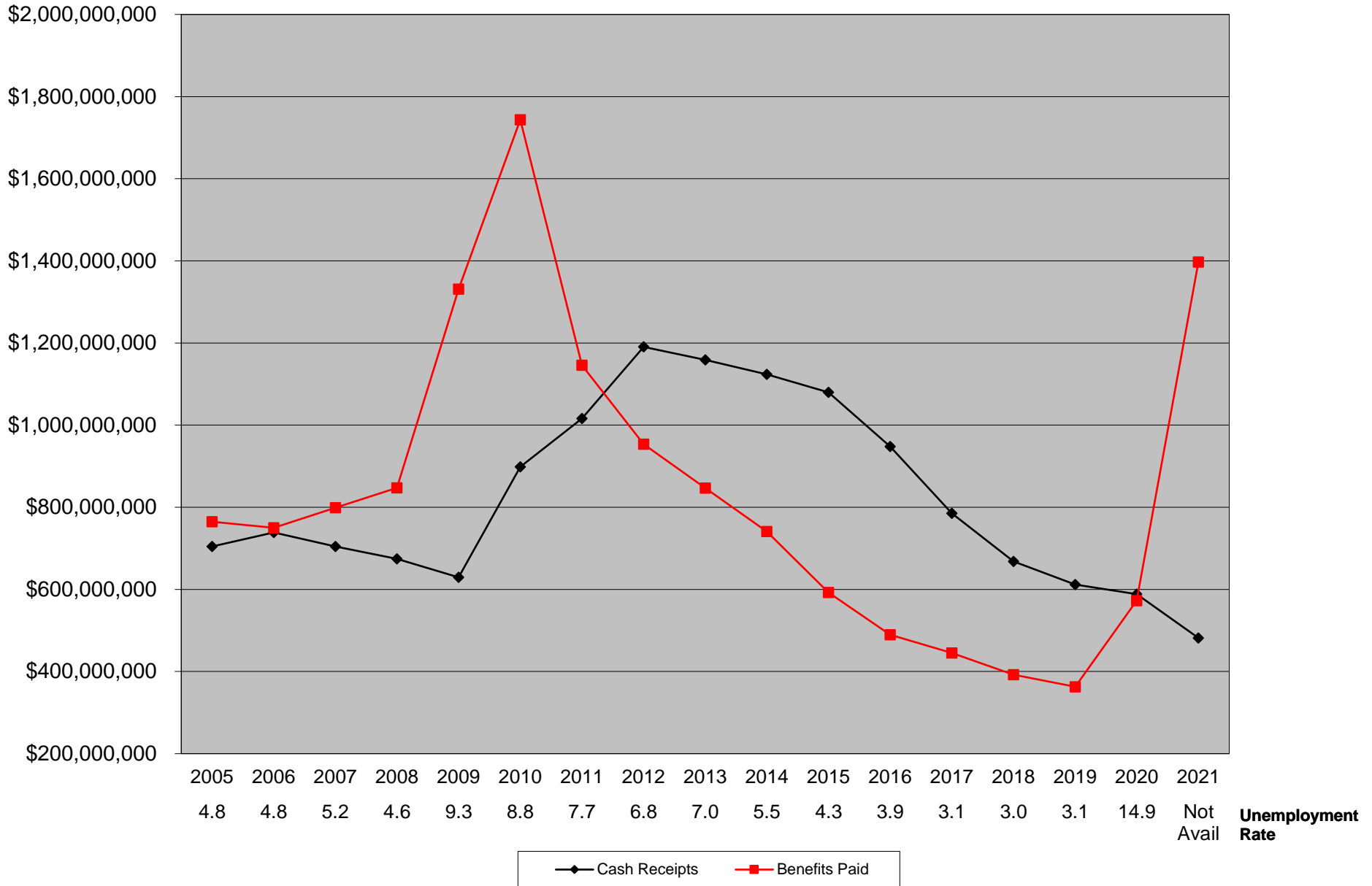
16. \$1,863,992 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

17. \$83,187,062 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

BUREAU OF TAX AND ACCOUNTING  
U.I. TREASURER'S REPORT  
BALANCING ACCT SUMMARY  
FOR THE MONTH ENDED April 30, 2021

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$511,917,656.78)	(\$484,263,072.65)	(\$503,517,440.13)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	72,149,281.12	86,015,205.68	94,782,371.92
FORFEITURES	1,363.00	5,738.00	41,516.00
OTHER INCREASES	<u>(219,281.37)</u>	<u>7,847,227.36</u>	<u>12,187,550.73</u>
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	71,931,362.75	93,868,171.04	107,011,438.65
TRANSFERS BETWEEN SURPLUS ACCTS	22,771.57	7,156.26	196,487.57
INTEREST EARNED ON TRUST FUND	0.00	6,022,942.91	11,873,952.51
FUTA TAX CREDITS	<u>0.00</u>	<u>7,113.23</u>	<u>2,686.15</u>
TOTAL INCREASES	71,954,134.32	99,905,383.44	119,084,564.88
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	8,456,817.84	50,374,953.15	42,215,477.11
OTHER NON-CHARGE BENEFITS	<u>5,516,517.06</u>	<u>19,168,530.20</u>	<u>9,316,033.34</u>
BENEFITS CHARGED TO SURPLUS SUBTOTAL	13,973,334.90	69,543,483.35	51,531,510.45
EMER UC RELIEF REIMB EMPL EXPENDITURES	<u>9,894.00</u>	<u>45,578.80</u>	<u>0.00</u>
BALANCE AT THE END OF THE MONTH/YEAR	<u><u>(453,946,751.36)</u></u>	<u><u>(453,946,751.36)</u></u>	<u><u>(435,964,385.70)</u></u>

## Cash Activity Related to Taxable Employers with WI Unemployment Rate (for all years from May to April)



# Financial Outlook

## Wisconsin Unemployment Insurance Program

Report prepared for the Governor and Legislature  
(Wis. Stat. § 16.48)

Amy Pechacek, Secretary-designee  
Department of Workforce Development  
April 2021  
UCD-8967-P (R. 04/2021)

## Executive Summary

The Department of Workforce Development's Division of Unemployment Insurance (UI) paid a record high level of claims over the last year as a result of the COVID-19 global pandemic. The emergence of COVID-19 created not only a historic public health crisis, but a workforce and economic crisis as well. Between March 15, 2020 and December 26, 2020, the UI Division paid over \$4.68 billion to approximately 590,095 claimants. Of those benefit payments, \$3.18 billion were not charged to Wisconsin's UI Trust Fund but instead were new federally funded COVID-19 relief programs, including Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), Lost Wages Assistance (LWA), and Federal Pandemic Unemployment Compensation (FPUC).

Wisconsin's UI Trust Fund was in a good position to weather the pandemic, with an Average High Cost Multiple (ACHM) of nearly 1. The healthy balance likely prevented Wisconsin from needing to borrow from the federal government during the COVID-19 pandemic. Nineteen states needed to borrow during the pandemic to pay benefits, with 14 of these states having an AHCM less than 1. With the record level of claims paid, the ACHM is currently at about 0.5. To withstand another recession without having to borrow from the federal government, it is likely the Trust Fund will need to grow again.

The Department projects the Wisconsin economy will quickly recover from the pandemic beginning in the second half of 2021 and grow fairly rapidly through 2023. For the remainder of 2021, the Department anticipates the Trust Fund will continue to shrink slightly but then will stabilize and begin growing in the second half of the year. UI benefit payments are expected to decline starting in 2022, which is projected to lead to an increase in the UI Trust Fund in future years. The Trust Fund is expected to stabilize but remain under \$1 billion at the end of 2023. Unforeseen circumstances, including economic adjustments or additional COVID variants that prevent full reopening and economic recovery, may impact the Trust Fund.

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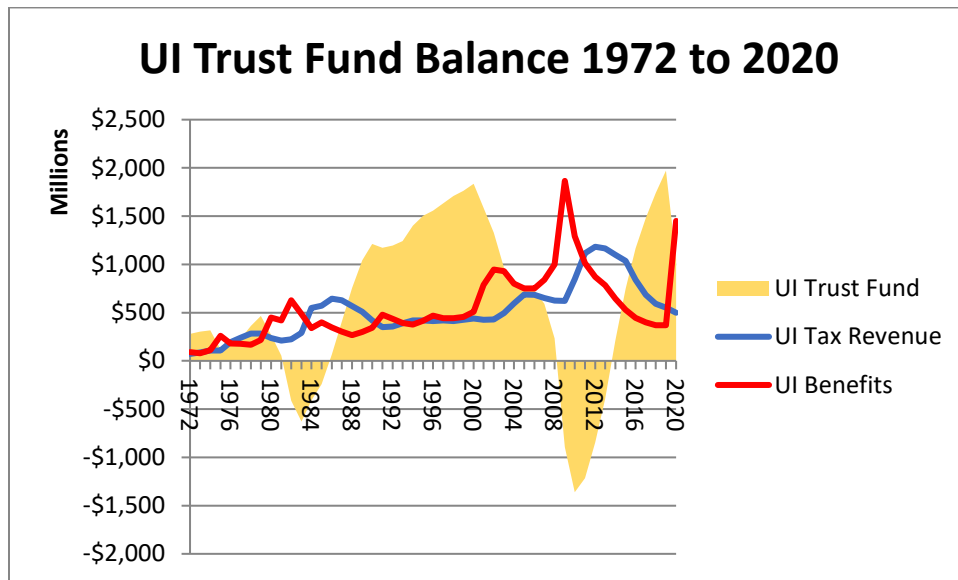
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## Introduction

The Department of Workforce Development is pleased to present this report on the financial outlook of the State of Wisconsin Unemployment Insurance (UI) program.

This *Financial Outlook* provides a summary of the UI program to measure the adequacy of the UI Trust Fund and the UI financing system. It provides background on UI financing as well as projections for the near-term future of the program.

UI is funded by employer contributions to provide temporary economic assistance to Wisconsin's eligible workers during times of unemployment.



ET Financial Handbook 394, <http://ows.doleta.gov/unemploy/hb394.asp>

Prior to the COVID-19 pandemic, UI benefit payments had been historically low. However, with a rapid increase in UI benefit payments in 2020, along with a decline in tax contributions, the UI Trust Fund balance declined significantly. At the end of 2020 the UI Trust Fund had a balance of \$1.049 billion.<sup>1</sup> This is a decrease of \$682 million from the 2018 ending balance of \$1.731 billion.

Section 1 provides the background on the Wisconsin UI Benefits and Financing System, Section 2 provides the recent history of the UI Trust Fund<sup>2</sup>, Section 3 provides recent UI law changes and impacts on UI Financing, and Section 4 provides UI Trust Fund projections through the end of 2023.

<sup>1</sup> This amount will differ from the DWD financial statement, which reflected a balance of \$1.137 billion. This difference is due to the fact that \$18,914,772 of this balance was set up in 2020 in the UI Trust Fund as an Emergency Admin Grant (EUISAA) subaccount to be used for administration of the Unemployment Compensation Program and is not available to pay benefits, and \$68,776,989 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-11/21 per § 2103 of the CARES Act and the Continued Assistance Act.

<sup>2</sup> For history of the UI Trust Fund prior to 2019, see Appendix A.

# Section 1: Background on the Wisconsin UI Benefits and Financing System

## Unemployment Insurance Benefits

UI benefits are paid to claimants who have lost employment through no fault of their own and have a work history with one or more employers that participate in the UI program. To continue to qualify for UI benefit payments, a claimant must be able and available for full-time work and, unless granted an exception, must be actively searching for work. The amount of UI benefit payments a claimant may receive is based on the claimant's past earned wages, up to a maximum weekly benefit rate of \$370, an amount below the national average of \$453. Wisconsin's maximum rate is also below the average of \$504 per week of bordering states. The maximum weekly benefit rate for all states is located in Appendix E. Under the regular UI program, a claimant may receive up to 26 weeks of benefits in Wisconsin, which is consistent with the maximum duration for the vast majority of states.

## Covered Employers in the Unemployment Insurance System

Most employers in Wisconsin participate in the UI program and are considered "covered employers."

Covered employers fall into two groups:

### *Taxable Employers*

Most employers in Wisconsin are taxable employers. Individual employers fund UI benefit payments and partially fund UI program operations through quarterly assessed taxes. Unemployment benefit risk is spread across all employers through taxes that are experience-rated, instead of employers self-financing unemployment benefits.

### *Reimbursable Employers*

Reimbursable employers self-finance unemployment benefits for their workers. Local governmental entities, non-profit organizations, and Native American Tribes can elect to be reimbursable employers. UI administers payment to individuals who worked for reimbursable employers and bills those employers directly to reimburse the UI benefits paid.

## Unemployment Insurance Taxes

UI benefits are financed by UI taxes levied on an employer's payroll. Taxes are levied by both federal and state governments.

### State Taxes

State UI taxes are a payroll tax that finance Wisconsin UI benefits. Employers are assessed UI taxes on each employee's wages up to the taxable wage base. In 2019 and 2020 the taxable wage base was \$14,000; therefore, an employer is assessed UI taxes on the first \$14,000 in wages paid to each employee. The tax rate an employer pays on wages up to the wage base is determined by two separate factors. The first factor is the UI tax schedule in effect for a given rate year. The UI tax schedule in effect is determined by the UI Trust Fund balance on June 30<sup>th</sup> of the previous year. Schedule D, the lowest rate schedule, is currently in effect. As the UI Trust Fund balance changes, tax schedules with



higher or lower rates automatically take effect. The higher the UI Trust Fund balance, the lower the tax rate schedule in effect.

The second factor that impacts the tax rate an employer pays is the employer's experience with the UI system. The more that current or former employees of an employer collect UI benefits, the higher the tax rate that employer will pay. New Wisconsin employers who do not have a previous history with the Wisconsin UI system are assigned a new employer tax rate for the first three years for which they make contributions. This rate varies depending on the industry and size of the employer. After three years, these employers' taxes are then based on their experience with the UI system.

There are two components of state UI taxes collected:

### **Basic Taxes**

The basic tax is generally the larger portion of the state tax. The basic tax is the portion of the tax an employer pays that is credited to the employer's UI account. The amount an employer pays in basic taxes is heavily tied to the employer's experience with the UI system.

### **Solvency Taxes**

The solvency tax is generally smaller than the basic tax amount. Solvency taxes are deposited in the Trust Fund and credited to the UI Balancing Account. Benefit payments not charged to specific employers are charged to the UI Balancing Account; it represents risk sharing among employers participating in the UI system.

### *Administrative Assessment*

Occasionally, there will be a separate assessment collected along with the UI state tax that is used for specific UI administrative programs. An assessment was implemented for tax years 2019 and 2020 to fund UI program integrity activities. The assessment amount is a flat 0.01 percent rate with a corresponding reduction in the solvency tax rate for all employers subject to a solvency tax. The administrative assessment does not change the amount of tax any given employer is required to pay.

### *UI Employer Account*

The employer account acts only as a measure to gauge a given employer's experience with the UI system. It is not a savings account for the employer to pay for future benefits. The net difference between all the taxes collected and the charged benefit payments over the entire employer's history constitutes the balance of the employer's account, also known as the Reserve Fund Balance. If an employer's account falls below zero, benefits will still be paid to the employer's eligible former workers. The basic tax an employer pays is entered as a credit on the account. UI benefit payments paid to former (or in some cases current) workers are charged against the account.

An employer's account balance on June 30<sup>th</sup> determines the employer's tax bracket, and ultimately the tax rate an employer pays the next calendar year. The employer's account balance is compared to the

employer's current taxable payroll<sup>3</sup>. The employer's reserve fund percentage is the ratio of the employer's account balance to the employer's payroll. This percentage is then compared to the current tax schedule in effect, and the employer's tax rate for the following calendar year is determined.

### *UI Balancing Account*

The UI Balancing Account represents the social insurance aspect of the system for employers. Revenue credited to the UI Balancing Account typically comes from two sources<sup>4</sup>. The first source, and by far the largest, is the solvency tax paid by employers. The second source is any interest earned on the UI Trust Fund. The Trust Fund earned \$37.9 million in interest revenue in 2020.

Some benefit payments are not charged to a specific employer's account but are instead charged to the UI Balancing Account. There are seven basic categories of benefit payments charged to the UI Balancing Account: 10 Percent Write-offs, Quits, Misconduct, Substantial Fault, Continued Employment, Approved Training, and Second Benefit Year. In the past there have been other benefit programs that have been charged to the UI Balancing Account. Full descriptions of these charges can be found in Appendix H.

The balance in the UI Balancing Account represents the lifetime revenues credited and benefits charged to the account. The current balance was -\$450 million as of December 31, 2020<sup>5</sup>; therefore, the solvency taxes and interest are not sufficient to cover charges against the UI Balancing Account.

### Federal Unemployment Taxes (FUTA)

Employers participating in the UI system also pay federal unemployment taxes. FUTA<sup>6</sup> taxes pay for the following:

#### **1. Unemployment Insurance Administration**

Like all other states, the administration of Wisconsin's Unemployment Insurance program is funded by FUTA tax revenue. The United States Department of Labor (USDOL) determines the amount of grant funding available to each state. Receipt of federal grant funds requires compliance and conformity with federal UI law.

#### **2. Extended Benefits (EB) and Emergency Unemployment Compensation (EUC)**

Wisconsin qualified for the EB program from May 2020 through November 2020. Normally funding for the EB program is shared equally by both the state and the federal government. The state portion is funded through the state's UI Trust Fund and the federal portion is funded through FUTA tax revenue. However, during this period, all EB was fully federally funded except for a small portion due to federal sequestration.

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<sup>3</sup> While the payroll used is for the fiscal year ending June 30, employers' 2nd quarter contribution and wage reports and payments due July 31 are reflected in this calculation if made on a timely basis.

<sup>4</sup> Other federally distributed funds are also credited to the UI Balancing Account. One example is the FUTA credit reduction revenue which occurs when the UI system is borrowing.

<sup>5</sup> This does not include benefits in 2020 that will be charged to the UI Balancing Account under Wis. Act 185 and Wis. Act 4.

<sup>6</sup> Federal Unemployment Tax Act, 26 U.S.C. § 3301.

The U.S. Congress has the option of authorizing EUC payments, which has typically occurred during severe recessions. During the pandemic, Congress authorized Pandemic Emergency Unemployment Compensation (PEUC).

### **3. Trust Fund Borrowing**

FUTA tax creates a revenue source for states to borrow to pay benefits when they exhaust their state UI Trust Fund. After the UI Trust Fund was exhausted in 2009, Wisconsin borrowed from the federal government to pay benefits. Wisconsin finished repaying all federal loans with interest in 2014. Wisconsin has not needed to borrow funds during the current pandemic.

#### *Costs Involved with UI Trust Fund Borrowing*

##### FUTA Credit Reductions

The tax rate for FUTA is 6.0 percent on the first \$7,000 of an employee's wages; however, up to 5.4 percent can be credited back to employers if a state's program meets certain requirements, including the state maintaining a positive Trust Fund balance. If a state's Trust Fund remains negative on January 1<sup>st</sup> for two consecutive years, the FUTA tax credit is reduced by 0.3 percentage points each year the loan is outstanding. From 2011 through 2013, Wisconsin employers were subject to FUTA tax credit reductions for a total cost of \$291 million. The additional federal taxes were used to repay the federal loans. When the Trust Fund became positive, employers were again eligible for the full FUTA tax credit.

##### Special Assessment for Interest (SAFI)

Federal law prohibits using regular state UI taxes to pay interest on a federal loan to a state Trust Fund; therefore, a separate funding source is needed. Wisconsin initially paid the interest charges on its federal loans through a special assessment on employers (SAFI) in 2011 and 2012. Although liability for the interest payments remained, the SAFI was not assessed after 2012. Starting in 2013, the Wisconsin Legislature provided state General Purpose Revenue (GPR) to cover interest due on the UI loan. In total, \$103 million in interest costs were assessed on Trust Fund loans due to the Great Recession, with employers paying \$78 million through SAFI and the remaining \$25 million paid with Wisconsin GPR funds.

The cost to employers of borrowing from the federal government is significant. Ideally, the UI system builds a large Trust Fund that is drawn down during a recession and builds back up during periods of economic expansion. The UI Trust Fund should be large enough so taxes would not need to be raised until after the recovery is underway.

## **Section 2: Recent History of the Wisconsin Unemployment Insurance Trust Fund**

The modern history of our UI financing system begins in 1981, with the events that produced the system in its current form. See Appendix A for more details on the modern history through 2018. This section focuses on the recent history of the Wisconsin UI Trust Fund beginning with 2019.

### **January of 2019 through Pandemic of 2020**

The Unemployment Insurance (UI) Trust Fund ended 2018 with a balance of over \$1.7 billion. In 2019 the UI Trust Fund continued to grow, with taxes continuing to exceed historically low benefits, even with the lowest UI tax schedule in effect (Schedule D). The UI Trust Fund reached a high balance of over \$1.9 billion in 2019. At the time, the Average High Cost Multiple of the Trust Fund was approaching 1, which is the DOL recommended level for trust fund solvency. At that level, the UI Trust Fund should be able to pay out benefits at a historically high benefit rate for a year without exhausting. Early in 2020, with the onset of the Coronavirus Pandemic, that AHCM was put to the test.

Since March 15, 2020, Wisconsin has faced not only an historic public health crisis with the emergence of COVID-19, but a resulting workforce and economic crisis as well. By December 26, 2020, the Unemployment Insurance (UI) Division had paid out over \$4.68 billion to approximately 590,095 claimants since the start of the pandemic. Of those benefit payments, \$3.18 billion were for Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), Lost Wages Assistance (LWA), and Federal Pandemic Unemployment Compensation (FPUC), which are federally funded, and not charged to the UI Trust Fund. During this time, many businesses were closed due to the public health emergency, thus reducing payrolls and, in turn, UI tax revenue also declined. Overall, the UI Trust Fund ended 2020 with a balance of \$1.049 billion.

Even though a large percentage of benefits were federally funded, the UI Trust Fund was reduced by \$600 million with a large increase in regular state UI benefit payments and a reduction in UI tax revenue received during 2020 due to reduced payrolls. With the ending balance of \$1.049 billion, the AHCM was at approximately 0.5. If the impacts of the pandemic continue, or if Wisconsin faces another recession, the UI Trust Fund would not be well-positioned to pay benefits without borrowing from the federal government.

Nineteen states needed to borrow funds during the pandemic to pay benefits. Going into the pandemic, 14 of these 19 states had an AHCM less than 1.0. Wisconsin entering the pandemic with an AHCM close to 1.0 likely averted the need to borrow.

## **Section 3: Recent UI Law Changes and Impact on UI Financing**

By Executive Order 72, Governor Evers declared a public health emergency on March 12, 2020 to protect the health and wellbeing of Wisconsin's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. On April 4, 2020, the President issued a declaration under the Stafford Act that, due to the COVID-19 pandemic, a major disaster exists in Wisconsin, beginning January 30, 2020 and continuing. Due to the pandemic, many businesses temporarily or permanently closed, resulting in significant business income reduction and layoffs.

The state and federal governments enacted a variety of laws to respond to assist employers and workers who were adversely affected by the COVID-19 pandemic. Some of these laws affected the state's UI Trust Fund.

### **State law changes**

Under 2019 Wisconsin Act 185, the Department of Workforce Development was required to charge unemployment benefits for initial claims related to the public health emergency declared by Executive Order 72 to the UI Balancing Account of the UI Trust Fund for taxable employers. For reimbursable employers, the Department charges non-federally funded benefits to the interest and penalty appropriation. This treatment of claims charging applies to weeks of benefits starting with the week of March 15, 2020. Under 2021 Wisconsin Act 4, the relief of benefit charges for employers ends March 13, 2021.

Under Acts 185 and 4, claimants are now eligible for unemployment benefits for the first week of unemployment, if the first week of unemployment falls between March 15, 2020 and March 13, 2021. Claimants were previously ineligible for benefits during the first otherwise compensable week of unemployment benefits. This is known as the waiting week.

### **Federal law changes**

Since the last Financial Outlook was published in 2019, special programs extended the amount of benefits a person could receive. The federal Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, the federal Continued Assistance for Unemployed Workers (Continued Assistance) Act of 2020, and the American Recovery Plan Act of 2021 (ARPA) provided federally funded unemployment benefits, including: PUA, PEUC, FPUC, MEUC, and federal funding of sharable regular compensation and sharable extended compensation in the Federal-State EB Program.

Based on the President's directive, the Federal Emergency Management Agency (FEMA) provided federal LWA benefits for six weeks in 2020 (the weeks ending August 1 through September 5, 2020). None of these benefits were chargeable to the state's UI Trust Fund.

Under the CARES Act, the Continued Assistance Act, and ARPA, regular state unemployment benefits for the first week of unemployment are federally funded for states that suspend the waiting week. For Wisconsin, 100% federal funding applies for the first week of unemployment benefits for the period of April 19, 2020 through March 14, 2021.

Work share benefits are also federally funded under the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act (ARPA), for the period of March 29, 2020 through September 4, 2021.

For reimbursable employers, the Federal Government reimbursed 50% of benefits for the period of March 15, 2020 to April 3, 2021. From April 4, 2021 through September 4, 2021, the Federal government will reimburse 75% of benefits paid.

## Section 4: UI Trust Fund Projection

### UI Trust Projection Methodology

The UI Trust Fund projection is the result of numerous other estimates that include future projections of the economy, unemployment insurance reciprocity, and estimated UI tax revenue.

Economic projections are from IHS Markit. The projections include the Wisconsin unemployment rate, labor force growth, and wage growth. The unemployment rate is used in projecting future UI benefits. The labor force growth and wage growth estimates are used both in projections of UI benefit payments and UI tax revenue.

The economic projection assumes the Wisconsin economy will quickly recover from the pandemic beginning in the second half of 2021. Growth is expected to be fairly rapid in 2022 and 2023, returning to long-term trends by 2024.

In addition to the IHS projections, UI benefits are based on the percentage of unemployed workers that apply for UI benefits and the percentage of applications that receive payment. UI benefits are projected to remain elevated for 2021 with higher claim levels. As the economy improves it is expected that UI claims as a percentage of the unemployed workers will return to pre-pandemic levels.

UI tax revenue is based upon the projections of covered payroll as well as UI benefits charged to employer accounts. Covered payroll growth is expected to follow the rest of the economy with fast expansion starting in the second half of 2021 and continuing in 2022 and 2023, returning to long term growth in 2024.

UI benefit charging presents distinct challenges for the current projection. Under normal projection circumstances, UI benefits are directly charged to an employer account which then will affect future tax rates that the employer pays. Under Wisconsin Act 185, and Act 4 UI benefits paid during the pandemic period may instead be charged to the UI Balancing Account rather than charged to the employer accounts. This prevents the UI benefit charges during the pandemic period from impacting employers' experience ratings.

This law change impacts the current projections in very specific ways. Traditionally the percentage of projected UI benefits that are charged are estimated based upon historical rates of benefit charging. Due to the large amount of UI benefit payments that are set to be charged to the Balancing Account instead of employer accounts due to Wisconsin Act 185 and Act 4, using past rates of charging to the UI Balancing Account is not feasible. In addition, the actual shifting of charges from employers to the UI Balancing Account has yet to occur but is planned in the coming months.

Because the full accounting of the charging of benefits has yet to occur, there is added uncertainty to the projections. It is important to note that the charging of the UI benefits affect not only the next year of UI tax revenue but will continue to affect UI tax revenue in future years. The impact of charging UI benefits during the pandemic is expected to have reduced UI tax revenue by approximately \$350 million during the projection period of this Outlook. Given that the magnitude of the impact of charging benefits to the UI Balancing Account is large, the corresponding risk to the projection can be in the range of tens of millions of dollars.



The federal CARES Act and similar subsequent legislation has the federal government reimbursing state UI benefit funds for UI benefits that are typically paid by state UI programs. These include reimbursement for all or part of the first week of UI benefits for states that do not have a one week waiting period for UI benefits and providing federal funding for UI benefits that are part of work share - also known as Short Term Compensation (STC) programs in states.

The reimbursement of benefits for these programs has yet to occur. The correct charging for these programs is in the same project that is underway to correctly shift charges from UI employers to the UI Balancing Account. Since this work has yet to be completed, the exact amount of benefits that will be reimbursed to Wisconsin UI Trust Fund is unknown, providing an additional source of potential projection error. However, the estimated federally funded reimbursement to the UI Trust Fund that is expected to occur before June of 2021 is \$55 million. Of total, \$41 million is expected for the first week of UI benefits and \$14 million is expected for the work share program. Due to the timing of the passage of Act 185, approximately \$43 million of first week benefits will not be reimbursed by the federal government.

### UI Trust Fund Projections

Unemployment Reserve Fund Activity				
(Millions \$)				
	2020	2021	2022	2023
Opening Unemployment Reserve Fund Balance	\$1,961	\$1,049	\$751	\$836
<i>Revenues:</i>				
State Unemployment Revenues (employer taxes)	\$500	\$427	\$540	\$553
Interest Income	\$38	\$22	\$20	\$22
Federal Reimbursement for UI Benefits		\$55		
<b>Total Revenue</b>	<b>\$538</b>	<b>\$504</b>	<b>\$560</b>	<b>\$575</b>
<i>Expenses:</i>				
Unemployment Benefits	\$1,450	\$801	\$475	\$512
<b>Ending Reserve Fund Balance<sup>7</sup></b>	<b>\$1,049</b>	<b>\$751</b>	<b>\$836</b>	<b>\$898</b>

Projections from Wisconsin Unemployment Insurance Division based upon Wisconsin Unemployment Insurance data and IHS Wisconsin projections February 2021.

The UI Trust Fund is expected to decline by an estimated \$298 million in 2021. This is due to the continued high level of UI benefit payments as well as lack of a typical increase in UI tax revenue due to the pause on charging in place from 2020. The tax schedule in place for 2021 is schedule D. It is expected that the UI Trust Fund balance will be below \$900 million on June 30, 2021 triggering a shift to schedule B for 2022. This is expected to increase UI tax revenue by approximately \$60 million over schedule D; however, with the charging of benefits to the UI Balancing Account and the uncertainty surrounding UI taxable income it is difficult to isolate the impact.

<sup>7</sup> This UI Trust Fund balance only includes funds available to pay state UI benefits. There are currently other funds in the Wisconsin UI Trust fund that are not available to pay state UI benefits. Such funds include holding funds for reimbursable employer benefits as part of the CARES Act and the Continued Assistance Act and an emergency administration grant. These accounts are included with other UI Trust Fund balances so they may not match the balances presented here.



UI benefit payments are expected to decline starting in 2022. This will lead to an increase in the UI Trust Fund in these years. At this time, it is expected that the tax schedule will remain at schedule B for 2023.

### **Risks to UI Trust Fund Projection**

In the methodology section, there was some discussion of challenges in producing projections at this time. These challenges create unique risks to the estimated values. This section addresses two other large areas of uncertainty that may cause the projections to be incorrect.

The first is that economic conditions are precarious due to the pandemic. This is different from other economic recessions because the cause and the solution are fairly well-understood. However, there are still risks. It is expected that the economy will start to recover as the population is vaccinated and the nation fully reopens by the end of 2021. But there may be unforeseen circumstances including economic adjustments or additional COVID variants that prevent full reopening. These factors cannot really be addressed in the projections and would cause the projections to be incorrect.

The other large risk is from changes in policy. The policy situation governing UI benefits and UI taxes is very fluid. These projections are made with the best understanding of the current policy available. However, the impacts of those policies are not fully understood in all circumstances. For example, the impact of federal extension of UI benefits on state UI payments is unknown. In many cases, if they qualify for new state UI benefits, claimants are expected to leave federal extended benefits and begin receiving state benefits. However, under certain conditions they may stay on the federal benefits instead. This would reduce the state outlay of benefits. Other changes could include the amount the federal government will reimburse states for UI benefits, or state extensions of charging UI benefits to the UI Balancing Account. Policy changes, including changes in how existing legislation is interpreted, may impact the validity of these projections.

## Conclusion and Recommendations

The Secretary recommends the Unemployment Insurance Advisory Council (UIAC) review and advance legislative measures that strengthen UI Trust Fund solvency while supporting the integrity of the UI system. The Secretary urges the Council to pursue a balanced approach to rebuilding the Trust Fund that recognizes some employers are still being economically impacted by the pandemic and the importance of delivering on UI's promise to support unemployed workers who are out of work through no fault of their own.

At the beginning of the pandemic, the UI Trust Fund was in a good position with an Average High Cost Multiple (ACHM) of nearly 1. States that meet the standard (ACHM of 1.0) are less likely to need to borrow and in a better position to withstand economic downturns. The Trust Fund is currently at an ACHM of about 0.5, and not in a position to withstand another economic downturn. The UI Trust Fund will need to grow again to avoid borrowing in a future recession.

Although state and federal legislative action has relieved employers of nearly \$1.7 billion in benefit charges from March 15, 2020 through March 13, 2021, the Secretary advises the UIAC to consider that some employers are still trying to recover financially from the pandemic's impact on their operations when it considers strategies to rebuild the Trust Fund.

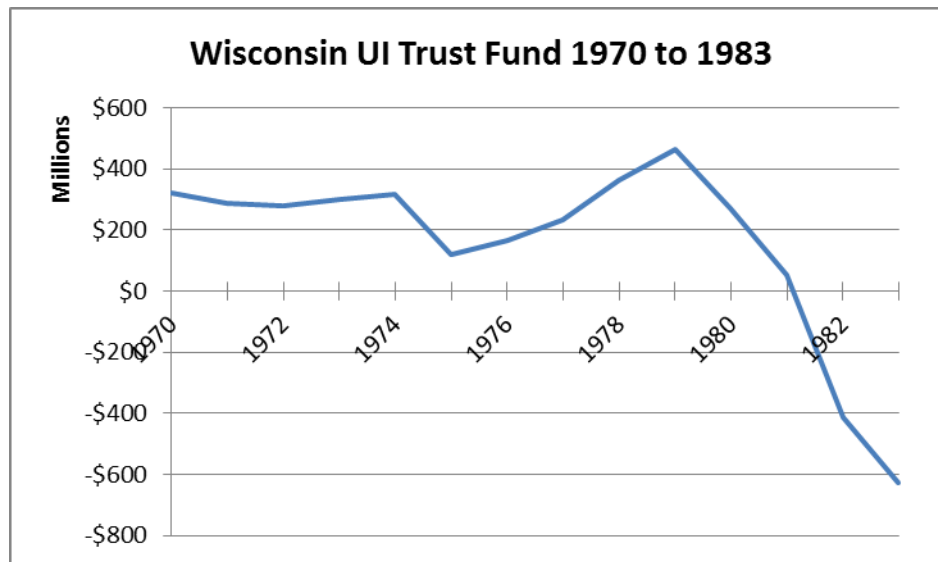
The Secretary also urges the Council to prioritize funding the Trust Fund at rates sufficient to provide workers the financial assistance necessary to withstand temporary periods of unemployment. Without the support of new federally funded unemployment relief programs, the impacts of the COVID-19 pandemic may have been catastrophic on the state's economy. Claimants have not received an increase in the weekly benefit rate since 2014. At one point, UI benefits replaced 50 percent of the average weekly wage but the current replacement rate is approximately 33 percent. Eligibility requirements have also impacted claimant reciprocity rates. From 2000-2007, the average reciprocity rate was 52.44 percent; whereas, from 2015-2019, the average reciprocity rate 33.75 percent.

The department is prepared to support the UIAC as it considers options to further strengthen Wisconsin's Unemployment Insurance program.

# Appendix A: Modern History of UI Financing System 1981 – 2018

## Creation of Our Current UI Financing System: 1981-1982 Recession and Aftermath

Much of the current Wisconsin UI financing system was developed as a response to the difficulties experienced by the UI Trust Fund during the recession of the early 1980s. The UI Trust Fund was rapidly depleted by the recession and Wisconsin had to borrow from the federal government to pay UI benefits.



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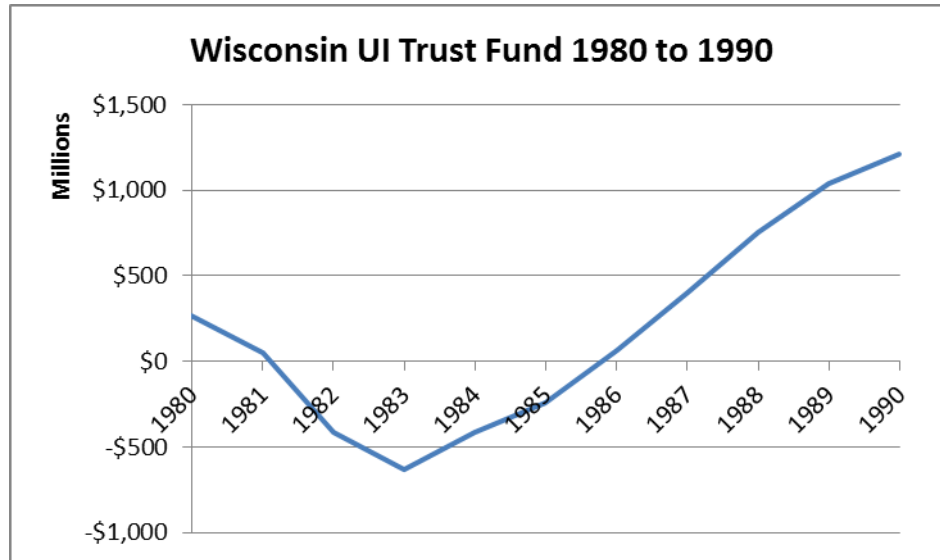
Wisconsin borrowed nearly \$1 billion (\$988 million) between 1982 and 1986. To provide context, this was about 4.1 percent of Total Covered Payroll in the mid-1980s. The same 4.1 percent of Total Covered Payroll of taxable employers in 2018 would be about \$4.2 billion. Wisconsin's employers paid \$124 million in interest as a result of borrowing in the mid-1980s.

To eliminate the large UI Trust Fund debt, Wisconsin enacted legislation that provided a number of major changes to the UI financing system. These changes included:

- Increasing the taxable wage base from \$6,000 to \$10,500;
- Creating new tax rate schedules that are dependent on the UI Trust Fund balance;
- Increasing the Rate Limiter to two percent;
- Temporarily discontinuing the 10 percent write-off;
- Limiting the effect of voluntary contributions;
- Charging the state's portion of Extended Benefits to employers instead of the UI Balancing Account;
- Reducing the maximum benefit duration from 34 weeks to 26 weeks;

- Increasing the requirements to qualify for benefits;
- Increasing the requalification requirements; and
- Eliminating the indexing of the weekly maximum benefit amount.

These changes allowed Wisconsin to rapidly repay the UI Trust Fund loan and build up a sizable UI Trust Fund by the end of the 1980s.



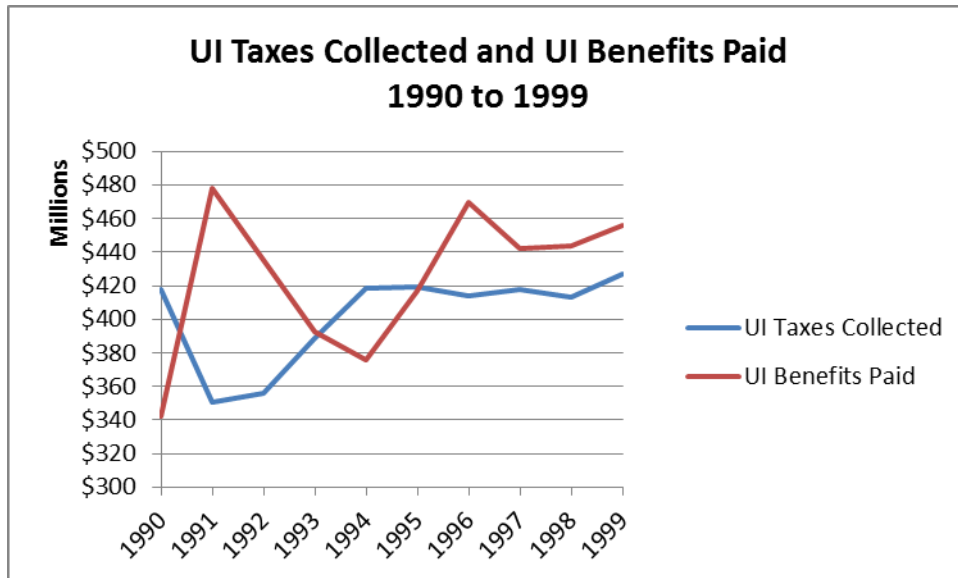
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### The Static UI Financing System in the 1990s

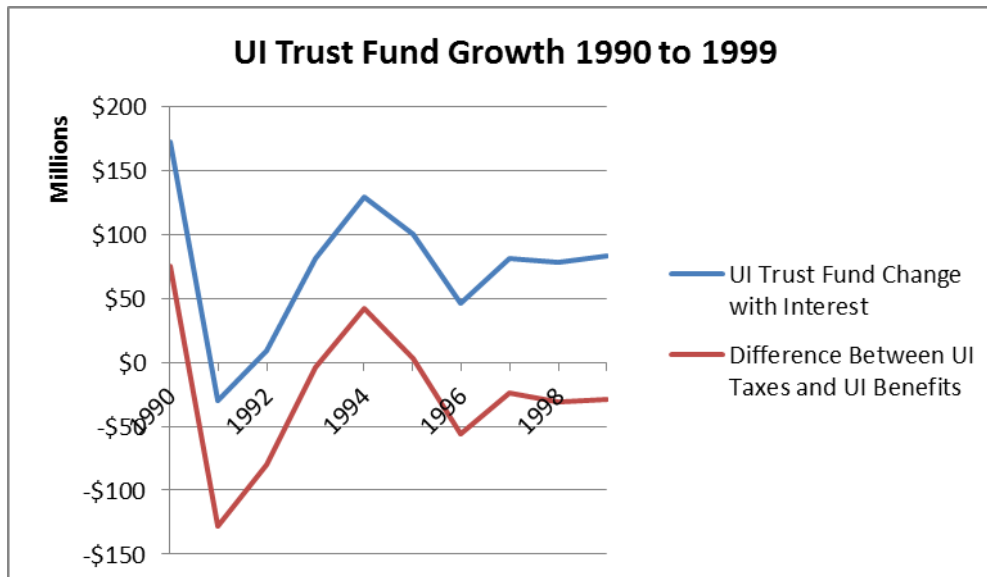
The UI Trust Fund accumulated a large balance before the onset of the 1991 recession. When the recession hit, total UI benefits paid exceeded UI tax revenue collected; however, the UI Trust Fund remained solvent. As the recession wound down, tax revenue rebounded, and benefit payments fell as expected.

During periods of economic growth, the UI financing system is designed to build up the UI Trust Fund to pay UI benefits during an economic downturn and avoid borrowing. This is what occurred following the 1991 recession. After the UI Trust Fund reaches a balance large enough to finance a recession, year-to-year UI benefits paid, and UI tax revenue collected should be roughly equal to maintain the UI Trust Fund balance, ensuring it will be large enough for the next recession.

Beginning in 1996, annual UI benefits paid began to exceed annual UI tax revenue collected. The mid-1990s were a high interest rate environment so the large interest returns allowed the UI Trust Fund to continue to grow despite the UI program running a yearly deficit.



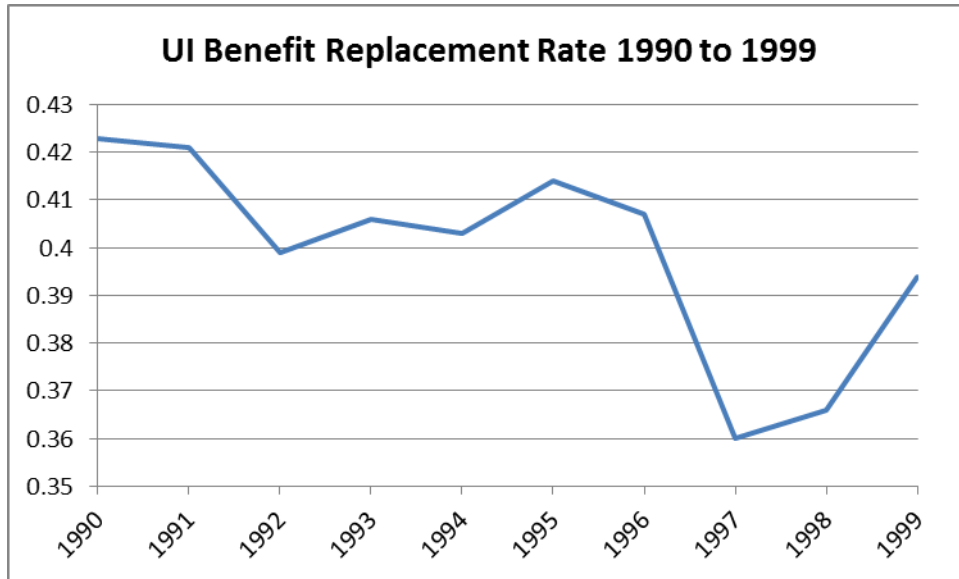
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The yearly deficit between benefit payments and tax revenue in the 1990s was not due to increases in the UI benefit formula. In fact, the real value of UI benefits to the unemployed fell during this time. The UI benefit replacement rate (the ratio of the average weekly benefit amount to the average weekly wage) declined over the 1990s. The average weekly benefit amount was 42.3 percent of the average weekly wage in 1990 and fell to 39.4 percent in 1999. (The replacement rate has continued to decline over the past two decades to a current rate of 35 percent.) Although the benefit replacement rate was declining, benefits paid increased in the late 1990s due to the average wage increasing over the period. Increases in an individual's wages increases the amount of a person's benefit entitlement. Benefit payments are expected to increase over time due to increases in wages earned and increases in the number of people

employed and eligible for benefits. The UI Trust Fund ended 1999 with a positive balance of \$1.7 billion.

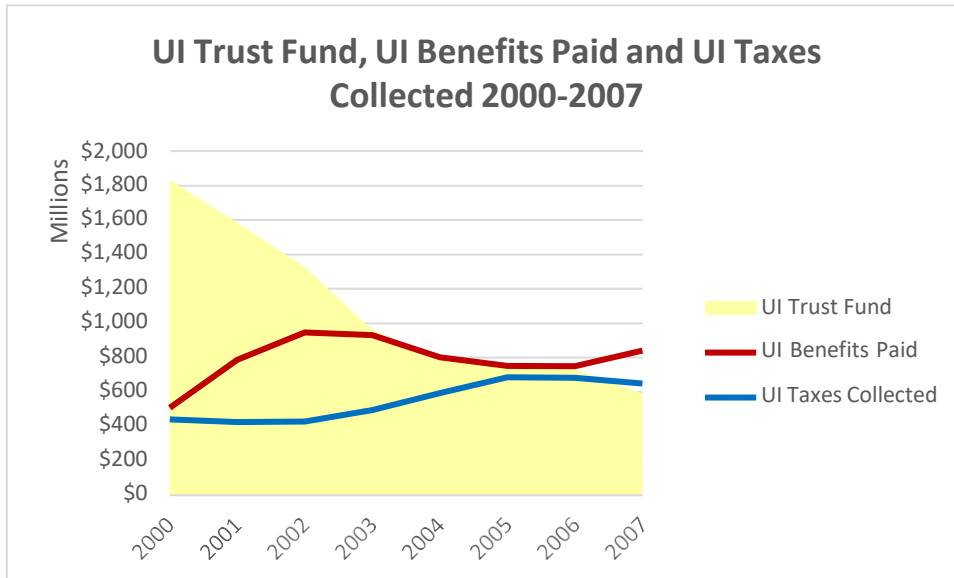


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### The Shrinking of the UI Trust Fund in the 2000s

The 2001-2002 recession began to expose the structural deficiencies of the 1990s' UI financing system. After the recession ended, the UI Trust Fund continued to dwindle, and taxes collected never exceeded benefits paid. Nationally, growth was tepid during the early part of the decade and growth was slightly slower in Wisconsin than in the rest of the nation.

The level of unemployment claims in the 2000s had increased over levels typical in the late 1990s. Interest earnings were no longer covering the gap between benefit payments and taxes. The system did not respond to either the recession or the shrinking UI Trust Fund. Taxes collected never exceeded benefits paid, and tax revenue started to fall, even though the UI Trust Fund continued to decline.



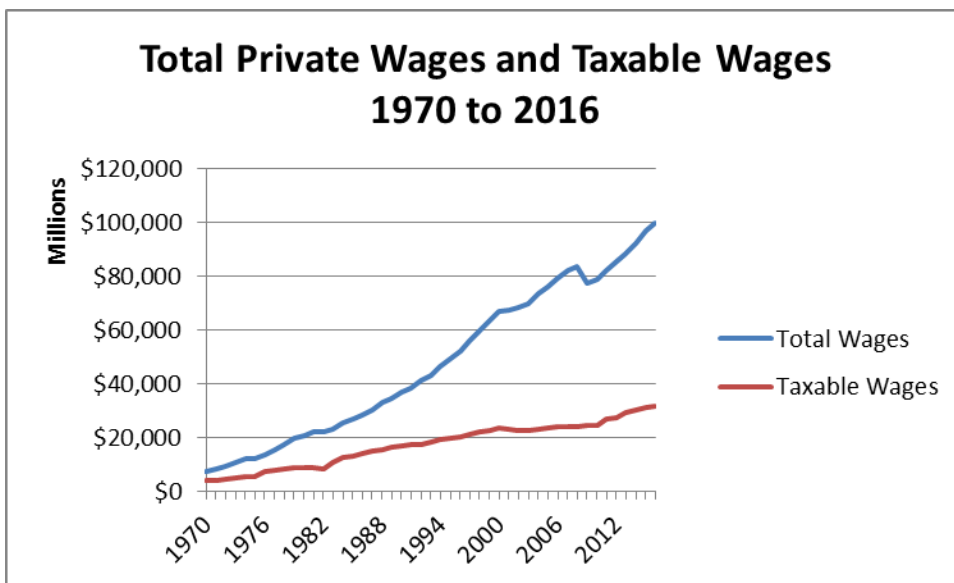
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There are two main reasons why the financing system was non-responsive:

**1. UI Taxable Wage Base Not Reflective of Wage Growth**

The taxable wage base remained at \$10,500, the level set in 1986. As a result, the ratio of taxable wages to total wages fell throughout the 1990s and 2000s.

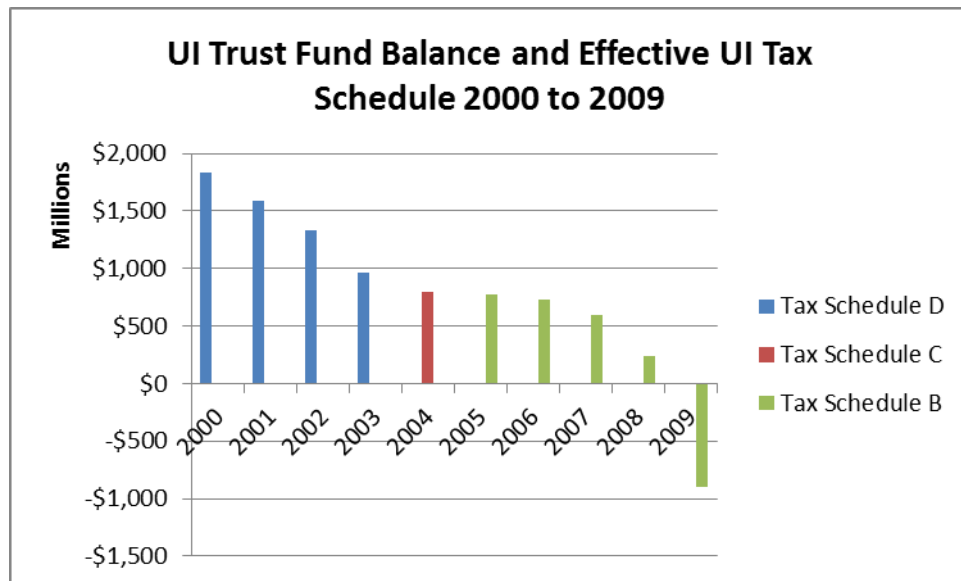
Increasing wages caused benefit payments to increase faster than tax revenue, even without a change in benefit policy. When the economy started to recover in 2003, employment did not rise as quickly as wages. Because the wage base was set in 1986, the increase in wages was not subject to taxes even though it was still increasing the risk to the system through higher benefit payments.



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## 2. The UI Tax Rate Schedule Change Triggers Reflect the 1980s Economy

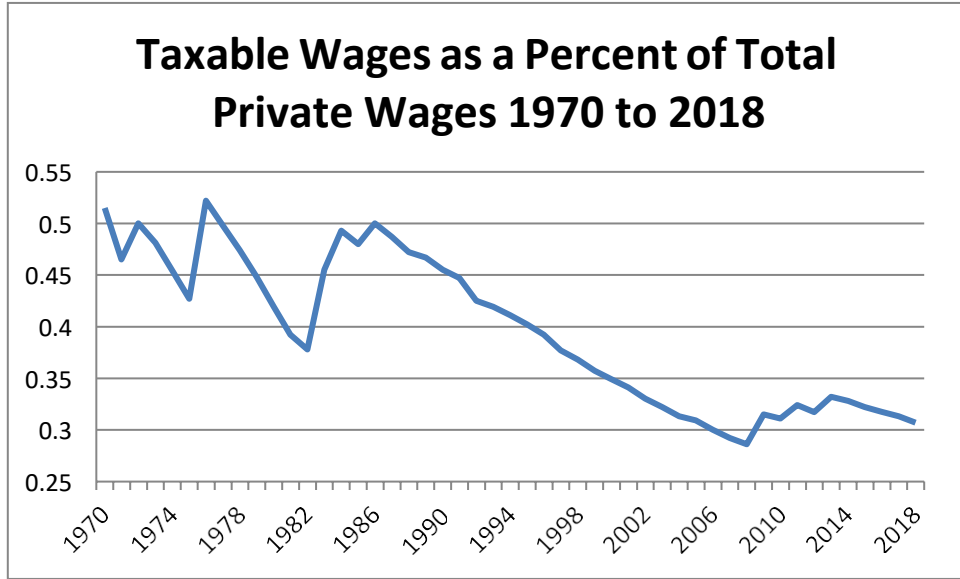
The UI tax system is comprised of four tax rate schedules. The balance of the UI Trust Fund as of June 30<sup>th</sup> determines which schedule is in effect for the next tax year and the dollar amount will trigger a corresponding tax schedule. When the schedule triggers were first established, they reflected the Wisconsin economy of the late 1980s. However, as the Wisconsin economy grew the triggers did not. When the triggers were adjusted in 1997, the threshold values were not updated to reflect any economic growth between 1989 and 1997. Therefore, the fixed trigger amounts did not reflect the economy of the early 2000s. Even with the UI Trust Fund shrinking rapidly, the balance never fell below the \$300 million balance threshold needed to trigger the highest tax rate schedule (Schedule A). Without the implementation of the higher rates in Schedule A, the UI Trust Fund continued to shrink.



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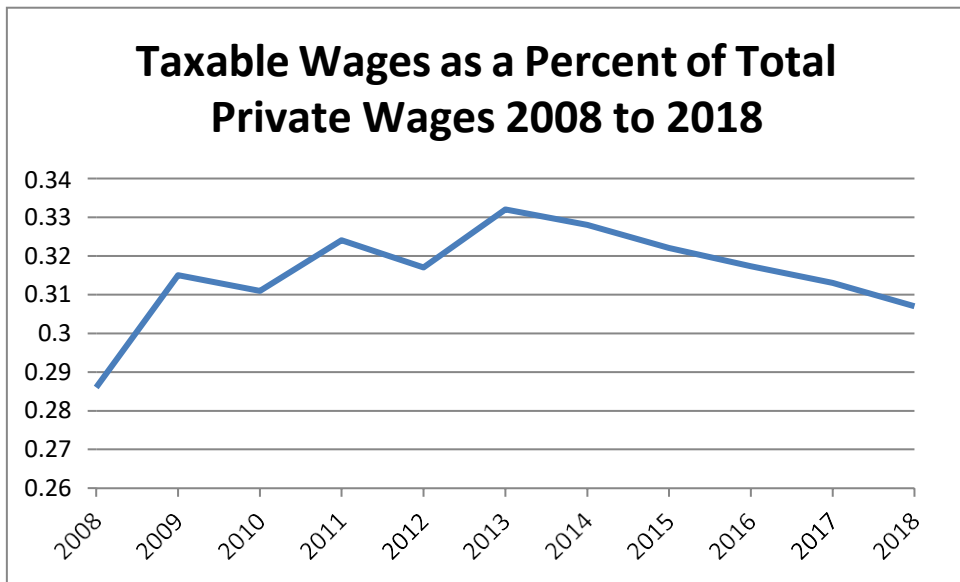
Between 2003 and the onset of the Great Recession, benefits paid remained above taxes collected. Unlike in the 1990s, interest earnings were not large enough to cover the gap and the UI Trust Fund continued to shrink. Any type of downturn would have inevitably caused the depletion of the UI Trust Fund.





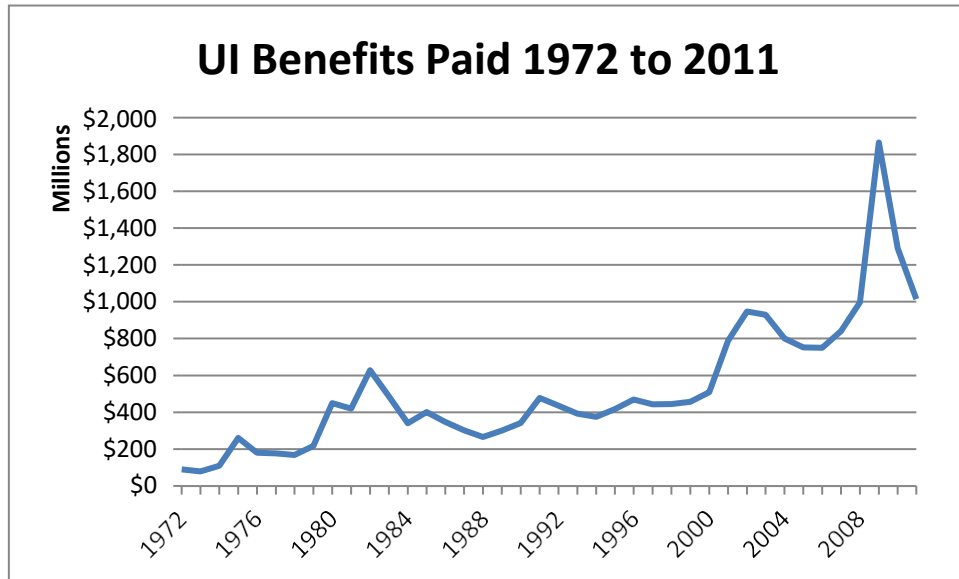
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Legislation was enacted in 2008 that increased the taxable wage base to \$12,000 in 2009, \$13,000 in 2011, and \$14,000 in 2013 where it was set to remain. This helped to reduce a portion of the decline of the ratio of the UI taxable wages to overall wages; however, by the time the wage base increased to \$14,000 in 2013, the wage base again began to lose value relative to total wages and its value has continued to decline.



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## The Great Recession



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The Great Recession strained the entire nation's Unemployment Insurance system. The Great Recession's initial impact on the Wisconsin UI system started in 2007, but it was not until 2008 and 2009 that UI benefit payments increased dramatically while overall employment fell. In raw dollar terms, the four largest benefit outlays in Wisconsin history occurred in the years 2008, 2009, 2010, and 2011, with the largest amount, \$1.8 billion, occurring in 2009.

### 5 Highest Benefit Years based on Benefits Paid as a Percent of Total Payroll 1972-2018

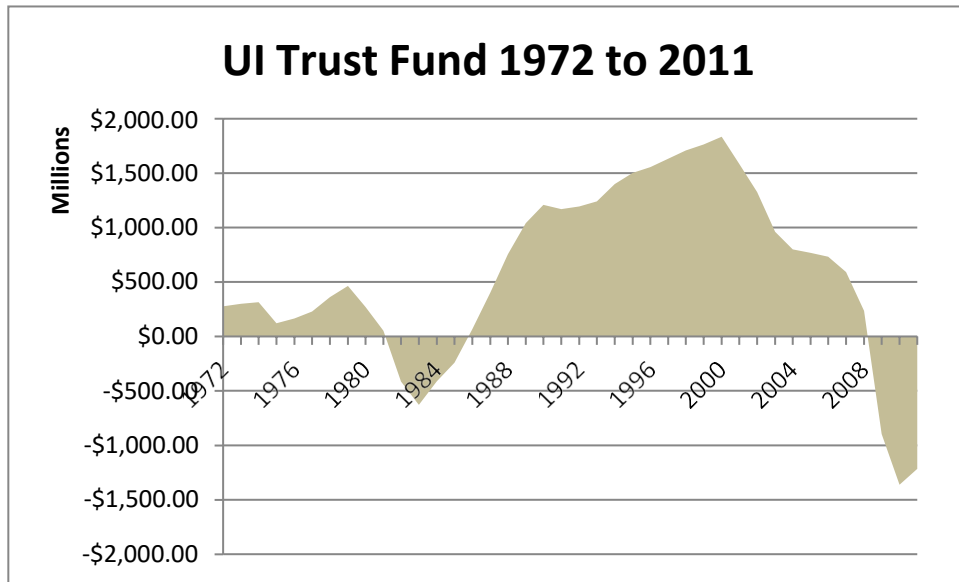
Year	Benefits as a Percent of Total Payroll
1982	2.84
2009	2.41
1980	2.17
1975	2.13
1983	2.11

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A better way to measure benefit expenditures is by comparing it to the amount of wages in the economy. Payroll can be viewed in terms of how many dollars are at risk. An analogy can be made to homeowner's insurance. The more expensive the home, the more money that needs to be paid out if there is a fire. For unemployment insurance, the more wages in the economy, the more benefits that will need to be paid during a recession.

When looking at benefit payments as a percentage of total payroll, the percentage during the Great Recession, while high, is below benefit payments during the 1981-1982 recession. When

viewed from this perspective, only 2009 is among the highest benefit years since 1972. The level of benefits paid during the Great Recession was in line with other recessions and reflected the growth of the economy and the increase in total payroll over four decades.



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As illustrated above, the Wisconsin UI Trust Fund was shrinking throughout the 2000s; the Great Recession was the catalyst that caused the UI Trust Fund to become insolvent and the state to borrow from the federal government to pay UI benefits.

The decline of the UI Trust Fund and the need to borrow to pay benefits led to policy responses taking effect. Some of these policy responses were in place due to existing laws and regulations:

- The reduction in the FUTA tax credit. Revenue from the tax credit reduction is used to pay off UI Trust Fund loans.
- Trigger to the highest Wisconsin UI tax schedule, Schedule A. When the UI Trust Fund fell below \$300 million in 2009, Schedule A went into effect for 2010. This schedule raises approximately \$90 to \$100 million more per year in tax revenue than the next schedule, Schedule B. When the UI Trust Fund balance exceeds \$300 million, an automatic trigger to Schedule B occurs.

Schedule A was not in effect until the UI Trust Fund was already insolvent; a strong indicator that the dollar value assigned to the trigger amounts was too low to prevent the need to borrow from the federal government. To put it in perspective, quarterly benefit payments exceeded \$300 million in eight of the 16 quarters between 2009 and 2012.

There were three Wisconsin legislative changes aimed to address the structural deficit in the UI Trust Fund during and following the Great Recession and all reduced benefit payments for claimants:

- Defining full-time work to be 32 hours or more;
- Eliminating partial benefits for individuals earning over \$500 per week; and
- Establishing a waiting week for UI claimants.

The waiting week caused the largest reduction in UI benefit payments, reducing payments by approximately 5 percent per year. Under the waiting week, the first week of benefits is withheld from eligible claimants. While the waiting week does not reduce the total amount of benefit payments a claimant is eligible to receive, the waiting week will reduce benefits paid for those claimants who do not exhaust their claim. The fewer weeks an individual claims, the larger the percentage reduction in benefit payments the waiting week represents. For example, a claimant claiming 6 weeks will see a 16.67 percent reduction in benefits under a waiting week versus no waiting week in place. Prior to the pandemic, with fewer claimants exhausting, many more claimants were having sizeable reductions in benefit payments due to the waiting week than was true when the law was enacted. At that time, more claimants exhausted their claim and still received payment for their maximum number of weeks.

During the Great Recession, UI benefit payments were reduced by approximately \$50 million dollars per year. Because of the multiplier effect<sup>8</sup> of UI benefit payments during a recession, this reduced the economic activity in Wisconsin by \$80 to \$100 million per year. After the recession the waiting week continued to reduce benefit payments; for 2018 this amounted to approximately \$19.9 million.

### **Recovery and Paying Off the UI Trust Fund Loan**

The nation experienced a slow growth recovery following the end of the Great Recession. This had an attendant slow employment recovery which had many people receiving UI benefits for long periods of time<sup>9</sup>. The low level of benefits paid was both a result of an improving economy and diminished base period wages for many people who were no longer qualified for UI benefits going forward due to a lack of employment.

Despite the lengthy period of above average paid benefits, the UI Trust Fund finished 2014 with a balance of \$215 million and the UI Trust Fund loan paid. There are three significant factors that contributed to repaying the loan and obtaining a positive balance:

1. Low level of UI benefits paid due to a reduction in filing activity;
2. Increase in UI tax revenue as a result of the highest tax rate schedule being in effect and a decline in employer experience rating due to high benefit payments; and
3. FUTA tax credit reduction.

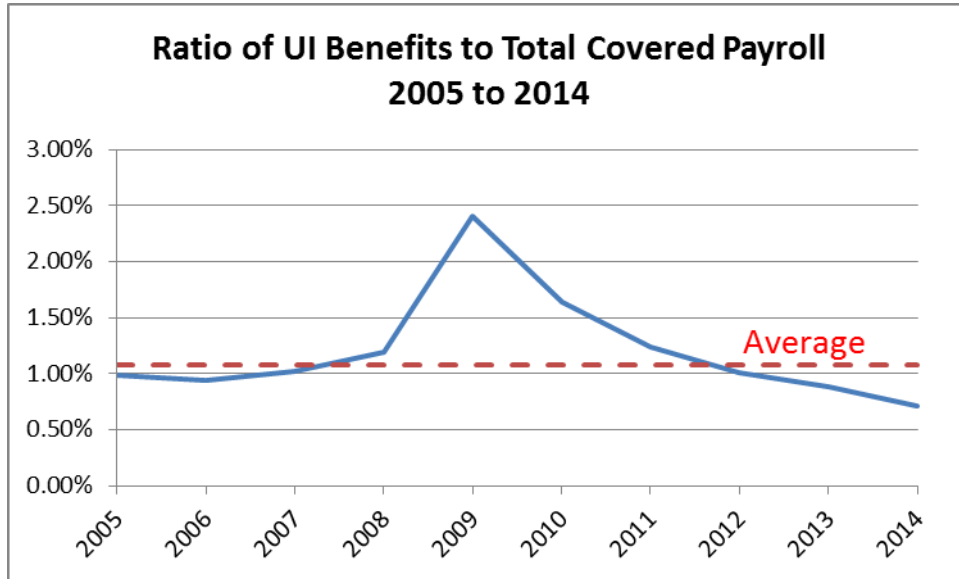
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<sup>8</sup> Estimates of the multiplier for UI benefits during the Great Recession range from 1.6 (The Testimony of Mark Zandi Chief Economist, Moody's Analytics Before the House Budget Committee "Perspectives on the Economy".) to 2.0 (IMPAQ International, The Role of Unemployment Insurance as an Automatic Stabilizer during a Recession by Wayne Vroman).

<sup>9</sup> Additional weeks of these benefits were paid under Emergency Unemployment Compensation (EUC) pursuant to federal legislation and were funded with federal taxes.

## Wisconsin UI Benefit Payments

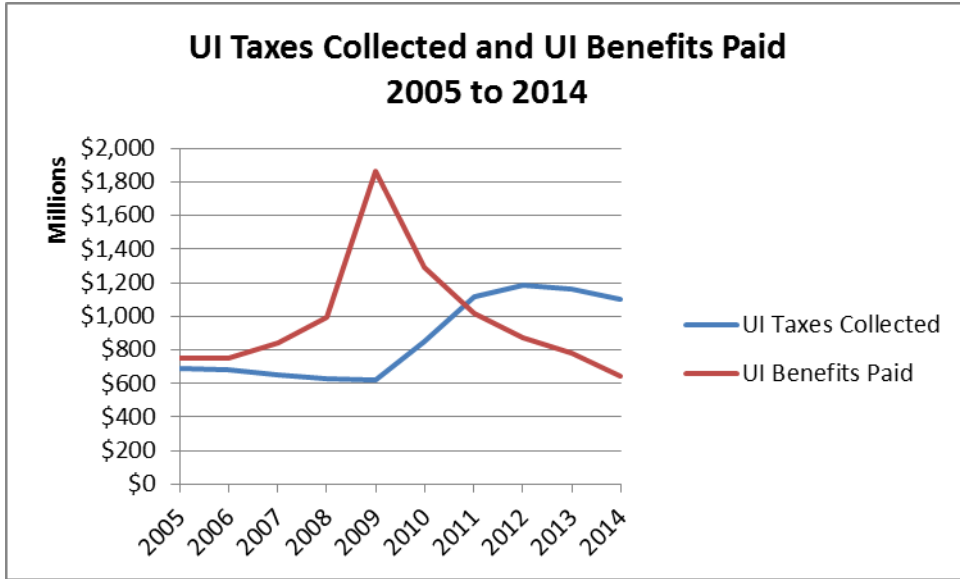
UI benefit payments were elevated through 2011 and fell to a more normal level in 2012. In 2013 UI benefit payments fell to an amount below average and were substantially below average in 2014. The low level of UI benefit payments reduced expenditures from the UI Trust Fund.



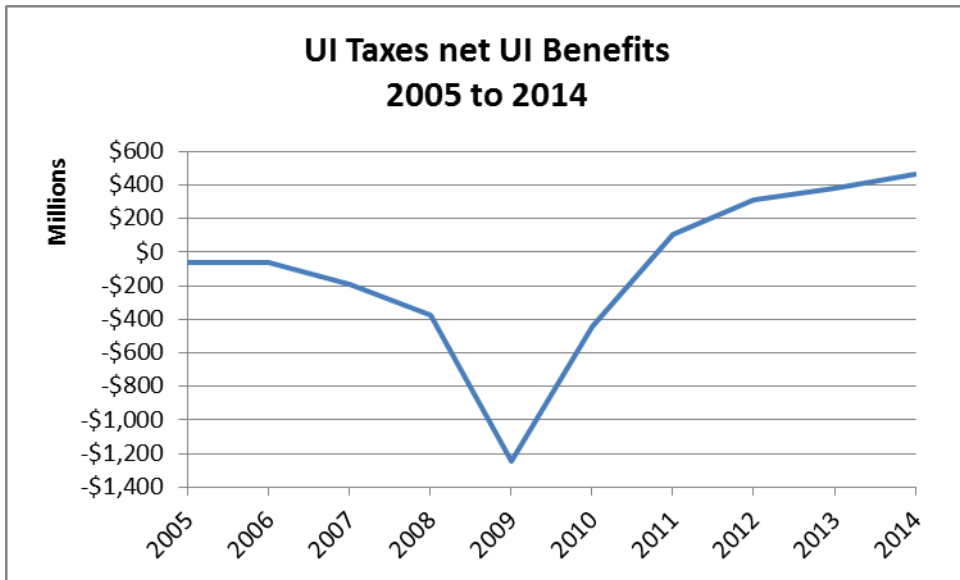
ET Financial Data Handbook 394, <http://ows.doleta.gov/unemploy/hb394.asp>

## UI Tax Revenue

While UI benefit payments declined rapidly, UI tax revenue also declined but at a slower rate. Prior to the pandemic, the UI Trust Fund balance had increased as the net positive difference between taxes and benefits had grown.



ET Financial Data Handbook 394, <http://ows.doleta.gov/unemploy/hb394.asp>



ET Financial Data Handbook 394, <http://ows.doleta.gov/unemploy/hb394.asp>

## FUTA Tax Credit Reduction

As described in Section 1, the Federal Unemployment Tax (FUTA) credit is reduced in states that borrow from the U.S. Treasury at a rate based on the number of years a state has borrowed. Employers in Wisconsin had credit for their FUTA tax reduced, leading to higher federal unemployment tax bills. The funds the federal government collects are used to reduce the state's debt. The FUTA credit reduction experienced by Wisconsin employers added approximately \$292 million to the UI Trust Fund. Without the revenue from the FUTA credit reduction, the UI Trust Fund would have remained negative until first quarter receipts at the end of April 2015.

## Cost of Wisconsin UI Borrowing during and after the Great Recession

Borrowing to pay UI benefits has costs associated with it that are borne by covered employers and other Wisconsin taxpayers. As mentioned above, the reduction in employers' FUTA credit increased federal UI taxes by \$291 million from 2012 to 2014. There are two details about the FUTA tax increase that differentiates it from state UI taxes. First, it is a flat wage tax, meaning the tax rate is not experience rated. Employers are taxed at the same rate no matter how much or how little they have used the UI system in the past. Second, the FUTA tax does not affect future tax rates.

The other large borrowing cost was interest payments on the federal loans. In total, UI Trust Fund borrowing accumulated \$103 million in interest costs. Of the interest costs, \$78 million was paid by employers through the Special Assessment for Interest (SAFI). The remaining \$25 million was paid with Wisconsin General Purpose Revenue (GPR) funds. Interest rates during this recession were low; however, low interest rates do not accompany every recession. The 1982 recession had very high interest rates. In the future it is possible the interest cost could be much higher if interest rates are higher.

### Direct Costs of Wisconsin UI Borrowing during and after the Great Recession (Millions of \$)

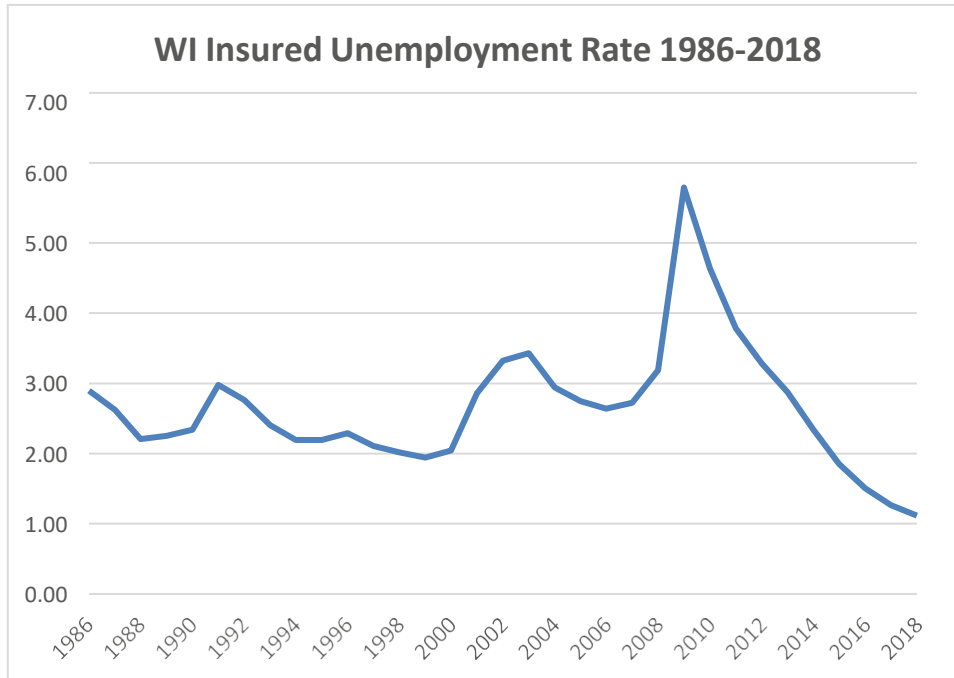
	2011	2012	2013	2014	Total
FUTA Credit Reduction		\$47	\$96	\$148	<b>\$291</b>
UI Trust Fund Loan Interest Paid Via SAFI	\$42	\$36			<b>\$78</b>
UI Trust Fund Loan Interest Paid Via GPR			\$19	\$6	<b>\$25</b>
<b>Total Borrowing Costs</b>					<b>\$394</b>
<b>Total Costs Paid by Employers</b>					<b>\$369</b>

Wisconsin UI Tax Data

## Wisconsin UI Benefit Payments post Great Recession

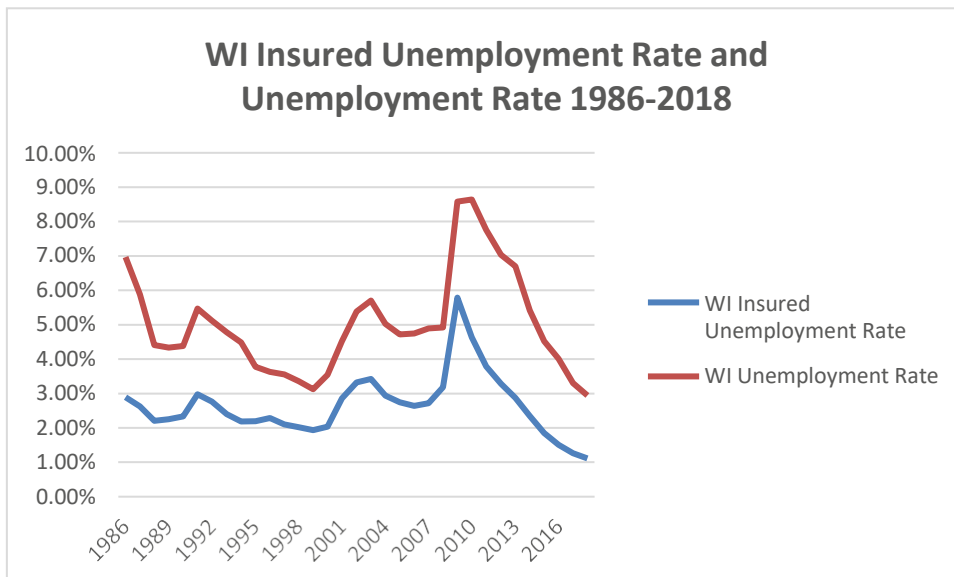
UI benefit payments have continued at historically low levels since the end of the Great Recession. There are two complementary reasons for this decline in benefit payments; a decline in unemployment claims, and the value of unemployment benefits relative to wages.

The decline in unemployment claims is illustrated by the insured unemployment rate declining to levels that have not been experienced in the modern UI system. The insured unemployment rate is the ratio of the UI claims to covered employment, so it represents the percent of covered employment that is collecting UI benefits.



U.S. Employment and Training Administration, Insured Unemployment Rate in Wisconsin [WIINSUREDUR], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/WIINSUREDUR>

This decline in claim activity is even more pronounced when compared to the overall unemployment rate over the same period. Unemployment rates for the years immediately prior to the pandemic were very similar to rates reported in the late 1990s, but the rate of unemployment claims were approximately half of what occurred during that period.

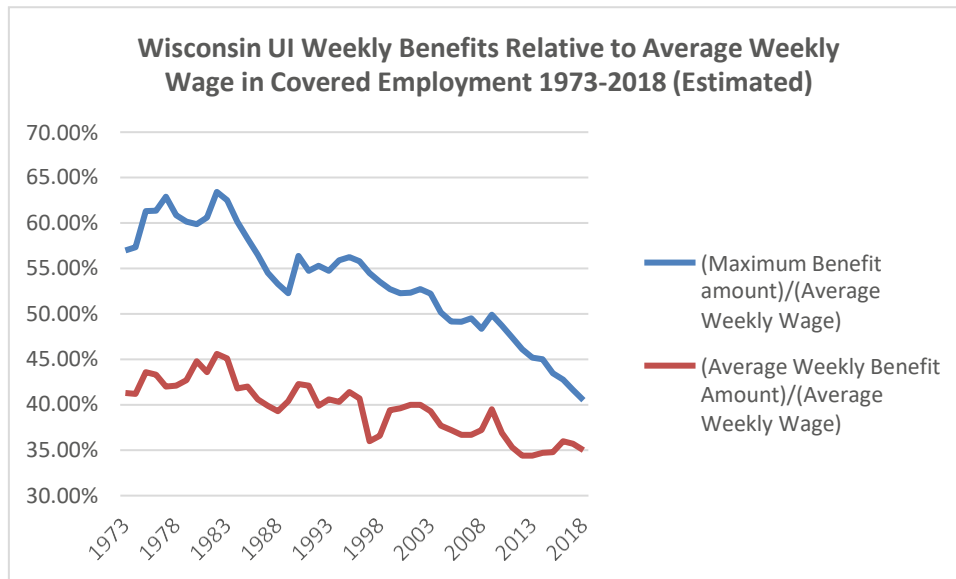


U.S. Employment and Training Administration, Insured Unemployment Rate in Wisconsin [WIINSUREDUR], U.S. Bureau of Labor Statistics, Unemployment Rate in Wisconsin [WIUR], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/>



Prior to the pandemic, there had been a break in the historic relationship between unemployment and unemployment claims. If UI benefit claims following the Great Recession had been closer to historic normal claim levels, even with the lower unemployment rate, unemployment benefit payments would be expected to be \$175 million to \$250 million more per year. This equates to about \$460 million to \$675 million of the increase in the UI Trust Fund balance since 2015.

The second reason is less of a break in recent UI history and more of a result of a long-run pattern in UI benefits. Over the last few decades, the value of UI benefits has not kept pace with growth in wages.



ET Financial Data Handbook 394, <http://ows.doleta.gov/unemploy/hb394.asp>

As the chart above illustrates, there has been a constant decrease in the maximum benefit rate relative to the average weekly wage. From the end of the Great Recession forward, there has been a sharp decline in the replacement rate of the UI weekly benefit rate. As this ratio falls the value of the UI benefit, both in supporting worker households and supporting the economy during downturns, falters.

From 1992 to 2003, the maximum weekly benefit rate increased each year. Starting in 2003, the rate of increase slowed but there were still regular increases until 2009. Starting in 2009, the maximum weekly benefit rate stalled at \$363 for 5 years. In 2014 it increased to \$370, where it has remained. All maximum weekly benefit amounts since 1992 are listed in Appendix D.

If the UI benefit rate was closer to the long-term replacement rate of 40 percent of average wages, UI benefit payments would have averaged \$100 million more per year in 2017 and 2018, with \$94 million being charged to the UI Trust Fund. This likely would have led to increased UI tax revenue of approximately \$31 million.

In summary, the rapid growth of the UI Trust Fund can be attributed to the historically low UI benefit payments that occurred prior to the pandemic. Historically low benefit payments added approximately \$525 to \$600 million to the UI Trust Fund over the reporting period of 2017 to 2018.

## Appendix B: Wisconsin Unemployment Statistics 1992 to 2020 Wisconsin Unemployment Reserve Fund<sup>10</sup>

(Amounts in Millions of \$)  
Wisconsin Unemployment Insurance Division Data

Year	Revenues						Expenses			Ending Balance
	Taxes	Interest and Other	Reed Act	Federal Distributions	FUTA Credit Reduction	Total Receipts	Benefit Expenses	Reed Act Expenses	Total Expenses	
1992	358	90				448	437		437	1,185
1993	391	85				476	394		394	1,267
1994	418	87				505	377		377	1,395
1995	421	98				519	418		418	1,496
1996	415	102				517	471		471	1,542
1997	419	105				524	445		445	1,621
1998	414	110				524	452		452	1,693
1999	431	113				544	466		466	1,771
2000	442	117				559	515		515	1,815
2001	432	110				542	791		791	1,566
2002	430	88	166			684	949		949	1,301
2003	497	65				562	932		932	931
2004	596	48				644	795	3	798	777
2005	687	42				729	752	4	756	750
2006	684	39				723	753	3	756	717
2007	649	37				686	845	4	849	554
2008	628	21				649	997	23	1,020	183
2009	634	1		144		779	1,873	3	1,876	(915)
2010	850					850	1,288	(5)	1,283	(1,348)
2011	1,115					1,115	1,012	(6)	1,006	(1,239)
2012	1,187				47	1,234	876	(5)	871	(876)
2013	1,172				96	1,268	793		793	(401)
2014	1,107	2			148	1,257	642		642	214
2015	1,048	13			1	1,062	536		536	741
2016	852	22				874	458		458	1,157
2017	691	30				721	408		408	1,470
2018	598	37				635	376		376	1,729
2019	557	45				602	372		372	1,959
2020	501	37		69		607	1,450		1,450	1,116

<sup>10</sup> Ending reserve fund balances exclude monies set aside under the American Recovery and Reinvestment Act (ARRA) and Short-Time Compensation (STC) and Emergency Administration Grant (EUISAA).

## Appendix C: Wisconsin Unemployment Statistics 1992 to 2020 Usage of Wisconsin Unemployment Insurance

ET Financial Data Handbook 394

Year	First Payments	Weeks Compensated	Duration	Insured Unemployment Rate	Maximum Weekly Benefit Amount
1992	215,669	2,978,897	13.8	2.7	\$240
1993	197,203	2,608,193	13.2	2.3	\$243
1994	191,952	2,443,988	12.7	2.1	\$256
1995	213,327	2,518,458	11.8	2.1	\$266
1996	234,291	2,791,774	11.9	2.3	\$274
1997	210,504	2,857,991	13.6	2.1	\$282
1998	219,771	2,726,008	11.5	2.0	\$290
1999	209,497	2,473,569	11.8	1.9	\$297
2000	230,458	2,582,328	11.2	2.0	\$305
2001	327,155	3,762,208	11.5	2.9	\$313
2002	328,083	4,363,674	13.3	3.4	\$324
2003	315,409	4,346,562	13.8	3.4	\$329
2004	269,306	3,759,400	14.0	2.9	\$329
2005	262,724	3,500,388	13.3	2.7	\$329
2006	258,845	3,421,577	13.2	2.6	\$341
2007	279,814	3,678,462	13.1	2.8	\$355
2008	321,164	4,225,212	13.2	3.2	\$355
2009	447,970	7,605,705	17.0	6.1	\$363
2010	324,879	5,770,210	17.8	4.7	\$363
2011	283,624	4,588,323	16.2	3.7	\$363
2012	232,949	3,926,156	16.9	3.3	\$363
2013	214,125	3,407,788	15.9	2.9	\$363
2014	175,853	2,698,223	15.3	2.3	\$370
2015	152,641	2,152,899	14.1	1.8	\$370
2016	133,083	1,716,415	12.9	1.5	\$370
2017	115,199	1,494,556	13.0	1.3	\$370
2018	106,770	1,352,076	12.7	1.1	\$370
2019	108,010	1,305,850	12.1	1.1	\$370
2020 <sup>11</sup>	396,187	6,007,541	15.2	5.2	\$370

<sup>11</sup> 2020 data is not finalized.

## Appendix D: Wisconsin Unemployment Statistics 1992 to 2020 Total Covered Employment, Average Weekly Wage, Average Weekly Benefit Amounts and Maximum Weekly Benefit Amount

ET Financial Data Handbook 394

Year	Covered Employment	Average Weekly Wage	Average Weekly Benefit	Maximum Weekly Benefit Amount
1992	2,253,976	\$434	\$175	\$240
1993	2,308,361	\$444	\$183	\$243
1994	2,384,509	\$458	\$188	\$256
1995	2,449,029	\$473	\$199	\$266
1996	2,493,484	\$491	\$202	\$274
1997	2,550,955	\$518	\$188	\$282
1998	2,602,559	\$542	\$215	\$290
1999	2,661,710	\$564	\$223	\$297
2000	2,703,542	\$584	\$233	\$305
2001	2,686,548	\$598	\$242	\$313
2002	2,660,922	\$614	\$248	\$324
2003	2,657,571	\$630	\$252	\$329
2004	2,684,896	\$656	\$251	\$329
2005	2,714,477	\$669	\$253	\$329
2006	2,737,431	\$694	\$259	\$341
2007	2,751,715	\$717	\$267	\$355
2008	2,743,267	\$735	\$273	\$355
2009	2,614,062	\$728	\$288	\$363
2010	2,600,207	\$745	\$275	\$363
2011	2,634,447	\$766	\$270	\$363
2012	2,664,284	\$788	\$271	\$363
2013	2,691,719	\$803	\$276	\$363
2014	2,728,833	\$823	\$285	\$370
2015	2,765,376	\$851	\$296	\$370
2016	2,772,828	\$866	\$312	\$370
2017	2,234,432	\$889	\$317	\$370
2018	2,792,000	\$914	\$320	\$370
2019	2,851,918	\$967	\$325	\$370
2020 <sup>12</sup>	2,854,552	\$927	\$295	\$370

<sup>12</sup> 2020 data is not finalized.

## Appendix E: Maximum Weekly Benefit Rate by State

USDOL Comparison of State Unemployment Laws (2019)

State	Maximum Weekly Benefit Rate	Maximum Weekly Benefit Rate with Dependent Allowance	State	Maximum Weekly Benefit Rate	Maximum Weekly Benefit Rate with Dependent Allowance
AL	\$265	\$265	NE	\$426	\$426
AK	\$370	\$442	NV	\$450	\$450
AZ	\$240	\$240	NH	\$427	\$427
AR	\$451	\$451	NJ	\$696	\$696
CA	\$450	\$450	NM	\$492	\$492
CO	\$597	\$597	NY	\$450	\$450
CT	\$631	\$706	NC	\$350	\$350
DE	\$330	\$330	ND	\$595	\$595
DC	\$438	\$438	OH	\$443	\$598
FL	\$275	\$275	OK	\$520	\$520
GA	\$330	\$330	OR	\$624	\$624
HI	\$630	\$630	PA	\$561	\$569
ID	\$414	\$414	PR	\$133	\$133
IL	\$471	\$648	RI	\$566	\$707
IN	\$390	\$390	SC	\$326	\$326
IA	\$467	\$573	SD	\$402	\$402
KS	\$474	\$474	TN	\$275	\$275
KY	\$502	\$502	TX	\$507	\$507
LA	\$221	\$284	UT	\$560	\$560
ME	\$431	\$646	VT	\$498	\$498
MD	\$430	\$430	VA	\$378	\$378
MA	\$795	\$1,192	VI	\$552	\$552
MI	\$362	\$362	WA	\$749	\$749
MN	\$717	\$717	WV	\$424	\$424
MS	\$235	\$235	<b>WI</b>	<b>\$370</b>	<b>\$370</b>
MO	\$320	\$320	WY	\$489	\$489
MT	\$527	\$527			
<b>National Average</b>				<b>\$453</b>	<b>\$480</b>

## Appendix F: Wisconsin Unemployment Statistics 1992 to 2020 Taxable UI Benefits and UI Taxes as a Percentage of Total Wages in Taxable Covered Employment

(Amounts in Millions of \$)  
ET Financial Data Handbook 394

Year	Total Wages in Taxable Covered Employment	Taxable Benefits as a Percent of Total Wages	Taxes as a Percent of Total Wages
1992	\$41,212	1.06%	0.86%
1993	\$43,218	0.91%	0.90%
1994	\$46,208	0.81%	0.90%
1995	\$49,104	0.85%	0.85%
1996	\$51,877	0.91%	0.80%
1997	\$55,968	0.79%	0.75%
1998	\$59,724	0.74%	0.69%
1999	\$63,497	0.72%	0.67%
2000	\$66,771	0.76%	0.66%
2001	\$67,452	1.17%	0.63%
2002	\$68,151	1.39%	0.63%
2003	\$69,588	1.34%	0.71%
2004	\$73,323	1.09%	0.81%
2005	\$75,730	0.99%	0.91%
2006	\$79,249	0.95%	0.86%
2007	\$82,118	1.02%	0.79%
2008	\$83,328	1.20%	0.75%
2009	\$77,419	2.41%	0.80%
2010	\$78,617	1.64%	1.08%
2011	\$82,114	1.23%	1.36%
2012	\$85,601	1.02%	1.38%
2013	\$88,438	0.89%	1.32%
2014	\$92,088	0.70%	1.19%
2015	\$96,775	0.54%	1.07%
2016	\$98,756	0.45%	0.85%
2017	\$103,271	0.39%	0.66%
2018	\$105,552	0.36%	0.54%
2019	\$111,976	0.33%	0.49%
2020 <sup>13</sup>	\$106,427	1.36%	0.47%

<sup>13</sup> 2020 data is not finalized.

## Appendix G: Wisconsin Unemployment Statistics 1992 to 2020 UI Benefits Directly Charged to the UI Balancing Account (Excludes Charges for the -10 percent Write-Off<sup>14</sup>)

(Amounts in Millions of \$)

Wisconsin Unemployment Insurance Division Data

Year	Quit	Misconduct	Substantial Fault	Suitable Work	PTNC Continued Employment	Waiver Agency Error	2nd Benefit Year	Temporary Supplemental Benefits	Training Benefits	Subtotal Bal Acct Direct Charges	Total UI Benefit Charges
1992	50.8	1.2		0.2	0.9	---	---	---		53.1	437.5
1993	47.7	1.1		0.2	0.9	---	---	---		49.9	393.9
1994	50.4	1.1		0.2	1.0	0.1	---	---		52.8	377.1
1995	61.0	1.4		0.2	1.1	0.2	---	---		63.9	418.2
1996	69.1	1.6		0.2	2.3	0.3	3.0	---		76.5	471.2
1997	67.6	1.8		0.3	3.7	0.3	12.1	---		85.8	444.9
1998	68.7	1.9		0.3	3.7	0.2	10.4	---		85.2	452.0
1999	73.4	2.0		0.3	3.6	0.2	10.4	---		89.9	466.2
2000	81.2	2.3		0.3	3.6	0.2	11.6	---		99.2	515.6
2001	116.7	3.4		0.5	4.8	0.2	16.6	---		142.2	790.7
2002	111.8	3.8		0.5	5.9	0.6	27.7	10.8		161.1	949.3
2003	98.8	3.6		0.5	6.8	0.3	30.8	-0.2		140.6	931.8
2004	84.7	2.8		0.5	6.3	0.4	24.7	---		119.4	795.2
2005	89.4	2.9		0.5	5.2	0.4	19.8	---		118.2	752.4
2006	94.0	3.2		0.4	5.2	0.3	18.5	---		121.6	752.6
2007	104.4	3.9		0.5	5.3	0.3	19.3	---		133.7	845.2
2008	112.4	4.2		0.4	6.1	0.4	24.9	---		148.4	996.8
2009	167.7	7.2		0.5	10.5	0.5	49.7	---		236.1	1,873.6
2010	85.7	4.6		0.3	11.9	0.6	54.5			157.6	1,288.5
2011	82.7	4.1		0.3	9.1	0.5	33.4		16.3	146.4	1,011.7
2012	85.9	3.0		0.4	7.2	0.5	24.2		18.5	139.7	875.8
2013	82.0	3.4		0.3	5.4	0.4	21.7		15.0	128.2	792.8
2014	69.4	3.1	0.4	0.3	4.7	0.1	17.1		8.1	103.2	642.5
2015	64.3	2.8	1.0	0.3	3.8	0.4	12.1		6.2	90.9	535.3
2016	51.8	2.4	0.8	0.2	3.3	0.1	9.7		5.1	73.4	457.4
2017	46.7	2.3	0.5	0.1	3.1	0.1	8.1		3.9	64.8	408.0
2018	44.9	2.2	0.2	0.1	2.8	0.1	6.8		3.0	60.1	375.9
2019	45.5	2.4	0.4	0.1	2.4	0.1	6.8		4.4	62.0	372.3
2020	202.4	5.5	4.8	0.1	9.5	0.3	15.8		5.3	243.7	1,450.1

<sup>14</sup> Does not include noncharging for Act 185 and Act 4. Those amounts will not be known until after the recharging effort is completed in the upcoming months.

## **Appendix H: Explanation of UI Benefit Charges to the UI Balancing Account**

### **Standard Charges to the UI Balancing Account**

#### **Write-Offs**

These are different from other UI Balancing Account charges since these are first charged to an employer's account. When the UI Division calculates the Reserve Fund Percentage for basic tax purposes, the Reserve Fund Percentage is limited to -10 percent and charged benefits that would decrease the Reserve Fund Percentage below that point are written-off. These written-off benefit charges are recharged to the UI Balancing Account. In 2020, the second largest charge to the UI Balancing Account comes from write-offs. This accounted for \$21.4 million in charges to the UI Balancing Account. All other charges to the UI Balancing Account in 2020 totaled \$243.7 million. Thus, write-offs represent approximately 8.1% percent of all charges to the UI Balancing Account in 2020.

#### **Quits**

When an employee quits work but becomes eligible for benefits, instead of charging the former employer, those benefits are charged to the UI Balancing Account. The idea is to not hold employers responsible when a claimant collects UI benefits due to no attributable action on behalf of the employer. A quit can occur if the claimant falls under one of the quit exceptions enumerated in statute or more likely if the claimant quits a job to take a new one and then is subsequently laid off. In 2020 quits are the largest category of charges against the UI Balancing Account.

#### **Misconduct**

This situation occurs when an employer terminates an employee for misconduct connected with employment. The employee then finds employment at a second employer. This second employer then lays off the employee (i.e. the employee is not terminated for cause from the second employer). The claimant's benefit amount is based on his work history from both employers, assuming the claimant's new work history is sufficient enough to requalify for benefits. Wages from the terminated with-cause employer are removed from consideration when calculating a claimant's maximum benefit amount. These wages however, will be used to determine the weekly benefit amount a claimant can receive. Any portion of the pro-rated benefit amount that comes from the terminated with-cause employer will be charged to the UI Balancing Account.

#### **Substantial Fault**

This is similar to what occurs under misconduct. If an employee who is terminated with justifiable cause under substantial fault finds work with another employer and is then laid off, he may requalify for benefits. If the employee does qualify for benefits, wages from the terminated with-cause employer are used both in calculating the maximum benefit amount and the weekly benefit rate. The pro-rated portion of benefits assigned to the terminated with-cause employer is instead charged to the UI Balancing Account.

#### **Continued Employment**

The typical case for this occurs when a claimant is working for two employers, either both part time, or one full time and one part time. The claimant is laid off from one employer but continues working at the second employer. The claimant files a claim based upon the reduction in wages earned. These benefits will be based upon the entire earnings of the claimant but the current employer, who



did not reduce the claimant's wages, will not be charged for their benefit share; instead they are charged to the UI Balancing Account.

### **Second Benefit Year**

This occurs when an employer was charged for a claimant's benefits in the first benefit year, and wages paid by the employer are part of a second benefit year for a claimant, but the employer has not employed the claimant for over a year. This can occur because benefits are based upon the first 4 of the previous 5 quarters. The 5<sup>th</sup> quarter could be part of a future benefit claim. That employer would not be charged for the fifth quarter, but those benefits would instead be charged to the UI Balancing Account.

### **Training Benefits**

UI benefits paid to claimants participating in department approved training programs are charged to the UI Balancing Account. The Training Benefits category includes benefits paid to claimants who were enrolled in the Extended Training program. The Extended Training program was ended by the Wisconsin Legislature in 2013, so no future charges for that program are expected.

## **Non-standard Charges to the UI Balancing Account**

### **Temporary Supplemental Benefits**

In 2002, special state Temporary Benefits were charged to the UI Balancing Account and similar programs in the future could also be charged to the UI Balancing Account.

### **Wisconsin Act 185 Pandemic Benefit Non-Charging**

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, the Department of Workforce Development was required to charge unemployment benefits for initial claims related to the public health emergency declared by Executive Order 72 to the UI Balancing Account of the UI Trust Fund for taxable employers.

# 2021 Financial Outlook: Wisconsin Unemployment Insurance Program

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UIAC Meeting  
May 20, 2021  
Madison, WI

**Robert Usarek**

Unemployment Insurance Division  
Department of Workforce Development

## Overview

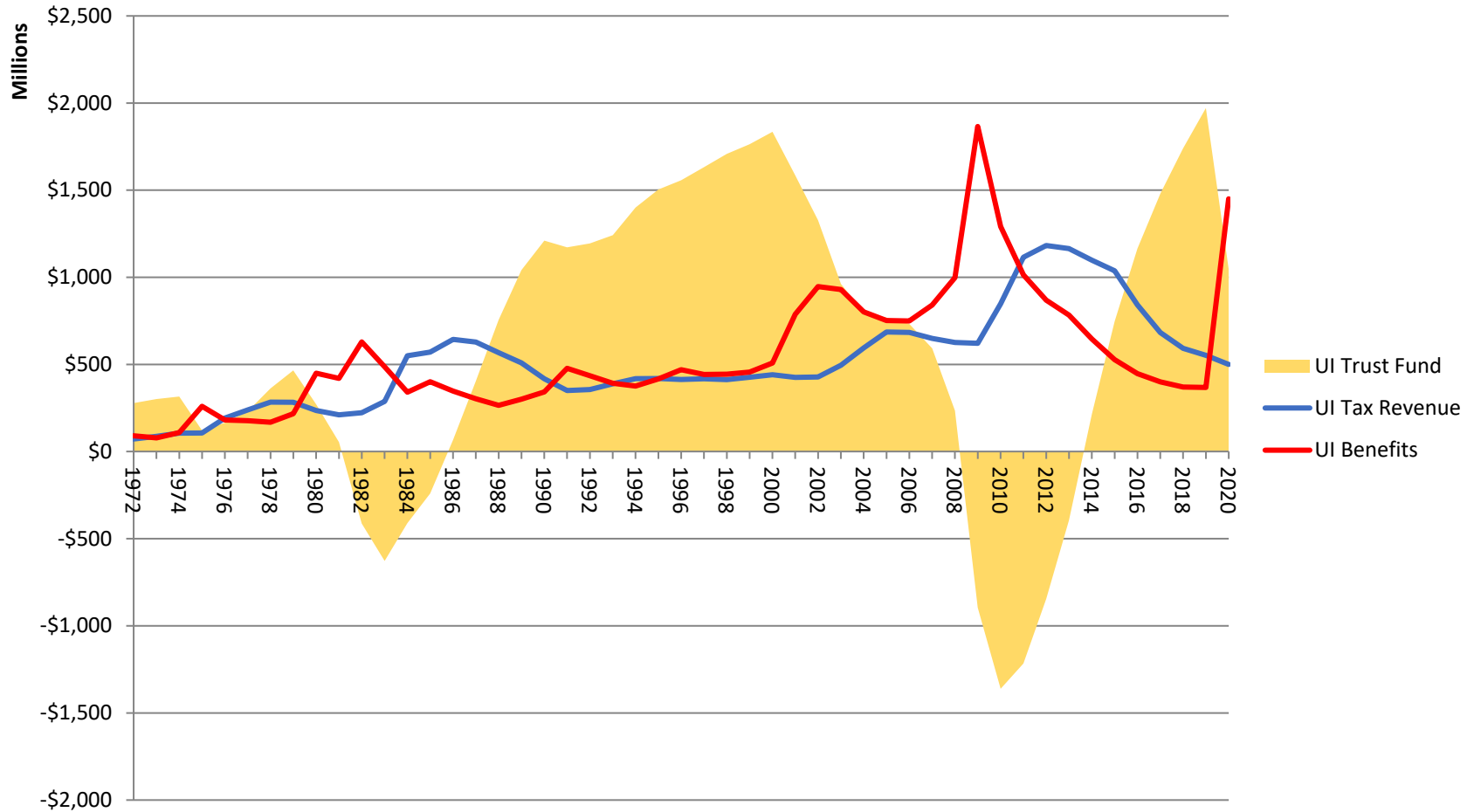
- Introduction
- Review of recent UI Trust Fund activity
- UI Trust Fund projections

- The 2021 *Financial Outlook* of the Wisconsin Unemployment Insurance (UI) program was submitted to the Governor's Office on April 15, 2021 pursuant to [Wis. Stat §16.48](#)
- The *Financial Outlook* provides background on the Wisconsin UI financing system and projections of the UI Trust Fund

# 2021 UI Financial Outlook: Review of Recent UI Trust Fund Activity



## UI Trust Fund Balance 1972 to 2020



# 2021 UI Financial Outlook: Review of Recent UI Trust Fund Activity



- The UI Trust Fund has decreased over the past two years:
  - At the end of 2018 the UI Trust Fund balance was \$1.731 billion
  - At the end of 2020 the UI Trust Fund balance was \$1.049 billion
- The main cause for the decrease in the UI Trust Fund was the rapid increase in benefits in 2020 due to the COVID – 19 Pandemic

# 2021 UI Financial Outlook: Review of Recent UI Trust Fund Activity



- Between March 15, 2020 and December 26, 2020, the UI Division paid over \$4.68 billion to approximately 590,095 claimants.
- Of those benefit payments, \$3.18 billion were federally funded COVID-19 relief programs, including
  - Pandemic Unemployment Assistance (PUA),
  - Pandemic Emergency Unemployment Compensation (PEUC),
  - Lost Wages Assistance (LWA),
  - Federal Pandemic Unemployment Compensation (FPUC).
- Wisconsin's UI Trust Fund was in a good position to weather the pandemic, with an Average High Cost Multiple (ACHM) of nearly 1.
- The healthy balance likely prevented Wisconsin from needing to borrow from the federal government during the COVID-19 pandemic.
- To withstand another recession without having to borrow from the federal government, it is likely the Trust Fund will need to grow again.

# 2021 UI Financial Outlook: UI Trust Fund Projections



Unemployment Reserve Fund Activity				
(Millions \$)				
	2020	2021	2022	2023
<b>Opening Unemployment Reserve Fund Balance</b>	\$1,961	\$1,049	\$751	\$836
<b>Revenues:</b>				
<b>State Unemployment Revenues (employer taxes)</b>	\$500	\$427	\$540	\$553
<b>Interest Income</b>	\$38	\$22	\$20	\$22
<b>Federal Reimbursement for UI Benefits</b>		\$55		
<b><u>Total Revenue</u></b>	<b><u>\$538</u></b>	<b><u>\$504</u></b>	<b><u>\$560</u></b>	<b><u>\$575</u></b>
<b>Expenses:</b>				
<b>Unemployment Benefits</b>	\$1,450	\$801	\$475	\$512
<b>Ending Reserve Fund Balance</b>	\$1,049	\$751	\$836	\$898



# 2021 UI Financial Outlook: UI Trust Fund Projections



- Trust Fund Projection Highlights:
  - Revenue is expected to decrease in 2021 and increase in 2022 and 2023
  - Benefits are expected to begin to decline in 2022
  - The Trust Fund balance is expected to begin to recover in 2<sup>nd</sup> half of 2021 and grow through 2023, but stabilize and remain under \$1B

# 2021 UI Financial Outlook: UI Trust Fund Projections



- There are multiple risks associated with the UI Trust Fund projections:
  - Under Wisconsin Act 185, and Act 4 UI benefits paid during the pandemic period may be charged to the UI Balancing Account rather than charged to the employer accounts. Because the full accounting of the charging of benefits has yet to occur, there is added uncertainty to the projections
  - Economic conditions are precarious due to the pandemic.
  - Another large risk is from changes in policy. The policy situation governing UI benefits and UI taxes is very fluid. These projections are made with the best understanding of the current policy available.

## Secretary's recommendation, page 15:

The Secretary recommends the Unemployment Insurance Advisory Council (UIAC) review and advance legislative measures that strengthen UI Trust Fund solvency while supporting the integrity of the UI system. The Secretary urges the Council to pursue a balanced approach to rebuilding the Trust Fund that recognizes some employers are still being economically impacted by the pandemic and the importance of delivering on UI's promise to support unemployed workers who are out of work through no fault of their own.

The Secretary also urges the Council to prioritize funding the Trust Fund at rates sufficient to provide workers the financial assistance necessary to withstand temporary periods of unemployment.

The department is prepared to support the UIAC as it considers options to further strengthen Wisconsin's Unemployment Insurance program.

Thank You

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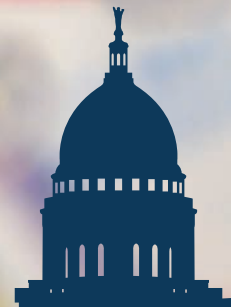


# Improving Wisconsin's UI laws

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:<sup>1</sup>

- (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.

<sup>1</sup> 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.<sup>2</sup>

### 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

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<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>



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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.

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

<sup>4</sup>Wis. 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).**



APPLETON

## 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.



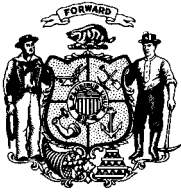


Department of Workforce Development

201 E. Washington Ave.

Madison, WI 53707

608-266-3131 | [dwd.wisconsin.gov](http://dwd.wisconsin.gov)



## 2021 SENATE BILL 320

April 21, 2021 - Introduced by Senators ERPENBACH, WIRCH, BEWLEY, CARPENTER, L. TAYLOR, ROYS, RINGHAND, PFAFF, SMITH and LARSON, cosponsored by Representatives SINICKI, SHANKLAND, HESSELBEIN, ANDERSON, HINTZ, HEBL, VRUWINK, NEUBAUER, CONLEY, S. RODRIGUEZ, EMERSON, ANDRACA, SHELTON, SPREITZER, SKOWRONSKI, SUBECK and STUBBS. Referred to Committee on Labor and Regulatory Reform.

- 1     **AN ACT** *to amend* 108.062 (20) (intro.) and 108.062 (20) (c) of the statutes;  
2           **relating to:** unemployment insurance work-share programs.

---

### *Analysis by the Legislative Reference Bureau*

Current law allows an employer to create a work-share program within a work unit of the employer. Under a work-share program, the working hours of all of the full-time employees in the program are reduced in an equitable manner in lieu of a layoff of some of the employees and a continuation of full-time employment by the other employees. A claimant for unemployment insurance (UI) benefits who is included in a work-share program may receive UI benefits during his or her continued employment with the work-share employer in an amount equal to the claimant's benefit for total unemployment multiplied by the same percentage reduction in normal working hours that the claimant incurs under the program. Current law also provides for the temporary modification of certain requirements that apply to work-share plans with respect to work-share plans submitted on or after April 17, 2020, and before the conclusion of a national emergency declared by the U.S. president in response to the 2019 novel coronavirus or July 4, 2021, whichever is earlier.

Also, under a provision in federal law, first enacted in the federal CARES Act, a state with a work-share law may receive payment equal to 100 percent of the amount of work-share benefits paid under a work-share program under the provisions of the state law. The CARES Act provided the payments for weeks of unemployment ending on or before December 31, 2020, but the date has been extended further, most recently in the federal American Rescue Plan Act. Under the

**SENATE BILL 320**

American Rescue Plan Act, the payments are extended for weeks of unemployment ending on or before September 6, 2021.

The bill does the following under state law with respect to work-share programs:

1. Extends the applicability of these modifications to correspond with the date described above provided in federal law (currently September 6, 2021) so that if federal law is amended to further extend the end date for the federal payments, the modifications are extended as well.

2. Adds an additional temporary modification to allow work-share plans to remain in effect for 12 months in a five-year period, instead of six months.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 108.062 (20) (intro.) of the statutes, as affected by 2021 Wisconsin  
2 Act 4, is amended to read:

3           108.062 **(20)** SUSPENSIONS OF CERTAIN PROVISIONS. (intro.) Notwithstanding sub.  
4 (2), this subsection, and not sub. (2), applies to work-share plans submitted on or  
5 after April 17, 2020, and before the conclusion of a national emergency declared by  
6 the U.S. president under 50 USC 1621 in response to the 2019 novel coronavirus or  
7 July 4, 2021, whichever is earlier applicable date in section 2108 (b) (2) of the federal  
8 CARES Act, as amended, 15 USC 9026 (b) (2), subject to sub. (19). During that  
9 period, prior to implementing a work-share program, an employer shall submit a  
10 work-share plan for the approval of the department. In its submittal, the employer  
11 shall certify that its plan is in compliance with all requirements under this section.  
12 Each plan shall:

13           **SECTION 2.** 108.062 (20) (c) of the statutes is amended to read:

**SENATE BILL 320**

1           108.062 **(20)** (c) Specify the period or periods when the plan will be in effect,  
2           which may not exceed a total of ~~6~~ 12 months in any 5-year period within the same  
3           work unit.

4           **SECTION 3. Initial applicability.**

5           (1) The treatment of s. 108.062 (20) (c) first applies to work-share plans  
6           approved under s. 108.062 (3) or (3m) on the effective date of this subsection.

7           **SECTION 4. Effective date.**

8           (1) This act takes effect on the first Sunday after publication.

9                                   (END)

### Fiscal Estimate - 2021 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> 21-2782/1	<b>Introduction Number</b> SB-320
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**Description**  
 unemployment insurance work-share programs

**Fiscal Effect**

**State:**

No State Fiscal Effect  
 Indeterminate

<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
--	--	---

**Local:**

No Local Government Costs  
 Indeterminate

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
--	--	--

<b>Fund Sources Affected</b>	<b>Affected Ch. 20 Appropriations</b>
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	

<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DWD/ Andrew Evenson (608) 266-1756	Danielle Williams (608) 266-2284	4/30/2021

## Fiscal Estimate Narratives

DWD 4/30/2021

LRB Number	<b>21-2782/1</b>	Introduction Number	<b>SB-320</b>	Estimate Type	<b>Original</b>
<b>Description</b> unemployment insurance work-share programs					

### Assumptions Used in Arriving at Fiscal Estimate

This bill extends the end date of the pandemic-related Unemployment Insurance (UI) provision that modifies the UI work-share program and allows the state to claim federal reimbursement for work-share benefit payments. The current end date is July 4, 2021. This bill allows current work-share modifications to apply through the date in federal law for which federal benefit payments are available (currently September 6, 2021), so that if federal law is amended to further extend the end date for the federal benefit payments, the modifications are extended as well. This bill also adds a temporary modification to allow work-share plans, approved between the provision's effective date and the end date of federal benefit payments, to remain in effect for 12 months in a five-year period, instead of six months.

This bill is not estimated to have a fiscal effect to the Department. Implementation of these provisions requires no IT systems programming or other administrative changes.

This bill extends the date to capture federal reimbursement for work-share benefits, increasing federal funds available to support these benefits and potentially decreasing UI Trust Fund costs. Although the UI Trust Fund is not a state appropriation, note that this change may have a small positive effect on the UI Trust Fund. The positive impact is expected to be small because current work-share program participation is modest, with 82 employers participating as of March 2021, and this number is expected to decline in future months.

The bill's change to increase eligible work-share months from six to 12 in a five-year period is estimated to have no impact to the UI Trust Fund. While this change could increase workshare months in the period following the end date of federal reimbursement and thus increase UI Trust Fund costs, such an increase is unlikely. Prior to the pandemic, there was only occasional demand for work-share agreements, with one work-share agreement in place in March of 2019, and no work-share agreements in place in January 2020. It is anticipated that work-share agreements will decline and reach pre-pandemic levels with very few or no agreements in place by the date that federal reimbursement ends.

For local governments planning to lay-off workers between passage of the bill and September 6th, there would be potential savings if they choose to use a Work-share program. However, the potential savings for local governments is not able to be determined at this time. After September 6th, there is no longer federal reimbursement. Local government employers, like all other employers, can choose to use the Work-share program as a way to retain staff during times of necessary furloughs.

### Long-Range Fiscal Implications



## 2021 ASSEMBLY BILL 328

May 14, 2021 - Introduced by Representatives ANDRACA, SHANKLAND, DOYLE, B. MEYERS, S. RODRIGUEZ, ANDERSON, BALDEH, CONLEY, CONSIDINE, EMERSON, HEBL, HONG, MILROY, OHNSTAD, RIEMER, SHELTON, SNODGRASS, SPREITZER, STUBBS, SUBECK and VRUWINK, cosponsored by Senators CARPENTER, PFAFF, ERPENBACH and L. TAYLOR. Referred to Committee on Workforce Development.

1 **AN ACT relating to:** unemployment insurance contribution rates.

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### *Analysis by the Legislative Reference Bureau*

Current law provides four schedules of unemployment insurance contribution (tax) rates, with Schedule D containing the lowest rates and Schedule A containing the highest. Which schedule is in effect for a given calendar year depends on the cash balance of the state's unemployment reserve fund as of the preceding June 30. Schedule D, which is in effect in calendar year 2021, is otherwise in effect for any calendar year whenever, as of the preceding June 30, the state's unemployment reserve fund has a cash balance of at least \$1,200,000,000.

This bill requires Schedule D of the unemployment insurance contribution (tax) rates to remain in effect through the end of calendar year 2023, regardless of the cash balance of the state's unemployment reserve fund as of June 30, 2021, and June 30, 2022.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 **SECTION 1. Nonstatutory provisions.**





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

The Wisconsin Department of Workforce Development ("the Department") adopts the following emergency rule *to amend* DWD 123.01 and *to create* DWD 123.04, relating to benefit charges for initial claims related to the public health emergency declared by Executive Order 72.

The Governor approved the scope statement for this rule, SS 144-20, on October 28, 2020. The scope statement was published in register No. 779A1, on November 2, 2020. The notice of preliminary hearing and comment period on the scope statement was published on November 2, 2020, in register No. 779A1. The preliminary hearing on the scope statement was held on November 9, 2020. The Department received no comments at the preliminary hearing. The Department approved the scope statement on November 16, 2020. This rule was approved by the Governor on April 30, 2021.

**Analysis Prepared by the Department of Workforce Development**

*Finding of Emergency*

By Executive Order 72, on March 12, 2020, the Governor declared a public health emergency to protect the health and well-being of the state's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses have temporarily or permanently closed, resulting in significant business income reduction and layoffs. On April 4, 2020, the President issued a declaration under the Stafford Act that a major disaster exists in Wisconsin, beginning January 30, 2020 and continuing, due to the COVID-19 pandemic.

2019 Wis. Act 185, sec. 50, which created s. 108.07(5)(bm)1., Stats., directed the Department to provide employers charging relief for unemployment benefits for initial claims that are related to the public health emergency declared on March 12, 2020 by Executive Order 72, for benefits payable between March 12, 2020 and December 31, 2020. 2021 Wis. Act. 4, sec. 5, which created s. 108.07(5)(bm)1m., Stats., extended the charging relief from December 31, 2020 to March 13, 2021, and requires the Department to presume that all initial claims for benefits through that date relate to the public health emergency unless the most recent separation from unemployment is due to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for substantial fault.

Under s. 108.07 (5) (bm), Stats., the Department is directed to charge unemployment benefits for initial claims that are related to the public health emergency first declared on March 12, 2020, by Executive Order 72, to the balancing account of the Trust Fund for contribution employers. For reimbursable employers, the Department charges such benefits to the interest and penalty appropriation.

2019 Wis. Act 185 also created s. 108.04 (2) (d), Stats., which requires employees and employers to “indicate whether a claim for regular benefits is related to the public health emergency declared on March 12, 2020, by executive order 72” when the Department requests. The statute does not provide a deadline for employees or employers to submit the information. That paragraph further provides that the Department “may specify the information required to be provided.”

The Department’s antiquated computer systems are ill-equipped to handle the changes in charges from the employers’ accounts to the balancing account or interest and penalty appropriation. Each weekly claim to be recharged under s. 108.07 (5) (bm), Stats., requires the Department to change each weekly benefit charge from the employer’s account, after any federal funds have been appropriately applied, to the balancing account or interest and penalty appropriation. The Department is working toward completing this process by June 30, 2021.

Under ss. 108.02 (8), 108.02 (22), and 108.18 (4), Stats., “an employer’s contribution rate on the employer’s payroll for a given calendar year shall be based on the reserve percentage of the employer’s account as of the applicable computation date,” s. 108.18 (4), Stats., which is June 30 of each year. Section 108.02 (22), Stats., requires the Department to determine the status of an employer’s account when setting the reserve percentage for contribution purposes as of the computation date.

If the recharging of benefits from employer accounts to the balancing account is not completed by June 30, 2021 for contribution employers, those employers’ contribution rates for 2022 could be set higher than they should be under the charging relief enacted by 2019 Wis. Act 185 and 2021 Wis. Act 4. Contribution rates that are incorrectly set higher than they should be could adversely affect employers’ abilities to recover financially from the economic downturn caused by the pandemic.

If the recharging of benefits from employer accounts to the interest and penalty appropriation is not completed as soon as possible for reimbursable employers, those employers will continue to receive monthly bills for reimbursements that they should not be required to pay under 2019 Wis. Act 185 and 2021 Wis. Act 4 and that they might not be able to afford to pay due to the economic downturn caused by the pandemic.

In order to meet the June 30, 2021 completion date, the Department needs the requested information from employers to determine whether or not they are entitled to charging relief unless the claims fall within the charging relief presumption. This rule sets a deadline to submit requests for charging relief to ensure that all recharging work is completed by the June 30, 2021 deadline.

A permanent rule is not appropriate because the relief of charging statutes only apply for a limited time.

### *Statutes Interpreted*

Sections 108.04 (2) (d) and 108.07 (5) (bm), Stats., which are discussed in the above Finding of Emergency.

### ***Statutory Authority***

Section 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 s. 108.14 (2), Stats.

### ***Related Statutes or Rules***

To implement the charging relief required under 2019 Wis. Ac 185, the Department promulgated EmR2044, which has an initial expiration date of May 5, 2021. Because EmR2044 was promulgated before the enactment of 2021 Wis. Act 4, which creates the presumption for charging relief for initial claims unless certain exceptions apply, the Department is promulgating this new emergency rule to be consistent with Act 4.

### ***Plain Language Analysis***

The emergency rule determines the information that employers must submit, if any, to request charging relief for initial claims that relate to the public health emergency declared on March 12, 2020, by Executive Order 72 between March 15, 2020 and March 13, 2021, to comply with s. 108.07 (5) (bm), Stats.

If a claimant's most recent employment separation is not due to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for substantial fault, and the claimant's initial claim is for a benefit year beginning on or after March 15, 2020 through March 13, 2021, the Department will presume that the claim relates to the public health emergency declared on March 12, 2020, by Executive Order 72. All employers who paid base period wages to the claimant will be relieved of the benefit charges for that claim and employers will not be required to request the relief.

An employer that paid base period wages may request charging relief if the most recent employment separation is due to a voluntary termination of work that would otherwise be charged to the employer and the claimant's initial claim is for a benefit year beginning on or after March 15, 2020 through March 13, 2021 and if the employer certifies that certain circumstances apply to the initial claim. If the most recent separation is due to a labor dispute, misconduct, substantial fault, or a voluntary termination of work, the unemployment benefits are already not charged to the employer under pre-pandemic law. An employer may meet the requirement by certifying that any of the following conditions exist:

- The employer's business/operations reduced, suspended, or ceased after experiencing a significant reduction in business due to a Safer at Home order or a government-issued health order that restricts business operations.
- The employer's business/operations reduced, suspended, or ceased due to other businesses (including suppliers) having reduced, suspended, or ceased operations.
- The federal Paycheck Protection Program loan amount was used to pay employees, but the business did not yet reopen.
- The employer provides other information showing that the initial claim relates to the public health emergency declared on March 12, 2020 by Executive Order 72.

For those employers who do not meet the presumption that the claim is related to the public health emergency, this emergency rule sets a deadline by which employers must submit the information required by section 108.04 (2) (d), Stats. The deadline is the latter of May 14, 2021, or 30 days after the Department sent a notification to the employer of an initial claim for benefit years beginning on or after March 15, 2020 through March 13, 2021. The deadline is necessary to ensure that all information regarding the initial claims is submitted in time for processing the recharging of benefits before June 30, 2021, which is the computation date that the Department must use to determine contribution rates for 2022.

This rule also determines the treatment of employers in a claimant's base period who are not the most recent employer of a claimant whose initial claim is related to the public health emergency declared on March 12, 2020, by Executive Order 72. The Department will apply the employer charging provisions of 2019 Wis. Act 185 and 2021 Wis. Act 4 to all base period employers for the claim.

Finally, this rule requires the Department to interpret the provisions of s. 108.07 (5) (bm), Stats., by applying the provisions of s. 108.07(5) (bm), Stats., to additional initial claims filed on or after March 15, 2020 for a benefit year that began before March 15, 2020 so that the legislative intent of 2021 Wis. Act 4 is properly applied.

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

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

Under the federal 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 ... non-charge[e] 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." 42 U.S.C. § 1103 (h) (3) (B). Wisconsin's share of the \$500 million is about \$9.457 million.

### *Comparison with rules in adjacent states*

Illinois does not charge employers for unemployment benefits “for a week of unemployment that begins on or after March 15, 2020, and before December 31, 2020, and is directly or indirectly attributable to COVID-19...” 820 ILCS 405/1502.4(A).

By Executive Order 2020-76, Michigan charges benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

Iowa is currently not charging unemployment benefits related to COVID-19 to employer accounts.

By Emergency Executive Order 20-05, Minnesota will “not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer.”

### *Summary of factual data and analytical methodologies*

The Department reviewed Wisconsin statutes, administrative rules, and changes to federal law to determine the information that employers must submit to receive charging relief. The recharging of claims under s. 108.07 (5) (bm), Stats., will take months to complete. By statute, the Department must complete the recharging of claims by June 30, 2021 so that employer contribution rates will be correctly set for 2022. The Department determined that the latter of May 14, 2021 or 30 days after the Department sent a notification to the employer of an initial claim for benefit years is the appropriate deadline for employers not subject to the presumption to submit the documentation in order to give employers sufficient time to request relief and for the Department to meet the June 30, 2021 statutory recharging completion date.

In particular, the Department reviewed recently enacted state law affecting charging benefits under section 108.07 (5) (bm), Stats., to determine the treatment of employers in a claimant’s base period who are not the most recent employer of a claimant whose initial claim is related to the public health emergency declared on March 12, 2020, by Executive Order 72. The Department determined to apply the employer non-charging provisions 2019 Wis. Act 185 and 2021 Wis. Act 4 to all employers in a claimant’s base period to be consistent with the administration of other charging provisions under ss. 108.02 (8), 108.02 (22), and 108.18 (4), Stats.

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

Under 2019 Wis. Act 185, s. 50 and 2021 Wis. Act 4, 100% of the unemployment insurance benefits for initial claims for benefit years beginning on or after March 15, 2020 through March 13, 2021 related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. Fifty or twenty-five percent of the unemployment insurance benefits for

initial claims related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the interest and penalty appropriation for employers subject to reimbursement financing; the remainder will be paid by the federal government. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through March 13, 2021. However, charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government during that period.

Section 108.04 (2) (d), created by 2019 Wis. Act 185, requires claimants and employers to indicate whether a claim for regular benefits is related to the public health emergency declared on March 12, 2020, by Executive Order 72. 2021 Wis. Act 4 extends the relief from benefit charging for employers from December 31, 2020 to March 13, 2021, and specifies that the Department must presume that all initial claims through March 13, 2021 are related to the public health emergency and are, thus, entitled to recharging relief unless the separation is due to a labor dispute, misconduct, substantial fault, and, in most cases, a voluntary termination of work. In those cases where the presumption does not apply, this rule is necessary for the Department to properly and timely apply s. 108.07 (5) (bm), Stats., which, as described above, provides for the charging of certain benefits to the balancing account or interest and penalty appropriation. Further, under s. 108.07 (5) (bm) 2. b., Stats., employers will not receive relief from benefit charges unless they timely and adequately provide the information necessary for the Department to determine how to charge the claim. Because the claim charging provisions of s. 108.07 (5) (bm), Stats., will involve manual processes, the Department needs enough time to complete the work before the June 30, 2021 computation date, which will determine contribution rates for 2022.

### ***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

### ***Effect on small business***

This emergency rule is expected to have a positive economic impact on employers, which may include small businesses, if those employers are required to submit information to the Department to request charging relief, do so by the deadline set by this emergency rule, and receive charging relief as a result.

### ***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](mailto:Janell.Knutson@dwd.wisconsin.gov)

***Place where comments are to be submitted and deadline for submission***

Mark Kunkel, Rules and Records Coordinator  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707  
E-Mail: [DWDAdminRules@dwd.wisconsin.gov](mailto:DWDAdminRules@dwd.wisconsin.gov)

Comments will be accepted until a date to be determined.

1           **SECTION 1.** DWD 123.01 is amended to read:

2           **DWD 123.01 Purpose.** Pursuant to ss. 108.04 (13), 108.09 (1), and 108.14 (2), Stats., in  
3 order to determine benefit claims, the department requires employers to provide information about  
4 claimants' employment separations, dates of work, wages and other payments, and other issues  
5 that may be disqualifying. This chapter specifies the benefit reports that must be filed by employers  
6 and the filing requirements for those reports. This chapter also interprets ss. 108.04 (2) (d) and  
7 108.07 (5) (bm), Stats., consistently with 42 USC 1103 (h) (3) (B), for determining the information  
8 that employers must submit to request charging relief for initial claims filed for benefit years  
9 beginning on or after March 15, 2020 through March 13, 2021, related to the public health  
10 emergency declared on March 12, 2020 by Executive Order 72, the deadline by which employers  
11 must submit the information to the department, and the treatment of employers in a claimant's  
12 base period who are not the most recent employer of a claimant whose initial claim is related to  
13 the public health emergency declared on March 12, 2020, by Executive Order 72.

14           **SECTION 2.** DWD 123.04 is created to read:

15           **DWD 123.04 Requests for Charging Relief. (1)** Under s. 108.07 (5) (bm) 1m., Stats.,  
16 the department shall presume that an initial claim for benefit years beginning on or after March

1 15, 2020 through March 13, 2021 relates to the public health emergency declared on March 12,  
2 2020 by Executive Order 72 unless the claimant's most recent separation from employment is due  
3 to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for  
4 substantial fault. For separations from employment that are not due to a labor dispute, voluntary  
5 termination of work, discharge for misconduct, or discharge for substantial fault, the employer  
6 does not need to comply with subs. (3) and (4) to receive charging relief under s. 108.07 (5) (bm),  
7 Stats.

8 (2) An employer may submit a request for charging relief under s. 108.07 (5) (bm), Stats.,  
9 to the department if the employer paid base period wages to a claimant whose most recent  
10 separation from employment is due to a voluntary termination of work for which s. 108.04 (7) (h),  
11 Stats., does not apply and whose initial claim is for benefit years beginning on or after March 15,  
12 2020 through March 13, 2021.

13 (3) An employer may receive charging relief under s. 108.07 (5) (bm), Stats., for benefits  
14 for initial claims described in sub. (2) if it provides all information that the department requires on  
15 a form that the department specifies.

16 **Note:** The required department form for requesting charging relief is UCB-18823-E,  
17 available online at <https://dwd.wisconsin.gov/uitax/relief-of-charging.htm>.

18 (4) An employer seeking charging relief under s. 108.07 (5) (bm), Stats., for benefits for  
19 initial claims described in sub. (2) may receive charging relief if it certifies that any of the  
20 following circumstances apply to the initial claim:

21 (a) The employer's business/operations reduced, suspended, or ceased after experiencing  
22 a significant reduction of income due to a Safer at Home order or a government-issued health order  
23 that restricts business operations.



1 (b) The employer's business/operations reduced, suspended, or ceased due to other  
2 businesses (including suppliers) having reduced, suspended, or ceased operations.

3 (c) The federal Paycheck Protection Program loan amount was used to pay employees, but  
4 the business did not yet reopen.

5 (d) The employer provides other information showing that the initial claim relates to the  
6 public health emergency declared on March 12, 2020 by Executive Order 72.

7 (5) Under s. 108.04 (2) (d), Stats., an employer that is required to submit a request for that  
8 relief under this section in order to receive relief under s. 108.07 (5) (bm), Stats., must submit the  
9 request for relief so that the department receives it by letter of May 14, 2021 or 30 days after the  
10 department sent a notification to the employer of an initial claim for benefit years beginning on or  
11 after March 15, 2020 through March 13, 2021.

12 (6) If the department determines that an initial claim relates to the public health emergency  
13 declared on March 12, 2020, by Executive Order 72 and that s. 108.07 (5) (bm) 1., Stats., applies  
14 to the claim, the department shall apply the provisions of s. 108.07 (5) (bm) 3., Stats., to all the  
15 employers that paid base period wages to the claimant for that claim.

16 (7) The department shall interpret the provisions of s. 108.07 (5) (bm), Stats., by applying  
17 the provisions of s. 108.07(5)(bm), Stats., to additional initial claims filed on or after March 15,  
18 2020 for a benefit year that began before March 15, 2020.

19 **Section 3. EFFECTIVE DATE.** This rule shall take effect upon publication in the official  
20 state newspaper as provided in s. 227.24 (1) (c), Stats.

Dated this 30<sup>th</sup> day of April, 2021.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By:

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Amy Pechacek, Secretary-designee

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> April 27, 2021
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> Chapter DWD 123 - Benefit Reports Filed by Employers	
<b>4. Subject</b> Benefit charges for initial claims related to the public health emergency declared by Executive Order 72.	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> Wis. Stat. § 20.445(1)(gd)
<b>7. Fiscal Effect of Implementing the Rule</b> <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input checked="" type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$ minimal; none for some businesses	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> Currently, unemployment benefits are charged to employer accounts unless a statutory exception applies. 2019 Wis. Act 185, sec. 50, which created s. 108.07(5)(bm)1., Stats., directed the Department to provide employers charging relief for unemployment benefits for initial claims that are related to the public health emergency declared on March 12, 2020 by Executive Order 72, for benefits payable between March 12, 2020 and December 31, 2020. 2021 Wis. Act. 4, sec. 5, which created s. 108.07(5)(bm)1m., Stats., extended the charging relief from December 31, 2020 to March 13, 2021, and requires the Department to presume that all initial claims for benefits through that date relate to the public health emergency unless the most recent separation from unemployment is due to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for substantial fault.  For those employers who do not meet the presumption that the claim is related to the public health emergency, this emergency rule sets a deadline by which employers must submit the information required by section 108.04 (2) (d), Stats. The deadline is the latter of May 14, 2021, or 30 days after the Department sent a notification to the employer of an initial claim for benefit years beginning on or after March 15, 2020 through March 13, 2021. The deadline is necessary to ensure that all information regarding the initial claims is submitted in time for processing the recharging of benefits before June 30, 2021, which is the computation date that the Department must use to determine contribution rates for 2022.  This rule also determines the treatment of employers in a claimant's base period who are not the most recent employer of a claimant whose initial claim is related to the public health emergency declared on March 12, 2020, by Executive Order 72. The Department will apply the employer charging provisions of 2019 Wis. Act 185 and 2021 Wis. Act 4 to all base period employers for the claim.  Finally, this rule requires the Department to interpret the provisions of s. 108.07 (5) (bm), Stats., by applying the provisions of s. 108.07(5) (bm), Stats., to additional initial claims filed on or after March 15, 2020 for a benefit year that	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

began before March 15, 2020 so that the legislative intent of 2021 Wis. Act 4 is properly applied.

In order to meet the June 30, 2021 completion date, the Department needs the requested information from employers to determine whether or not they are entitled to charging relief unless the claims fall within the charging relief presumption. This rule sets a deadline to submit requests for charging relief to ensure that all recharging work is completed by the June 30, 2021 deadline.

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Employers subject to the provisions of the Wisconsin unemployment insurance law may be impacted by the proposed rule if they are required by the rule to submit a form to request relief of charging. The Department held a hearing on the scope statement but no comments were submitted.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.  
None.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if the small business is subject to the Wisconsin unemployment insurance law. Those businesses may receive a benefit under this rule if their employees filed claims for unemployment insurance benefits during the period of March 15, 2020 through March 13, 2021 for those claims that do not meet the presumption for charging relief because they can timely request such relief as instructed by the rule.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This emergency rule is expected to have a positive economic impact on employers, if those employers are required to submit information to the Department to request charging relief, do so by the deadline set by this emergency rule, and receive charging relief as a result.

The policy alternative is to do nothing, which could negatively impact employers not subject to the presumption but who can demonstrate that they are entitled to charging relief. For those employers, their contribution rates might be higher for 2022 than they should be.

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16. Long Range Implications of Implementing the Rule

This rule is intended to provide emergency relief to employers during the pandemic and assist with the recovery efforts in the state.

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17. Compare With Approaches Being Used by Federal Government

Under the federal 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...non-charge[e] 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." 42 U.S.C. § 1103(h)(3)(B). Wisconsin's share of the \$500 million is about \$9.457 million.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois does not charge employers for unemployment benefits "for a week of unemployment that begins on or after March 15, 2020, and before December 31, 2020, and is directly or indirectly attributable to COVID-19..." 820 ILCS 405/1502.4(A).

By Executive Order 2020-76, Michigan charges benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

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Iowa is currently not charging unemployment benefits related to COVID-19 to employer accounts.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

By Emergency Executive Order 20-05, Minnesota will “not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer.”

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19. Contact Name

Janell Knutson

20. Contact Phone Number

608-266-1639

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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This emergency rule is expected to have a positive economic impact on employers, which may include small businesses, if those employers are required to submit information to the Department to request charging relief, do so by the deadline set by this emergency rule, and receive charging relief as a result.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Under 2019 Wis. Act 185, s. 50 and 2021 Wis. Act 4, 100% of the unemployment insurance benefits for initial claims for benefit years beginning on or after March 15, 2020 through March 13, 2021 related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. Fifty or twenty-five percent of the unemployment insurance benefits for initial claims related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the interest and penalty appropriation for employers subject to reimbursement financing; the remainder will be paid by the federal government. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through March 13, 2021. However, charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government during that period.

Section 108.04 (2) (d), created by 2019 Wis. Act 185, requires claimants and employers to indicate whether a claim for regular benefits is related to the public health emergency declared on March 12, 2020, by executive order 72. 2021 Wis. Act 4 extends the relief from benefit charging for employers from December 31, 2020 to March 13, 2021, and specifies that the Department must presume that all initial claims through March 13, 2021 are related to the public health emergency and are, thus, entitled to recharging relief unless the separation is due to a labor dispute, misconduct, substantial fault, and, in most cases, a voluntary termination of work. In those cases where the presumption does not apply, this rule is necessary for the Department to properly and timely apply s. 108.07 (5) (bm), Stats., which provides for the charging of certain benefits to the balancing account or interest and penalty appropriation. Further, under s. 108.07 (5) (bm) 2. b., Stats., employers will not receive relief from benefit charges unless they timely and adequately provide the information necessary for the Department to determine how to charge the claim. Because the claim charging provisions of s. 108.07 (5) (bm), Stats., will involve manual processes, the Department needs enough time to complete the work before the June 30, 2021 computation date, which will determine contribution rates for 2022.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

None.

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The rule is an emergency rule, so it is only effective for a limited time.

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5. Describe the Rule's Enforcement Provisions

The Department of Workforce Development administers the unemployment insurance program by, among other things, determining contribution rates for employers and determining the amount of reimbursements payable by employers

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

subject to reimbursement financing.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes  No

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**State of Wisconsin  
Department of Workforce Development**

**NOTICE OF PUBLIC HEARING**

**Chapter DWD 123  
Benefit Reports Filed By Employers  
Emergency Rule EmR2112**

The Wisconsin Department of Workforce Development (DWD) announces that it will hold a public hearing on emergency rule EmR2112 relating to benefit charges for initial claims related to the public health emergency declared by Executive Order 72.

**Hearing Information**

Date: June 15, 2021  
Time: 10:30 am  
Location: Webex meeting at the following link:

<https://dwdwi.webex.com/dwdwi/j.php?MTID=m925f2643948d018b3cf1780d5cd55692>

Meeting number: 1454 63 9984  
Password: kDFPJ8HPb39

The hearing can also be accessed with the following telephone numbers and access code:

+1-855-282-6330 US TOLL FREE  
+1-415-655-0003 US TOLL  
Access code: 1454 63 9984

**Accessibility**

If you have special needs or circumstances regarding communication or accessibility at the hearing, please contact Mark Kunkel, DWD Rules and Records Coordinator, at (608) 267-7713 or markd.kunkel@dwd.wisconsin.gov no later than 5:00 pm, June 10. Accommodations or language interpretation will be made available on request to the extent possible.

**Appearances at the Hearing and Submittal of Written Comments**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions.

Written comments may be submitted by email to [DWDAdminRules@dwd.wisconsin.gov](mailto:DWDAdminRules@dwd.wisconsin.gov) or through DWD's website: <https://dwd.wisconsin.gov/dwd/admin-rules/>. Written comments must be received on or before June 15, 2021, to be included in the record of rulemaking proceedings.



The analysis and text of the emergency rule may be accessed at the following link:

[https://docs.legis.wisconsin.gov/code/emergency\\_rules/all/emr2112](https://docs.legis.wisconsin.gov/code/emergency_rules/all/emr2112)

**Agency Contact Person**

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](mailto:Janell.Knutson@dwd.wisconsin.gov)

**Agency Small Business Regulatory Coordinator**

Jennifer Wakerhauser, Deputy Legal Counsel  
Department of Workforce Development  
Telephone: (608) 266-2140  
E-Mail: [JenniferL.Wakerhauser@dwd.wisconsin.gov](mailto:JenniferL.Wakerhauser@dwd.wisconsin.gov)

# **STATEMENT OF SCOPE**

## **Department of Workforce Development**

**Rule No:** DWD 102

**Relating to:** Employer contribution rates for 2022

**Rule Type:** Emergency

**Finding/nature of emergency:**

By Executive Order 72, the Governor declared a public health emergency to protect the health and well-being of the state's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses have temporarily or permanently closed, resulting in significant business income reduction and layoffs.

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, which created and then amended s. 108.07 (5) (bm), the Department of Workforce Development is directed to charge unemployment benefits for initial claims that are related to the public health emergency declared by Executive Order 72 to the balancing account of the Trust Fund for contribution employers. This treatment of claims charging applies to weeks of benefits payable starting with the week of March 15, 2020 through March 13, 2021.

The Department's antiquated computer systems are ill-equipped to handle the changes in charges from the employers' accounts to the balancing account. Each weekly claim to be charged to the balancing account under s. 108.07 (5) (bm), Stats., requires the Department to change the benefit charges from the employer's account to the balancing account of the Trust Fund after any federal funds have been appropriately applied. Given the high volume of claims being filed during the pandemic, the work to complete the charging changes will not be completed by June 30, 2021.

Under sections 108.02(8), 108.02(22), and 108.18(4), Stats., "an employer's contribution rate on the employer's payroll for a given calendar year shall be based on the reserve percentage of the employer's account as of the applicable computation date," s. 108.18(4), Stats., which is June 30 of each year. Section 108.02(22), Stats., requires the Department to determine the status of an employer's account when setting the reserve percentage for contribution purposes as of the computation date.

Because the Department is not able to complete the benefit charging changes required by Acts 185 and 4 by June 30, employers' contribution rates for 2022 may be based, in part, on benefit charges that should have been charged to the balancing account instead of the employers' accounts. If contribution rates are set before recharging, the result for most employers subject to contribution financing would be higher contribution rates for 2022 than they should be.

An emergency rule is needed to prevent employers from being subject to 2022 rates that are higher than they should be under Acts 185 and 4. Without a rule, employers may not see the

benefit of charging relief under Acts 185 and 4 until rates are set for 2023 after recharging is completed.

The Department does not contemplate promulgating a permanent rule because the recharging will be accomplished to set appropriate rates that only apply for a limited time. This emergency rule will meet the policy goals of Acts 185 and 4 to address the public health emergency and protect the welfare of the economy through charging relief for contribution employers.

**Description of the objective of the proposed rule:**

This emergency rule will provide that, to achieve the policy goals of Acts 185 and 4, and the plain language of ss. 108.02 (8), (22) and 108.18 (4), Stats., in calculating an employer's net reserve as of the computation date for 2022 rates, the Department shall assume that all benefit charges and adjustments for the period of March 15, 2020 through March 13, 2021 are related to the public health emergency declared by Executive Order 72 so that all employer accounts are credited with those benefits under s. 108.07(5) (bm), Stats. The Department shall apply the credit as if the noncharging provisions have been implemented when calculating rates for 2022.

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

Currently, an employer's contribution rate on the employer's payroll for a given calendar year is based on the reserve percentage of the employer's account as of the applicable computation date, which is June 30 of each year. Ultimately, however, the employer's reserve fund balance considers all charges and credits on a rolling basis so that the employer's unemployment experience determines the contribution rate.

The new policy to be included in this rule will ensure that employers' contribution rates are calculated as of June 30, 2021 and meet the policy goals of Acts 185 and 4. Contribution rates for 2023 will be calculated after all recharging is complete.

Similarly, on June 27, 2020, the Department promulgated EmR2018 to ensure 2021 contribution rates would not be higher than they should have been under Act 185 because the Department was unable to complete recharging by June 30, 2020. At the time, the Department anticipated that it would have recharging complete by June 30, 2021, to set the 2022 rates. However, since then, additional state and federal law changes have altered the requirements for recharging and have created new and modified benefit programs that caused a delay in the IT programming necessary to implement recharging.

To correctly set contribution rates, recharging work must consider applicability of federal programs that reduce the benefit charges to employers in addition to the recharging relief provided by Acts 185 and 4. Federal law changes provide federal funding (in whole or in part) that affects recharging in the following programs: waiver of waiting week; work share; and regular unemployment for reimbursable employers.

Moreover, under state law, Act 4 extended the period of charging relief for contribution employers from December 31, 2020 to March 14, 2021, and created a presumption of relief for employment separations unless certain exemptions apply.

These federal and state law changes must be taken into account to correctly perform the recharging to ensure the correct tax rate for employers. It is not possible to simply "recharge" the regular unemployment benefits covered by Acts 185 and 4 and accurately determine the tax rate for employers. This emergency rule will ensure when recharging is completed for all employers, their tax rates will be accurate.

Moreover, the new federal benefits programs under the Coronavirus Aid, Relief, and Economic Security Act, Continued Assistance Act, and the America Rescue Plan Act created new and modified benefit programs that placed demands on the Department's computer programming and staff resources. The Department prioritized programming of those benefit programs over the recharging efforts given this rule can ensure that employers are not subject to a higher contribution rate than they should receive, while ensuring workers receive timely benefits.

The policy alternative is to do nothing, which would negatively impact most employers subject to contribution financing because their contribution rates will be higher for 2022 than they should be. For most employers subject to contribution financing, this would result in higher contribution rates for 2022, which would not be in accordance with the legislative intent of Acts 185 and 4.

**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.” Section 108.14(2), Stats.

**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 80 hours.

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

Employers subject to contribution financing for unemployment insurance.

**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:**

State law must conform to and substantially 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 employers subject to contribution financing, which may include small businesses, to provide those employers with contribution rates that align with the policy goals of Acts 185 and 4.

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

**Approval of the agency head or authorized individual:**

**State of Wisconsin  
Department of Workforce Development**

**NOTICE OF PRELIMINARY PUBLIC HEARING  
AND COMMENT PERIOD FOR SS 046-21**

The Wisconsin Department of Workforce Development (DWD) announces that, pursuant to s. 227.136 (1), Stats., a preliminary public hearing and comment period will be held regarding a statement of scope for a proposed emergency rule revising Wis. Admin. Code ch. DWD 102 related to employer contribution rates for 2022.

This statement of scope was published in Wisconsin Administrative Register 785A3 on May 17, 2021, as SS 046-21. An electronic PDF copy can be viewed or downloaded from the following link:

[https://docs.legis.wisconsin.gov/code/register/2021/785A3/register/ss/ss\\_046\\_21/ss\\_046\\_21](https://docs.legis.wisconsin.gov/code/register/2021/785A3/register/ss/ss_046_21/ss_046_21)

**Hearing Information**

Date: May 27, 2021  
Time: 2:00 pm  
Location: Webex meeting at the following link:

<https://dwdwi.webex.com/dwdwi/j.php?MTID=mf571420b95cc5da338f0244ded3e8cac>

Meeting number: 145 713 7393  
Password: ZXtJtMdT463

The hearing can also be accessed with the following telephone numbers and access code:

+1-855-282-6330 US TOLL FREE  
+1-415-655-0003 US TOLL  
Access code: 145 713 7393

**Accessibility**

If you have special needs or circumstances regarding communication or accessibility at the hearing, please contact Mark Kunkel, DWD Rules and Records Coordinator, at (608) 267-7713 or markd.kunkel@dwd.wisconsin.gov no later than 5:00 pm, May 24. Accommodations or language interpretation will be made available on request to the extent possible.

**Appearances at the Hearing and Submittal of Written Comments**

The purpose of the hearing will be to hear comments on the statement of scope from any member of the public who wishes to attend as described in the above instructions. Those interested in making an oral presentation will be given the opportunity to do so. Alternatively, written

comments may be submitted without attending the hearing. Written comments may be sent to the agency contact person listed below or by email to [DWDAdminRules@dwd.wisconsin.gov](mailto:DWDAdminRules@dwd.wisconsin.gov). The deadline for the submission of written comments is May 27, 2021. Written comments received by this date will be given the same consideration as testimony presented at the hearing.

**Agency Contact Person**

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Department of Workforce Development  
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**D21-01**  
**Creation of Administrative Fund**

Date: March 18, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Creation of Administrative Fund**

**1. Description of Proposed Change**

The Unemployment Administration Fund previously comprised funds that the Department used for administering the unemployment program. That fund was eliminated in 1985 Wis. Act 29, which created the Administrative Account.<sup>1</sup> The Administrative Account comprises both the federal administrative grant funds and the interest and penalties paid by employers. When employers fail to timely file unemployment quarterly tax and wage reports or fail to timely pay their unemployment contributions, the Department assesses penalties and interest. The penalties and interest incentivize timely reporting and payments by employers and provide an additional source of revenue for the Department to cover shortfalls in the federal administrative grant.

The Unemployment Program Integrity Fund comprises a variety of sources, including penalties assessed for claimant fraud as well as against employers for intentional worker misclassification.<sup>2</sup> The Unemployment Interest Payment Fund comprises funds collected from the special employer assessment to repay interest on federal loans if the trust fund balance is insufficient to pay benefits.<sup>3</sup> The amounts in these Funds are designated as “nonlapsible,” which means that these amounts may not be transferred to the General Fund to balance the budget.

The Department proposes to eliminate the Administrative Account and recreate a fund for receiving the employer interest and penalties collected under section 108.22(1) and any other amounts the Department collects that are not designated for another fund. This new fund would,

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<sup>1</sup> Wis. Stat. § 108.20.

<sup>2</sup> Wis. Stat. § 108.19(1s).

<sup>3</sup> Wis. Stat. §§ 108.19(1m) to (1q).



**D21-01**  
**Creation of Administrative Fund**

as the Unemployment Administration Fund was, be designated as “nonlapsible.” The purpose of this proposal is to provide consistent treatment for the amounts collected by the Department and to better ensure that amounts paid by employers remain with the unemployment program.

**2. Proposed Statutory Changes**

If the Council approves this proposal, the Department would ask the Legislative Reference Bureau to draft proposed statutory language for the Council to review and approve, based on the 2019 UIAC Agreed Bill.

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will better ensure that employer interest and penalties remain with the unemployment insurance program.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective with other changes made as part of the agreed bill cycle.

**D21-01**  
**Creation of Administrative Fund**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by Technical Services Section

**Trust Fund Impact:**

This law change proposal is not expected to have any Trust Fund impact.

**IT and Administrative Impact:**

This law change proposal is not expected to have an IT or administrative impact.

**Summary of Proposal:**

This law change proposal would recreate an Administrative Fund for receiving the employer interest and penalties collected under section 108.22(1) and any other amounts the UI Division collects that are not designated for another fund. Like other Funds related to the unemployment program, the amounts in the newly recreated fund would be designated as “nonlapsible.” The purpose of this proposal is to provide consistent treatment for the amounts collected by the Department and to better ensure that amounts paid by employers remain with the unemployment program.

**Trust Fund Methodology**

This law change proposal is not expected to have any Trust Fund impact.

**IT and Administrative Impact Methodology**

This law change proposal is not expected to have an IT or administrative impact.

The most recent lapse expenditures of employer interest and penalties monies occurred in SFY16 and SFY17 of approximately \$2.67 million and \$2.23 million respectively. This proposal would result in an additional \$2 - \$3 million in funds remaining within the UI program during years where lapse is in effect.

**D21-02**  
**Appropriations Revisions and Technical Corrections**

Date: March 18, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Appropriations Revisions and Technical Corrections**

**1. Description of Proposed Change**

The Department receives federal funds to operate the unemployment insurance program. It also collects interest and penalties from employers and penalties from claimants. The amounts that the Department receives are appropriated under state law for certain purposes. State law previously provided that amounts related to the administration of the unemployment insurance program were to be deposited into the “Unemployment Administration Fund.” That fund was eliminated in 1985 Wisconsin Act 29 and the appropriations were transferred to the general fund. Chapter 108 was amended to repeal references to the Unemployment Administration Fund and to refer to the “Administrative Account.”<sup>1</sup> The Department proposes to eliminate the “Administrative Account” and clarify the unemployment insurance appropriations references in Chapter 108. This will ensure that funds are deposited correctly and that payments are made from the correct appropriation.

The Department proposes various technical corrections, including those described above, on the following pages. These changes are the same as the Department proposed in the 2019-2020 Council session.

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<sup>1</sup> Wis. Stat. § 108.20.

**D21-02**  
**Appropriations Revisions and Technical Corrections**

Changes in LRB-3683/P1:

<b>Section</b>	<b>Change</b>	<b>Reason</b>
1, 66	Specifies the appropriation for assessments under s. 108.19(1).	Clarifies appropriation language if the assessment were ever assessed.
2	Amends the “employer interest and penalty” appropriation in s. 20.445(1)(gd) to repeal references to repealed laws and to update cross-references.	For clarification of statutes.
2, 4, 5, 6, 7, 12, 13, 15, 16, 17, 18, 22, 23, 24, 25, 29, 30, 31, 33, 34, 37, 38, 41, 49, 50, 51, 52, 53, 54, 55, 57, 58, 61, 70, 79, 82, 86	Amends references to federal laws in ch. 108 to the specific federal statute.	For clarification and ease of checking cross-references. Corrects some outdated and incorrect references to federal laws.
3	Repeal reference to 1997 WI Act 39 from s. 20.445(1)(gh).	Delete a reference to a temporary provision that is no longer in effect.
8-11, 46, 62, 63, 69-75	Restructure the statutes regarding the unemployment interest payment fund, which relates to the special assessments for interest.	To ensure that the statutes are properly organized based on current drafting conventions and to better organize these sections.
14	Amend definition of “employer’s account.”	Clarifies statute by incorporating cross-reference to s. 108.16(2)(a).
19	Repeal the exclusion from gross income for amounts received under qualified group legal services plans in s. 108.02(26)(c)9.	Corresponding federal exclusion in 26 USC § 120 has been repealed.
20	Repeal the exclusion from gross income for amounts received under the federal Medicare Catastrophic Coverage Act in 108.02(26)(c)14..	Corresponding federal Act has been repealed.

**D21-02**  
**Appropriations Revisions and Technical Corrections**

21	Move s. 108.04(7)(h) to s. 108.04(7)(u).	Moves statute related to charging benefits so that it appears after the quit exceptions.
26-27, 32, 39-40	Amend various statutes related to charging of benefits related to substantial fault.	Updates statutes regarding charging of benefits related to substantial fault to ensure proper charging.
28	Repeals “in this state” from s. 108.10.	Clarifies that the procedures for appeals of tax matters apply to all employing units, not just those in Wisconsin.
28, 36, 87, 88	Adds cross-reference to s. 108.095.	These changes should have been made when s. 108.095 was created.
33-34	Amend s. 108.14(a) to (d).	Modernize language related to federal conformity requirement.
35	Re-number s. 108.14(18).	Move the provision to be near the related statute.
42, 43, 44, 45, 48	Add “fund’s” before “balancing account” in various statutes.	To be consistent with the rest of ch. 108.
47	Amend s. 108.16(6m).	Correct cross-references.
56	Amend and consolidate sections of 108.161.	For clarification.
64-68, 76-77	Reorganization of statutes related to assessments.	For clarification and simplification.
78	Repeal s. 108.19(3).	Repeal outdated section.
80-81	Creates s. 108.195	Better organization of the various funds.
83	Amend s. 108.22(1m).	To include amounts due by Indian Tribes. This reference should have been added when s. 108.22(1m) was created.
84	Amend s. 108.22(8e).	Add reference to the balancing account for consistency.
85	Amend s. 108.223(2)(b).	Improve style of statute.

Changes in LRB-3684/P1:

<b>Section</b>	<b>Change</b>	<b>Reason</b>
1 & 12	Create an appropriation for LIRC to receive transcript and copying fees.	Originally requested by LIRC in the 2015 State Budget process. Provides an appropriation for receiving fees currently collected by LIRC.
2	Clarifies location for deposit of assessment for program administration.	Department may assess employers an assessment to ensure funding for the UI program. This clarifies which appropriation would handle the funds.

**D21-02**  
**Appropriations Revisions and Technical Corrections**

3	Amendment to the appropriation that primarily receives employer interest and penalties to receive additional sources of funds.	Consolidates certain appropriations and clarifies language.
4	Repeals the appropriation in s. 20.445(1)(gg).	Repeals an appropriation that is no longer used, related to technology assessments.
5	Repeals the appropriation in s. 20.445(1)(gm).	Repeals an appropriation related to the employer handbook because those funds are redirected to the (gd) appropriation (employer interest and penalties).
6 & 31	Repeals SWIB authority to manage the unemployment administration fund.	The unemployment administration fund no longer exists, so this should have been repealed when the fund ceased to exist.
7 & 31	Repeal “administrative account.”	The “administrative account” replaced the unemployment administrative fund. State moneys are supposed to be handled by appropriations and funds, not accounts. This removes the references to the account in favor of citation to the specific appropriation for the moneys.
8, 9, 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32	Repeals references to the “administrative account” and replaces those references with the specific appropriation in s. 20.445(1).	This change ensures that the unemployment appropriations are drafted consistent with current State budget practices and removes ambiguity regarding the appropriate appropriation applicable to certain moneys.
15, 17, 18	Repeals and amends references regarding costs of printing certain materials.	Consolidates language regarding printing forms and handbooks. Replaces references to the “administrative account” with a specific appropriation for consistency. <i>See</i> Section 5.
30	Amends and moves statute regarding use of contributions for administrative purposes.	If federal law is changed to permit this purpose, the Department prefers the proposed language in Section 30. This statutory language has apparently not been updated since 1943.
33	Transfers funds to the appropriation in s. 20.445(1)(gd).	It is necessary to transfer any remaining funds in these appropriations, which are being repealed. <i>See</i> Sections 4 and 5.

**2. Proposed Statutory Changes**

See attached LRB drafts.

**D21-02**  
**Appropriations Revisions and Technical Corrections**

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will clarify the appropriations statutes related to the unemployment insurance program and correct typos and cross-references in the statutes.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective with other changes made as part of the agreed bill cycle.

**D21-02**  
**Appropriations Revisions and Technical Corrections**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by Technical Services Section

**Trust Fund Impact:**

This law change proposal is not expected to have any Trust Fund impact.

**IT and Administrative Impact:**

This law change proposal is not expected to have an IT or administrative impact.

**Summary of Proposal:**

The Department proposes to eliminate the “Administrative Account” and clarify the unemployment insurance appropriations references in Chapter 108. This will ensure that the funds are deposited correctly and that payments are made from the correct appropriations.

The Department also proposes various technical corrections.

**Trust Fund Methodology**

This law change proposal is not expected to have any Trust Fund impact.

**IT and Administrative Impact Methodology**

This law change proposal is not expected to have an IT or administrative impact.





State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-3683/P1  
MED:cjs

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT to repeal** 108.02 (26) (c) 9., 108.02 (26) (c) 14. and 108.19 (3); **to**  
2     **renumber** 108.04 (7) (h); **to renumber and amend** 108.14 (12) (e), 108.14 (18),  
3     108.19 (1), 108.19 (1m), 108.19 (1n), 108.19 (1p), 108.19 (1q), 108.19 (1s), 108.19  
4     (2) and 108.19 (2m); **to consolidate, renumber and amend** 108.14 (12) (a) to  
5     (d), 108.161 (1) and (1m) and 108.161 (5) and (6); **to amend** 20.445 (1) (gc),  
6     20.445 (1) (gd), 20.445 (1) (gh), 20.445 (1) (n), 20.445 (1) (nb), 20.445 (1) (nd),  
7     20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 108.02  
8     (2) (c), 108.02 (13) (c) 2. a., 108.02 (14), 108.02 (15) (j) 5., 108.02 (15) (k) 5., 108.02  
9     (17m), 108.02 (19), 108.04 (12) (b), 108.04 (16) (d) 1., 108.04 (18) (a), 108.04 (18)  
10    (b), 108.07 (5) (intro.), 108.07 (5) (c), 108.10 (intro.), 108.13 (4) (a) 2., 108.14  
11    (3m), 108.14 (8n) (a), 108.14 (8n) (e), 108.14 (26), 108.141 (1) (h), 108.141 (3g)  
12    (a) 3. b., 108.141 (7) (a), 108.141 (7) (b), 108.145, 108.15 (3) (d), 108.151 (2) (d),  
13    108.152 (1) (d), 108.155 (2) (a) and (d), 108.16 (6) (m), 108.16 (6m) (a), 108.16  
14    (6x), 108.16 (9) (a), 108.161 (title), 108.161 (2), 108.161 (3), 108.161 (3e),  
15    108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9), 108.17 (2m), 108.18 (3) (c),

1 108.18 (7) (a) 1., 108.18 (7) (h), 108.19 (1f) (a), 108.19 (1f) (c), 108.19 (4), 108.20  
2 (2m), 108.22 (1m), 108.22 (8e), 108.223 (2) (b), 108.23, 108.24 (3) (a) 3. a. and  
3 108.24 (3) (a) 4.; **to repeal and recreate** 108.19 (title); and **to create** 108.19  
4 (1) (d), 108.19 (1e) (cm), 108.19 (1m) (e), 108.195 (title) and 108.195 (2) (title)  
5 of the statutes; **relating to:** correcting and updating cross-references and  
6 making organizational changes in the unemployment insurance law.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

7 **SECTION 1.** 20.445 (1) (gc) of the statutes is amended to read:  
8 20.445 (1) (gc) *Unemployment administration.* All moneys received by the  
9 department under s. 108.19 ~~not otherwise appropriated under this subsection (1) for~~  
10 the administration of ch. 108.

\*\*\*\*NOTE: See the note under SECTION 66.

11 **SECTION 2.** 20.445 (1) (gd) of the statutes is amended to read:  
12 20.445 (1) (gd) *Unemployment interest and penalty payments.* All moneys  
13 received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) ~~and (13)~~  
14 (e) and 108.22 except interest and penalties deposited under s. ~~108.19 (1q), and~~  
15 ~~forfeitures under s. 103.05 (5)~~ 108.195 (1), all moneys not appropriated under par.  
16 (gg) ~~and, all moneys received as forfeitures under s. 103.05 (5), and~~ all moneys  
17 transferred to this appropriation account from the appropriation account under par.  
18 (gh), for the payment of benefits specified in s. 108.07 (5) ~~and 1987 Wisconsin Act 38,~~

1 ~~section 132 (1) (e)~~, for the payment of interest to employers under s. 108.17 (3m), for  
2 research relating to the condition of the unemployment reserve fund under s. 108.14  
3 (6), for administration of the unemployment insurance program and federal or state  
4 unemployment insurance programs authorized by the governor under s. 16.54, for  
5 satisfaction of any federal audit exception concerning a payment from the  
6 unemployment reserve fund or any federal aid disallowance concerning the  
7 unemployment insurance program, for assistance to the department of justice in the  
8 enforcement of ch. 108, for the payment of interest due on advances from the federal  
9 unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324  
10 to the unemployment reserve fund, and for payments made to the unemployment  
11 reserve fund to obtain a lower interest rate or deferral of interest payments on these  
12 advances, except as otherwise provided in s. 108.20.

\*\*\*\*NOTE: This is the so-called "I&P fund." However, it is not a separate segregated fund, but rather an appropriation account in the general fund. Except as described below, the changes in this SECTION constitute clarifications or correspond to other changes in the bill, including cross-reference changes.

\*\*\*\*NOTE: Section 108.04 (13) (c) 2., 1985 stats., required \$15 tardy filing fees to be paid in certain circumstances. 1987 Act 38 renumbered s. 108.04 (13) (c) to s. 108.04 (13) (b) and changed existing cross-references accordingly. However, due to the passage of 1987 Act 27 that same session that created a *new* reference to the (old) s. 108.04 (13) (c) in s. 20.445 (1) (gf) but that was not taken into account by Act 38 and the fact that Act 38 reused the numbering for (13) (c) for something else, references to "(13) (c)" appear to have perpetuated to this day. As such, the reference to (13) (c) is struck, as it has not referenced any amounts collected since the 1985 statutes.

\*\*\*\*NOTE: 1987 Act 38, SECTION 132 (1), was a nonstatutory transitional provision that provided how certain benefits were to be charged for periods in 1989 and 1990. The reference to this provision is struck, as this transitional period has long since passed.

13 **SECTION 3.** 20.445 (1) (gh) of the statutes is amended to read:

14 20.445 (1) (gh) *Unemployment information technology systems; assessments.*

15 All moneys received from assessments levied under s. 108.19 (1e) (a) ~~and 1997~~

16 ~~Wisconsin Act 39, section 164 (2)~~, for the purpose specified in s. 108.19 (1e) (d). The

1 treasurer of the unemployment reserve fund may transfer moneys from this  
2 appropriation account to the appropriation account under par. (gd).

\*\*\*NOTE: This deletes a reference to a temporary provision from 1997 Act 39.

3 **SECTION 4.** 20.445 (1) (n) of the statutes is amended to read:

4 20.445 (1) (n) *Employment assistance and unemployment insurance*  
5 *administration; federal moneys.* All federal moneys received, as authorized by the  
6 governor under s. 16.54, for the administration of employment assistance and  
7 unemployment insurance programs of the department, for the performance of the  
8 department's other functions under subch. I of ch. 106 and ch. 108, and to pay the  
9 compensation and expenses of appeal tribunals and of employment councils  
10 appointed under s. 108.14, to be used for such purposes, except as provided in s.  
11 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC  
12 1103 (d) of the federal Social Security Act, as amended, to transfer to the  
13 appropriation account under par. (nb) an amount determined by the treasurer of the  
14 unemployment reserve fund not exceeding the lesser of the amount specified in s.  
15 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the  
16 appropriation account under par. (nd) an amount determined by the treasurer of the  
17 unemployment reserve fund not exceeding the lesser of the amount specified in s.  
18 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the  
19 appropriation account under par. (ne) an amount not exceeding the lesser of the  
20 amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under  
21 par. (ne) and the amount determined by the treasurer of the unemployment reserve  
22 fund that is required to pay for the cost of banking services incurred by the  
23 unemployment reserve fund, and to transfer to the appropriation account under s.

1 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve  
2 fund.

3 **SECTION 5.** 20.445 (1) (nb) of the statutes is amended to read:

4 20.445 (1) (nb) *Unemployment administration; information technology*  
5 *systems.* From the moneys received from the federal government under ~~section 903~~  
6 42 USC 1103 (d) of the federal Social Security Act, as amended, as a continuing  
7 appropriation, the amounts in the schedule, as authorized by the governor under s.  
8 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par.  
9 (n) for this purpose shall be credited to this appropriation account. No moneys may  
10 be expended from this appropriation unless the treasurer of the unemployment  
11 reserve fund determines that such expenditure is currently needed for the purpose  
12 specified in s. 108.19 (1e) (d).

13 **SECTION 6.** 20.445 (1) (nd) of the statutes is amended to read:

14 20.445 (1) (nd) *Unemployment administration; apprenticeship and other*  
15 *employment services.* From the moneys received from the federal government under  
16 ~~section 903~~ 42 USC 1103 (d) of the federal Social Security Act, as amended, the  
17 amounts in the schedule, as authorized by the governor under s. 16.54, to be used for  
18 administration by the department of apprenticeship programs under subch. I of ch.  
19 106 and for administration and service delivery of employment and workforce  
20 information services, including the delivery of reemployment assistance services to  
21 unemployment insurance claimants. All moneys transferred from par. (n) for this  
22 purpose shall be credited to this appropriation account. No moneys may be expended  
23 from this appropriation unless the treasurer of the unemployment reserve fund  
24 determines that such expenditure is currently needed for the purposes specified in  
25 this paragraph.

1           **SECTION 7.** 20.445 (1) (ne) of the statutes is amended to read:

2           20.445 (1) (ne) *Unemployment insurance administration and bank service*  
3 *costs.* From the moneys received by this state under ~~section 903 of the federal Social~~  
4 ~~Security Act, as amended~~ 42 USC 1103, all moneys transferred from the  
5 appropriation account under par. (n) to be used for the administration of  
6 unemployment insurance and for the payment of the cost of banking services  
7 incurred by the unemployment reserve fund. No moneys may be expended from this  
8 appropriation unless the treasurer of the unemployment reserve fund determines  
9 that such expenditure is currently needed for the purpose specified in this  
10 paragraph.

11           **SECTION 8.** 20.445 (1) (u) of the statutes is amended to read:

12           20.445 (1) (u) *Unemployment interest payments and transfers.* From the  
13 unemployment interest payment fund, all moneys received from assessments under  
14 s. 108.19 (1m) (a) for the purpose of making the payments and transfers authorized  
15 under s. 108.19 (1m) (f).

\*\*\*\*NOTE: Reflects changes in SECTION 70.

16           **SECTION 9.** 20.445 (1) (v) of the statutes is amended to read:

17           20.445 (1) (v) *Unemployment program integrity.* From the unemployment  
18 program integrity fund, all moneys received from sources identified under s. ~~108.19~~  
19 ~~(1s)~~ 108.195 (2) (a) for the purpose of making the payments authorized under s.  
20 ~~108.19 (1s)~~ 108.195 (2) (b).

\*\*\*\*NOTE: Reflects changes in SECTION 75.

21           **SECTION 10.** 25.17 (1) (xe) of the statutes is amended to read:

22           25.17 (1) (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.195  
23 (1));

\*\*\*NOTE: Reflects changes in SECTION 74.

1           **SECTION 11.** 25.17 (1) (xf) of the statutes is amended to read:  
2           25.17 (1) (xf) Unemployment program integrity fund (s. 108.19 ~~(1s)~~ 108.195  
3           (2));

\*\*\*NOTE: Reflects changes in SECTION 75.

4           **SECTION 12.** 108.02 (2) (c) of the statutes is amended to read:  
5           108.02 (2) (c) In connection with the production or harvesting of any commodity  
6           defined as an agricultural commodity in s. 15 (g) of the federal agricultural marketing  
7           act, as amended (46 Stat. 1550, s. 3; under 12 USC 1141j) or (f), in connection with the  
8           ginning of cotton, or in connection with the operation or maintenance of ditches, canals,  
9           reservoirs, or waterways, not owned or operated for profit, used exclusively for  
10          supplying and storing water for farming purposes.

\*\*\*NOTE: This updates a cross-reference to federal law to reflect the correct provision. (Note that the U.S. Code still has it as “(g)” but notes that “Section 1141j(g) of title 12, referred to in subsec. (f)(3), was redesignated section 1141j(f) by Pub. L. 110-246.”)

11          **SECTION 13.** 108.02 (13) (c) 2. a. of the statutes is amended to read:  
12          108.02 (13) (c) 2. a. Such crew leader holds a valid certificate of registration  
13          under ~~the federal farm labor contractor registration act of 1963~~ 29 USC 1801 to 1872;  
14          or substantially all the members of such crew operate or maintain tractors,  
15          mechanized harvesting or cropdusting equipment, or any other mechanized  
16          equipment which is provided by such crew leader; and

\*\*\*NOTE: The Farm Labor Contractor Registration Act of 1963 was repealed by P.L. 97-470, the Migrant and Seasonal Agricultural Worker Protection Act. This substitutes in the correct cross-references in current federal law.

17          **SECTION 14.** 108.02 (14) of the statutes is amended to read:  
18          108.02 (14) EMPLOYER'S ACCOUNT. “Employer’s account” means ~~a~~ an employer’s  
19          separate account in the fund, ~~reflecting the employer’s experience with respect to~~

1 ~~contribution credits and benefit charges under this chapter~~ maintained as required  
2 under s. 108.16 (2) (a).

\*\*\*NOTE: This adds a cross-reference to this definition, in place of the current generic description, for additional clarity.

3 **SECTION 15.** 108.02 (15) (j) 5. of the statutes is amended to read:

4 108.02 (15) (j) 5. In any quarter in the employ of any organization exempt from  
5 federal income tax under section 26 USC 501 (a) ~~of the internal revenue code~~, other  
6 than an organization described in section 26 USC 401 (a) or 501 (c) (3) ~~of such code~~,  
7 or under section 26 USC 521 ~~of the internal revenue code~~, if the remuneration for  
8 such service is less than \$50;

9 **SECTION 16.** 108.02 (15) (k) 5. of the statutes is amended to read:

10 108.02 (15) (k) 5. With respect to which unemployment insurance is payable  
11 ~~under the federal railroad unemployment insurance act (52 Stat. 1094)~~ 45 USC 351  
12 to 369;

13 **SECTION 17.** 108.02 (17m) of the statutes is amended to read:

14 108.02 (17m) INDIAN TRIBE. "Indian tribe" has the meaning given in 25 USC  
15 ~~450b~~ 5304 (e), and includes any subdivision, subsidiary, or business enterprise that  
16 is wholly owned by such an entity.

\*\*\*NOTE: 25 USC 450b was editorially reclassified in the U.S. Code as 25 USC 5304.

17 **SECTION 18.** 108.02 (19) of the statutes is amended to read:

18 108.02 (19) NONPROFIT ORGANIZATIONS. "Nonprofit organization" means an  
19 organization described in section 26 USC 501 (c) (3) ~~of the Internal Revenue Code~~  
20 that is exempt from federal income tax under section 26 USC 501 (a) ~~of the Internal~~  
21 ~~Revenue Code.~~

22 **SECTION 19.** 108.02 (26) (c) 9. of the statutes is repealed.



\*\*\*NOTE: This repeals a provision that referenced a federal law provision concerning qualified group legal services plans. The provision in federal law had been terminated for taxable years beginning after June 30, 1992, and has since been repealed outright by P.L. 113-295.

1           **SECTION 20.** 108.02 (26) (c) 14. of the statutes is repealed.

\*\*\*NOTE: This repeals a reference to the federal Medicare Catastrophic Coverage Act of 1988, which was subsequently repealed by P.L. 101-234, the Medicare Catastrophic Coverage Repeal Act of 1989.

2           **SECTION 21.** 108.04 (7) (h) of the statutes is renumbered 108.04 (7) (u).

\*\*\*NOTE: This provision, relating to charging benefits when a quit exception applies, is moved so that it appears after all of the quit exceptions, not in the middle of them.

3           **SECTION 22.** 108.04 (12) (b) of the statutes is amended to read:

4           108.04 (12) (b) Any individual who receives, through the department, any other  
5 type of unemployment benefit or allowance for a given week is ineligible for benefits  
6 for that same week under this chapter, except as specifically required for conformity  
7 with ~~the federal trade act of 1974 (P.L. 93-618)~~ 19 USC 2101 to 2497b.

8           **SECTION 23.** 108.04 (16) (d) 1. of the statutes is amended to read:

9           108.04 (16) (d) 1. The department shall not deny benefits under sub. (7) as a  
10 result of the individual's leaving unsuitable work to enter or continue such training,  
11 as a result of the individual's leaving work that the individual engaged in on a  
12 temporary basis during a break in the training or a delay in the commencement of  
13 the training, or because the individual left on-the-job training not later than 30 days  
14 after commencing that training because the individual did not meet the  
15 requirements ~~of the federal trade act~~ under 19 USC 2296 (c) (1) (B); and

16           **SECTION 24.** 108.04 (18) (a) of the statutes is amended to read:

17           108.04 (18) (a) The wages paid to an employee who performed services while  
18 the employee was an alien shall, if based on such services, be excluded from the  
19 employee's base period wages for purposes of sub. (4) (a) and ss. 108.05 (1) and 108.06

1 (1) unless the employee is an alien who was lawfully admitted for permanent  
2 residence at the time such services were performed, was lawfully present for the  
3 purpose of performing such services, or was permanently residing in the United  
4 States under color of law at the time such services were performed, including an alien  
5 who was lawfully present in the United States as a result of the application of the  
6 provisions of ~~section 212 (d) (5) of the federal immigration and nationality act~~ (8 USC  
7 1182 (d) (5)). All claimants shall be uniformly required to provide information as to  
8 whether they are citizens and, if they are not, any determination denying benefits  
9 under this subsection shall not be made except upon a preponderance of the evidence.

10 **SECTION 25.** 108.04 (18) (b) of the statutes is amended to read:

11 108.04 (18) (b) Any amendment of s. 26 USC 3304 (a) (14) of the federal  
12 ~~unemployment tax act~~ specifying conditions other than as stated in par. (a) for denial  
13 of benefits based on services performed by aliens, or changing the effective date for  
14 required implementation of par. (a) or such other conditions, ~~which~~ that is a condition  
15 of approval of this chapter for full tax credit against the tax imposed by the federal  
16 unemployment tax act, shall be applicable to this subsection.

17 **SECTION 26.** 108.07 (5) (intro.) of the statutes is amended to read:

18 108.07 (5) (intro.) Except as provided in sub. (7), whenever benefits ~~which~~  
19 that would otherwise be chargeable to the fund's balancing account are paid based  
20 on wages paid by an employer that is not subject to the contribution requirements  
21 of ss. 108.17 and 108.18, and the benefits are so chargeable under sub. (3) or s.  
22 108.04 (1) (f) ~~or~~, (5), or (5g) or 108.14 (8n) (e), or under s. 108.16 (6m) (e) for benefits  
23 specified in s. 108.16 (3) (b), the department shall charge the benefits as follows:

\*\*\*NOTE: This subsection governs the charging of benefits that would otherwise be chargeable to the balancing account in certain situations where one employer is a reimbursable employer. This provision originated in 1987 Act 38, and the drafting file

indicates that it was intentionally written to omit certain cases where benefits are charged to the balancing account (i.e., s. 108.04 (7) and (8)). However, s. 108.04 (5g) did not exist at that time, and when it was created, it appears that it should have been added here.

1           **SECTION 27.** 108.07 (5) (c) of the statutes is amended to read:

2           108.07 (5) (c) If 2 or more employers from which the claimant has base period  
3 wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and  
4 one or more employers from which the claimant has base period wages are subject  
5 to the contribution requirements of ss. 108.17 and 108.18, that percentage of the  
6 employee's benefits which would otherwise be chargeable to the fund's balancing  
7 account under sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g), or under s. 108.16 (6m) (e)  
8 for benefits specified in s. 108.16 (3) (b), shall be charged to the administrative  
9 account and paid from the appropriation under s. 20.445 (1) (gd).

\*\*\*NOTE: See the note under SECTION 26.

10           **SECTION 28.** 108.10 (intro.) of the statutes is amended to read:

11           **108.10 Settlement of issues other than benefit claims.** (intro.) Except as  
12 provided in s. 108.245 (3), in connection with any issue arising under this chapter as  
13 to the status or liability of an employing unit ~~in this state~~, for which no review is  
14 provided under s. 108.09, 108.095, or 108.227 (5) and whether or not a penalty is  
15 provided in s. 108.24, the following procedure shall apply:

\*\*\*NOTE: This adds a cross-reference to s. 108.095, which provides a separate procedure from s. 108.09 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

\*\*\*NOTE: This deletes "in this state" to clarify that the procedures in this section apply to issues involving the status or liability of any employing unit, not only an employing unit located in this state.

16           **SECTION 29.** 108.13 (4) (a) 2. of the statutes is amended to read:

17           108.13 (4) (a) 2. "Legal process" has the meaning given under 42 USC ~~662 (e)~~  
18 659 (i) (5).

\*\*\*NOTE: The definition referenced here was moved by P.L. 104-193 from 42 USC 662 to 42 USC 659.

1           **SECTION 30.** 108.14 (3m) of the statutes is amended to read:

2           108.14 (3m) In any court action to enforce this chapter the department, the  
3           commission, and the state may be represented by any licensed attorney who is an  
4           employee of the department or the commission and is designated by either of them  
5           for this purpose or at the request of either of them by the department of justice. If  
6           the governor designates special counsel to defend, in behalf of the state, the validity  
7           of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101  
8           to 1110, the expenses and compensation of the special counsel and of any experts  
9           employed by the department in connection with that proceeding may be charged to  
10          the administrative account. If the compensation is being determined on a contingent  
11          fee basis, the contract is subject to s. 20.9305.

12          **SECTION 31.** 108.14 (8n) (a) of the statutes is amended to read:

13          108.14 (8n) (a) The department shall enter into a reciprocal arrangement  
14          ~~which is approved by the U.S. secretary of labor pursuant to section under 26 USC~~  
15          3304 (a) (9) (B) ~~of the internal revenue code~~, to provide more equitable benefit  
16          coverage for individuals whose recent work has been covered by the unemployment  
17          insurance laws of 2 or more jurisdictions.

18          **SECTION 32.** 108.14 (8n) (e) of the statutes is amended to read:

19          108.14 (8n) (e) The department shall charge this state's share of any benefits  
20          paid under this subsection to the account of each employer by which the employee  
21          claiming benefits was employed in the applicable base period, in proportion to the  
22          total amount of wages he or she earned from each employer in the base period, except  
23          that if s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a)

1 ~~or (b) to (c)~~, 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to  
2 employment by such an employer who is subject to the contribution requirements of  
3 ss. 108.17 and 108.18, the department shall charge the share of benefits based on  
4 employment with that employer to the fund's balancing account, or, if s. 108.04 (1)  
5 (f) ~~or (5)~~, or (5g) or 108.07 (3) would have applied to an employer that is not subject  
6 to the contribution requirements of ss. 108.17 and 108.18, the department shall  
7 charge the share of benefits based on that employment in accordance with s. 108.07  
8 (5) (a) and (b). The department shall also charge the fund's balancing account with  
9 any other state's share of such benefits pending reimbursement by that state.

\*\*\*NOTE: In the first string of cross-references, missing cross-references are added to provisions that provide for charging to the balancing account.

\*\*\*NOTE: A reference to s. 108.04 (5g) is added in the second-to-last sentence to correspond to the changes in SECTIONS 26 and 27. See the note under SECTION 26.

10 **SECTION 33.** 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered  
11 108.14 (12) (am) and amended to read:

12 108.14 (12) (am) Consistently Consistent with the provisions of pars. (8) and  
13 ~~(9) of section 303 (a) of Title III of the federal social security act, 42 USC 503 (a) (8)~~  
14 and (9), the department shall expend all moneys received in the federal  
15 administrative financing account from any federal agency under said Title III shall  
16 ~~be expended 42 USC ch. 7 subch. III~~ solely for the purposes and in the amounts found  
17 necessary by said that agency for the ~~proper and efficient~~ administration of this  
18 chapter. ~~(b) Consistently with said provisions of said Title III, any~~ The department  
19 shall replace, within a reasonable time, any such moneys, that were received prior  
20 to before July 1, 1941, and remaining remained unencumbered on said that date, or  
21 that were received on or after said that date, which, because of any action or  
22 contingency, have been if the moneys are lost or have been expended for purposes

1 other than, or in amounts in excess of, those found necessary by said the federal  
2 agency for the proper administration of this chapter, shall be replaced within a  
3 reasonable time. This paragraph is the declared policy of this state, as enunciated  
4 by the 1941 legislature, and shall be implemented as further provided in this  
5 subsection. (c) If it is believed that any amount of money thus received has been  
6 thus is lost or improperly expended, the department, on its own motion or on notice  
7 from said the federal agency, shall promptly investigate and determine the matter  
8 and shall, depending on the nature of its determination, take such steps as it may  
9 deem considers necessary to protect the interests of the state. (d) If it is finally  
10 determined that moneys thus received have been thus lost or improperly expended,  
11 then the department shall either make the necessary replacement from those  
12 moneys in the administrative account specified in s. 108.20 (2m) or shall submit, at  
13 the next budget hearings conducted by the governor and at the budget hearings  
14 conducted by the next legislature convened in regular session, a request that the  
15 necessary replacement be made by an appropriation from the general fund.

\*\*\*\*NOTE: Modernizes and streamlines language that was written to fulfill the  
conformity requirement under 42 USC 503 (a) (8) and (9).

16 **SECTION 34.** 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and  
17 amended to read:

18 108.14 (12) (bm) This subsection shall not be construed to relieve this state of  
19 any obligation existing ~~prior to its enactment~~ before July 1, 1941, with respect to  
20 moneys received ~~prior to~~ before July 1, 1941, pursuant to said Title III under 42 USC  
21 ch. 7 subch. III.

\*\*\*\*NOTE: See the note under the previous SECTION.

22 **SECTION 35.** 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and  
23 amended to read:

1           108.19 **(1e)** (e) No later than the end of the month following each quarter in  
2           which the department expends moneys derived from assessments levied under s.  
3           ~~108.19 (1e)~~ this subsection, the department shall submit a report to the council on  
4           unemployment insurance describing the use of the moneys expended and the status  
5           at the end of the quarter of any project for which moneys were expended.

      \*\*\*NOTE: Moves this requirement to the provision to which it closely relates.

6           **SECTION 36.** 108.14 (26) of the statutes is amended to read:

7           108.14 **(26)** The department shall prescribe by rule a standard affidavit form  
8           that may be used by parties to appeals under ss. 108.09, 108.095, and 108.10 and  
9           shall make the form available to employers and claimants. The form shall be  
10          sufficient to qualify as admissible evidence in a hearing under this chapter if the  
11          authentication is sufficient and the information set forth by the affiant is admissible,  
12          but its use by a party does not eliminate the right of an opposing party to cross  
13          examine the affiant concerning the facts asserted in the affidavit.

      \*\*\*NOTE: This adds a cross-reference to s. 108.095, which provides a separate  
      procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false  
      statement or representation of a person to obtain UI benefits payable to another person.

14          **SECTION 37.** 108.141 (1) (h) of the statutes is amended to read:

15          108.141 **(1)** (h) "State law" means the unemployment insurance law of any  
16          state, that has been approved by the U.S. secretary of labor under section 26 USC  
17          3304 of the internal revenue code.

18          **SECTION 38.** 108.141 (3g) (a) 3. b. of the statutes is amended to read:

19          108.141 **(3g)** (a) 3. b. The gross average weekly remuneration for the work  
20          exceeds the claimant's weekly benefit rate plus any supplemental unemployment  
21          benefits, as defined in section 26 USC 501 (c) (17) (D) of the internal revenue code,  
22          then payable to the claimant;

1           **SECTION 39.** 108.141 (7) (a) of the statutes is amended to read:

2           108.141 (7) (a) The department shall charge the state's share of each week of  
3 extended benefits to each employer's account in proportion to the employer's share  
4 of the total wages of the employee receiving the benefits in the employee's base  
5 period, except that if the employer is subject to the contribution requirements of ss.  
6 108.17 and 108.18 the department shall charge the share of extended benefits to  
7 which s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a)  
8 ~~or (b) to (c)~~, 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing  
9 account.

      \*\*\*\*NOTE: As in SECTION 32, this adds a reference to substantial fault in the extended benefits provision.

10           **SECTION 40.** 108.141 (7) (b) of the statutes is amended to read:

11           108.141 (7) (b) The department shall charge the full amount of extended  
12 benefits based on employment for a government unit to the account of the  
13 government unit, except that if s. 108.04 (5), (5g), or (7) applies and the government  
14 unit has elected contribution financing the department shall charge one-half of the  
15 government unit's share of the benefits to the fund's balancing account.

      \*\*\*\*NOTE: This adds a reference to substantial fault in the extended benefits provision.

16           **SECTION 41.** 108.145 of the statutes is amended to read:

17           **108.145 Disaster unemployment assistance.** The department shall  
18 administer under s. 108.14 (9m) the distribution of disaster unemployment  
19 assistance to workers in this state who are not eligible for benefits whenever such  
20 assistance is made available by the president of the United States under ~~26~~ 42 USC  
21 5177 (a). In determining eligibility for assistance and the amount of assistance  
22 payable to any worker who was totally self-employed during the first 4 of the last 5



1 most recently completed quarters preceding the date on which the worker claims  
2 assistance, the department shall not reduce the assistance otherwise payable to the  
3 worker because the worker receives one or more payments under the social security  
4 act (~~42 USC 301 et seq.~~) ch. 7, for the same week that the worker qualifies for such  
5 assistance.

\*\*\*\*NOTE: The cross-reference to "26 USC 5177 (a)" appears to have been an error from when this provision was enacted. It is corrected to the proper cross-reference, "42 USC 5177 (a)."

6 **SECTION 42.** 108.15 (3) (d) of the statutes is amended to read:

7 108.15 (3) (d) If a government unit elects contribution financing for any  
8 calendar year after the first calendar year it becomes newly subject to this chapter,  
9 it shall be liable to reimburse the fund for any benefits based on prior employment.  
10 If a government unit terminates its election of contribution financing, ss. 108.17 and  
11 108.18 shall apply to employment in the prior calendar year, but after all benefits  
12 based on such prior employment have been charged to its contribution account any  
13 balance remaining in such account shall be transferred to the fund's balancing  
14 account.

\*\*\*\*NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

15 **SECTION 43.** 108.151 (2) (d) of the statutes is amended to read:

16 108.151 (2) (d) Sections 108.17 and 108.18 shall apply to all prior employment,  
17 but after all benefits based on prior employment have been charged to any account  
18 it has had under s. 108.16 (2) any balance remaining therein shall be transferred to  
19 the fund's balancing account as if s. 108.16 (6) (c) or (6m) (d) applied.

\*\*\*\*NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

20 **SECTION 44.** 108.152 (1) (d) of the statutes is amended to read:

1           108.152 (1) (d) If the Indian tribe or tribal unit is an employer ~~prior to~~ before  
2 the effective date of an election, ss. 108.17 and 108.18 shall apply to all employment  
3 ~~prior to~~ before the effective date of the election, but after all benefits based on prior  
4 employment have been charged to any account that it has had under s. 108.16 (2),  
5 the department shall transfer any positive balance or charge any negative balance  
6 remaining therein to the fund's balancing account as if s. 108.16 (6) (c) and (6m) (d)  
7 applied.

      \*\*\*NOTE: This adds the word "fund's" before "balancing account," consistent with  
the rest of ch. 108.

8           **SECTION 45.** 108.155 (2) (a) and (d) of the statutes are amended to read:

9           108.155 (2) (a) On October 2, 2016, the fund's treasurer shall set aside  
10 \$2,000,000 in the fund's balancing account for accounting purposes. On an ongoing  
11 basis, the fund's treasurer shall tally the amounts allocated to reimbursable  
12 employers' accounts under s. 108.04 (13) (d) 4. c. and deduct those amounts from the  
13 amount set aside plus any interest calculated thereon.

14           (d) If the department assesses reimbursable employers under par. (c), the  
15 department shall determine the amount of assessments to be levied as provided in  
16 sub. (3), and the fund's treasurer shall notify reimbursable employers that the  
17 assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall  
18 be payable by each reimbursable employer that is subject to this chapter as of the  
19 date the assessment is imposed. Assessments imposed under this section shall be  
20 credited to the fund's balancing account.

      \*\*\*NOTE: This adds the word "fund's" before "balancing account," consistent with  
the rest of ch. 108.

21           **SECTION 46.** 108.16 (6) (m) of the statutes is amended to read:

1           108.16 **(6)** (m) Any amounts transferred to the balancing account from the  
2 unemployment interest payment fund under s. 108.19 (1m) (f).

      \*\*\*NOTE: This adds a cross-reference to the provision that provides for the transfers that are referenced.

3           **SECTION 47.** 108.16 (6m) (a) of the statutes is amended to read:

4           108.16 **(6m)** (a) The benefits thus chargeable under sub. (7) (a) or (b) or s.  
5 108.04 (1) (f), (5), (5g), (7) ~~(h)~~ (u), (7m), (8) (a) ~~or (b) to (c)~~, (13) (c) or (d) or (16) (e),  
6 108.07 (3), (3r), (5) (b), (5m), or (6), 108.133 (3) (f), 108.14 (8n) (e), 108.141, 108.15,  
7 108.151, or 108.152 ~~or sub. (6) (e) or (7) (a) and (b)~~.

      \*\*\*NOTE: See the note under SECTION 21 regarding the change of “(7) (h)” to “(7) (u).”

      \*\*\*NOTE: This adds a missing cross reference to s. 108.04 (7m).

      \*\*\*NOTE: This adds a cross-reference to s. 108.15. Sections 108.15, 108.151, and 108.152 all call for benefits to be paid from a reimbursement account for an employer that is a subaccount of the balancing account.

      \*\*\*NOTE: Material that was formerly in s. 108.16 (6) (e) was relocated to s. 108.16 (6m) (f) and (11). See 1999 Wisconsin Acts 15 and 83. The reference to (6) (e) here appears to be a vestige of the former law and it is therefore deleted.

      \*\*\*NOTE: This extends a cross-reference to s. 108.04 (8) (c), which also provides for charging to the balancing account.

8           **SECTION 48.** 108.16 (6x) of the statutes is amended to read:

9           108.16 **(6x)** The department shall charge to the uncollectible reimbursable  
10 benefits account the amount of any benefits paid from the fund's balancing account  
11 that are reimbursable under s. 108.151 but for which the department does not receive  
12 reimbursement after the department exhausts all reasonable remedies for collection  
13 of the amount.

      \*\*\*NOTE: This adds the word “fund’s” before “balancing account,” consistent with the rest of ch. 108.

14          **SECTION 49.** 108.16 (9) (a) of the statutes is amended to read:

15          108.16 **(9)** (a) Consistently with section 26 USC 3305 of the internal revenue  
16 code, relating to federal instrumentalities ~~which~~ that are neither wholly nor

1 partially owned by the United States nor otherwise specifically exempt from the tax  
2 imposed by ~~section~~ under 26 USC 3301 of the internal revenue code:

3 1. Any contributions required and paid under this chapter for ~~1939 or any~~  
4 ~~subsequent~~ year by any such instrumentality, including any national bank, shall be  
5 refunded to such ~~that~~ instrumentality in case this chapter is not certified with  
6 respect to such year under ~~s. 26 USC 3304 of said code.~~

7 2. No national banking association ~~which is subject to this chapter shall be~~  
8 required to comply with any of its provisions or requirements under this chapter, to  
9 the extent that such compliance would be contrary to ~~s. 26 USC 3305 of said code.~~

10 **SECTION 50.** 108.161 (title) of the statutes is amended to read:

11 **108.161 (title) Federal administrative financing account; Reed Act**  
12 **distributions.**

\*\*\*\*NOTE: This section was created by 1957 Act 235 following the enactment of the Federal Employment Security Administrative Financing Act of 1954, the relevant portion of which is known as the "Reed Act" and provides for periodic distributions of money to states, the last of which occurred in 2002. This amends the title here to make it more apparent what this section is about. The treatments below aim to eliminate antiquated language (i.e., "hereunder") and use U.S. Code cross-references instead of references to the Social Security Act.

13 **SECTION 51.** 108.161 (1) and (1m) of the statutes are consolidated, renumbered  
14 108.161 (1) and amended to read:

15 108.161 (1) The fund's treasurer shall maintain within the fund an  
16 employment security "federal administrative financing account",<sup>2</sup> and shall credit  
17 ~~thereto~~ to that account all amounts credited to the fund pursuant to the federal  
18 ~~employment security administrative financing act (of 1954) and section 903 of the~~  
19 ~~federal social security act, as amended. (1m) The treasurer of the fund shall also~~  
20 ~~credit to said account~~ under 42 USC 1101 to 1103 and all federal moneys credited to  
21 the fund pursuant to under sub. (8).

1           **SECTION 52.** 108.161 (2) of the statutes is amended to read:

2           108.161 (2) The requirements of ~~said section 903~~ 42 USC 1103 shall control any  
3           appropriation, withdrawal, and use of any moneys in said the federal administrative  
4           financing account.

5           **SECTION 53.** 108.161 (3) of the statutes is amended to read:

6           108.161 (3) ~~Consistently~~ Consistent with this chapter and ~~said section 903,~~  
7           ~~such~~ 42 USC 1103, moneys in the federal administrative financing account shall be  
8           used solely for benefits or employment security administration by the department,  
9           including unemployment insurance, employment service, apprenticeship programs,  
10          and related statistical operations.

11          **SECTION 54.** 108.161 (3e) of the statutes is amended to read:

12          108.161 (3e) Notwithstanding sub. (3), any moneys allocated under ~~section 903~~  
13          ~~of the federal Social Security Act, as amended,~~ 42 USC 1103 for federal fiscal years  
14          2000 and 2001 and the first \$2,389,107 of any distribution received by this state  
15          under ~~section 903 of that act~~ 42 USC 1103 in federal fiscal year 2002 shall be used  
16          solely for unemployment insurance administration.

17          **SECTION 55.** 108.161 (4) of the statutes is amended to read:

18          108.161 (4) ~~Such moneys~~ Moneys in the federal administrative financing  
19          account shall be encumbered and spent for employment security administrative  
20          purposes only pursuant to, and after the effective date of, a specific legislative  
21          appropriation enactment that does all of the following:

22               (a) ~~Stating~~ States for which such purposes and in what amounts the  
23               appropriation is being made to the administrative account created by s. 108.20.

24               (b) ~~Directing~~ Directs the fund's treasurer to transfer the appropriated amounts  
25               to the administrative account only as and to the extent that they are currently

1 needed for such expenditures, and ~~directing~~ directs that there shall be restored to the  
2 federal administrative financing account created by sub. (1) any amount thus  
3 transferred ~~which~~ that has ceased to be needed or available for such expenditures.

4 (c) ~~Specifying~~ Specifies that the appropriated amounts are available for  
5 obligation solely within the 2 years beginning on the appropriation law's date of  
6 enactment. This paragraph does not apply to the appropriations under s. 20.445 (1)  
7 (nd) and (ne) or to any amounts expended from the appropriation under s. 20.445 (1)  
8 (nb) from moneys transferred to this state on March 13, 2002, pursuant to ~~section 903~~  
9 ~~(d) of the federal Social Security Act~~ 42 USC 1103 (d).

10 (d) ~~Limiting~~ Limits the total amount ~~which~~ that may be obligated during any  
11 fiscal year to the aggregate of all amounts credited under sub. (1), including amounts  
12 credited pursuant to under sub. (8), reduced at the time of any obligation by the sum  
13 of the moneys obligated and charged against any of the amounts credited.

14 **SECTION 56.** 108.161 (5) and (6) of the statutes are consolidated, renumbered  
15 108.161 (5m) and amended to read:

16 108.161 **(5m)** The total of the amounts ~~thus~~ appropriated under sub. (4) for use  
17 in any fiscal year shall in no event exceed the moneys available for such use  
18 ~~hereunder~~ under this section, considering the timing of credits ~~hereunder~~ under this  
19 section and the sums already spent or appropriated or transferred or otherwise  
20 encumbered ~~hereunder~~. ~~(6)~~ under this section. The fund's treasurer shall keep a  
21 record of all such ~~times and amounts; shall charge~~ transactions and shall do all of the  
22 following:

23 (a) Charge each sum against the earliest credits ~~duly~~ available therefor; ~~shall~~  
24 include.

1           **(b)** Include any sum ~~thus that has been~~ appropriated but not yet spent  
2 hereunder under this section in computing the fund's net balance as of the close of  
3 any month, in line with the federal requirement that any such sum shall, until spent,  
4 be considered part of the fund; ~~and shall certify.~~

5           **(c)** Certify the relevant facts whenever necessary hereunder.

6           **SECTION 57.** 108.161 (7) of the statutes is amended to read:

7           108.161 (7) If any moneys appropriated hereunder under this section are used  
8 to buy and hold suitable land, ~~with a view to the future construction of an~~ and to build  
9 a suitable employment security building thereon, and if such land is later sold or  
10 transferred to other use, the proceeds of such sale (, or the value of such land when  
11 transferred), shall be credited to the federal administrative financing account  
12 ~~created by sub. (1)~~ except as otherwise provided in ss. 13.48 (14) and 16.848.

13           **SECTION 58.** 108.161 (8) of the statutes is amended to read:

14           108.161 (8) If any sums are appropriated and spent hereunder under this  
15 section to buy land and to build a suitable employment security building thereon, or  
16 to purchase information technology hardware and software, ~~then~~ any federal  
17 moneys thereafter credited to the fund or paid to the department by way of gradual  
18 reimbursement of such employment security capital expenditures, or in lieu of the  
19 estimated periodic amounts ~~which that~~ would otherwise (, in the absence of such  
20 expenditures), be federally granted for the rental of substantially equivalent  
21 quarters, shall be credited to the federal administrative financing account ~~created~~  
22 ~~by sub. (1)~~, consistently with any federal requirements applicable to the handling  
23 and crediting of such moneys.

24           **SECTION 59.** 108.161 (9) of the statutes is amended to read:

1           108.161 (9) Any land and building or office quarters acquired under this section  
2 shall continue to be used for employment security purposes. Realty or quarters may  
3 not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am)  
4 or 16.848 (1) and may not be sold or transferred without the governor's approval. The  
5 proceeds from the sale, or the value of realty or quarters upon transfer, shall be  
6 credited to the federal administrative financing account ~~established in sub. (1) or~~  
7 ~~credited to the fund established in s. 108.20~~ administrative account, or both as  
8 determined by the department in accordance with federal requirements. Equivalent  
9 substitute rent-free quarters may be provided, as federally approved. Amounts  
10 credited under this subsection shall be used solely to finance employment security  
11 quarters according to federal requirements.

      \*\*\*NOTE: There is no longer a fund established under s. 108.20, which instead  
refers to an "administrative account."

12           **SECTION 60.** 108.17 (2m) of the statutes is amended to read:

13           108.17 (2m) When a written statement of account is issued to an employer by  
14 the department, ~~showing as duly credited~~ that shows a specified amount received  
15 from the employer under this chapter as having been credited, no other form of state  
16 receipt ~~therefor~~ is required.

17           **SECTION 61.** 108.18 (3) (c) of the statutes is amended to read:

18           108.18 (3) (c) Permitting the employer to pay such lower rate is consistent with  
19 the relevant conditions then applicable to additional credit allowance for such year  
20 under section 26 USC 3303 (a) of the ~~federal unemployment tax act~~, any other  
21 provision to the contrary notwithstanding.

22           **SECTION 62.** 108.18 (7) (a) 1. of the statutes is amended to read:



1           108.18 (7) (a) 1. Except as provided in pars. (b) to (i), any employer may make  
2 payments to the fund during the month of November in excess of those required by  
3 this section and s. 108.19 (1), (1e), and (1f). Each payment shall be credited to the  
4 employer's account for the purpose of computing the employer's reserve percentage  
5 as of the immediately preceding computation date.

      \*\*\*NOTE: This cross-reference range omitted s. 108.19 (1m), so this is amended to refer to s. 108.19 generally so as to include s. 108.19 (1m).

6           **SECTION 63.** 108.18 (7) (h) of the statutes is amended to read:

7           108.18 (7) (h) The department shall establish contributions, other than those  
8 contributions required by this section and assessments required under s. 108.19 (1),  
9 (1e), and (1f) and contributions other than those submitted during the month of  
10 November or authorized under par. (f) or (i) 2., as a credit, without interest, against  
11 future contributions payable by the employer or shall refund the contributions at the  
12 employer's option.

      \*\*\*NOTE: See the previous SECTION'S note.

13           **SECTION 64.** 108.19 (title) of the statutes is repealed and recreated to read:

14           **108.19 (title) Special assessments.**

      \*\*\*NOTE: This section is modified so as to have it deal primarily with assessments. Provisions establishing segregated funds are moved to s. 108.195, and remaining material is renumbered to improve organization and readability.

15           **SECTION 65.** 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and  
16 amended to read:

17           108.19 (1) (a) Each employer subject to this chapter shall regularly ~~contribute~~  
18 ~~to the administrative account at the rate of two-tenths of one~~ pay an assessment  
19 equal to 0.2 percent per year on its payroll, except that the department may prescribe  
20 at the close of any fiscal year such lower rates of ~~contribution~~ under this section  
21 subsection, to apply to classes of employers throughout the ensuing fiscal year, as will

1 in the department's judgment adequately finance the administration of this chapter,  
2 and as will in the department's judgment fairly represent the relative cost of the  
3 services rendered by the department to each such class.

\*\*\*\*NOTE: Changes reference to "this section" to acknowledge other assessments in  
s. 108.19.

4 **SECTION 66.** 108.19 (1) (d) of the statutes is created to read:

5 108.19 (1) (d) Assessments under this subsection shall be credited to the  
6 appropriation account under s. 20.445 (1) (gc).

\*\*\*\*NOTE: If DWD ever were to assess employers under s. 108.19 (1), the  
contributions would probably have to be deposited in the appropriation account under s.  
20.445 (1) (gc) given how the relevant statutes are currently worded, so this change  
provides as such. (Because assessments under s. 108.19 (1e) and (1m) are directed  
elsewhere, assessments under this subsection appear to be the only moneys that would  
conceivably ever go to the appropriation under s. 20.445 (1) (gc).)

7 **SECTION 67.** 108.19 (1e) (cm) of the statutes is created to read:

8 108.19 (1e) (cm) Assessments under this subsection shall be credited to the  
9 appropriation under s. 20.445 (1) (gh).

\*\*\*\*NOTE: Adds a reference to the receiving appropriation for consistency within  
this section.

10 **SECTION 68.** 108.19 (1f) (a) of the statutes is amended to read:

11 108.19 (1f) (a) Except as provided in par. (b), each employer, other than an  
12 employer that finances benefits by reimbursement in lieu of contributions under s.  
13 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable  
14 under s. 108.18 and this section, pay an assessment for each year equal to the lesser  
15 of 0.01 percent of its payroll for that year or the solvency contribution that would  
16 otherwise be payable by the employer under s. 108.18 (9) for that year.

17 (d) Assessments under this ~~paragraph~~ subsection shall be deposited in the  
18 unemployment program integrity fund.

\*\*\*\*NOTE: Makes slight organizational changes for consistency within this section.

19 **SECTION 69.** 108.19 (1f) (c) of the statutes is amended to read:

1           108.19 **(1f)** (c) Notwithstanding par. (a), the department may, if it finds that the  
2 full amount of the levy is not required to effect the purposes specified in ~~sub. (1s) s.~~  
3 108.195 (2) (b) for any year, prescribe a reduced levy for that year and in such case  
4 shall publish in the notice under par. (b) the rate of the reduced levy.

\*\*\*NOTE: Changes made due to the renumbering in SECTION 75.

5           **SECTION 70.** 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and  
6 amended to read:

7           108.19 **(1m)** (a) Each employer subject to this chapter as of the date a rate is  
8 established under this subsection shall pay an assessment ~~to the unemployment~~  
9 ~~interest payment fund~~ at a rate established by the department sufficient to pay  
10 interest due on advances from the federal unemployment account under ~~Title XII of~~  
11 ~~the federal social security act~~, 42 USC 1321 to 1324. The rate established by the  
12 department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or  
13 108.152 (1) shall be 75 percent of the rate established for other employers. The  
14 amount of any employer's assessment shall be the product of the rate established for  
15 that employer multiplied by the employer's payroll of the previous calendar year as  
16 taken from quarterly employment and wage reports filed by the employer under s.  
17 108.205 (1) or, in the absence of the filing of such reports, estimates made by the  
18 department.

19           (d) Each assessment made under this subsection is due within 30 days after the  
20 date the department issues the assessment. ~~If the~~

21           (f) The department shall use amounts collected from employers under this  
22 subsection ~~exceed the amounts needed to pay interest due on advances from the~~  
23 federal unemployment account under 42 USC 1321 to 1324. ~~If the amounts collected~~  
24 exceed the amounts needed to pay that interest for a given year, the department shall

1 use any the excess to pay interest owed in subsequent years on advances from the  
2 federal unemployment account. If the department determines that additional  
3 interest obligations are unlikely, the department shall transfer the excess to the  
4 fund's balancing account of ~~the fund~~, the unemployment program integrity fund, or  
5 both in amounts determined by the department.

6 **SECTION 71.** 108.19 (1m) (e) of the statutes is created to read:

7 108.19 (1m) (e) Assessments under this subsection shall be deposited in the  
8 unemployment interest payment fund.

\*\*\*\*NOTE: Adds a reference to the receiving fund for consistency within this section.

9 **SECTION 72.** 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and  
10 amended to read:

11 108.19 (1m) (b) The department shall publish as a class 1 notice under ch. 985  
12 any rate established under ~~sub. (1m) par. (a)~~ within 10 days of after the date that the  
13 rate is established.

14 **SECTION 73.** 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and  
15 amended to read:

16 108.19 (1m) (c) Notwithstanding ~~sub. (1m) par. (a)~~, an employer having a  
17 payroll of \$25,000 or less for the preceding calendar year is exempt from any  
18 assessment under ~~sub. (1m) this subsection~~.

19 **SECTION 74.** 108.19 (1q) of the statutes is renumbered 108.195 (1) and amended  
20 to read:

21 108.195 (1) UNEMPLOYMENT INTEREST PAYMENT FUND. There is created a  
22 separate, nonlapsible trust fund designated as the unemployment interest payment  
23 fund consisting of all amounts collected under ~~sub. s. 108.19 (1m) (a)~~ and all interest  
24 and penalties on those amounts collected under s. 108.22.

1           **SECTION 75.** 108.19 (1s) of the statutes is renumbered 108.195 (2), and 108.195  
2 (2) (a) 3., as renumbered, is amended to read:

3           108.195 (2) (a) 3. Amounts transferred under ~~sub. (1m) s. 108.19 (1m) (f).~~

4           **SECTION 76.** 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and  
5 amended to read:

6           108.19 (1) (b) If the department finds, at any time within a fiscal year for which  
7 it has prescribed lower contribution rates to the administrative account than the  
8 maximum rate permitted under ~~sub. (1) par. (a),~~ that such lower rates will not  
9 adequately finance the administration of this chapter or are excessive for that  
10 purpose, the department may by ~~general~~ rule prescribe a new schedule of rates in no  
11 case exceeding the specified maximum to apply under this ~~section~~ subsection for the  
12 balance of the fiscal year.

13           **SECTION 77.** 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and  
14 amended to read:

15           108.19 (1) (c) Within the limit specified by ~~sub. (1) under par. (a),~~ the  
16 department may by rule prescribe at any time as to any period any such rate or rates  
17 or schedule as it deems necessary and proper ~~hereunder~~ under this subsection.  
18 Unless thus prescribed, no such rate or rates or schedule shall apply under ~~sub. (1)~~  
19 ~~or (2) par. (a) or (b).~~

20           **SECTION 78.** 108.19 (3) of the statutes is repealed.

      \*\*\*NOTE: This provision is repealed as it appears to have been rendered  
out-of-date.

21           **SECTION 79.** 108.19 (4) of the statutes is amended to read:

22           108.19 (4) If ~~section 303~~ 42 USC 503 (a) (5) of title III of the social security act  
23 and ~~section 26 USC 3304~~ (a) (4) of the internal revenue code are amended to permit

1 a state agency to use, in financing administrative expenditures incurred in carrying  
2 out its employment security functions, some part of the moneys collected or to be  
3 collected under the state unemployment insurance law, in partial or complete  
4 substitution for grants under ~~title III~~ 42 USC 501 to 506, then this chapter shall, by  
5 rule of the department, be modified in the manner and to the extent and within the  
6 limits necessary to permit such use by the department under this chapter; and the  
7 modifications shall become effective on the same date as such use becomes  
8 permissible under the federal amendments.

9 **SECTION 80.** 108.195 (title) of the statutes is created to read:

10 **108.195 (title) Segregated funds.**

\*\*\*\*NOTE: This puts put the creation of the funds in a separate section for better organization.

11 **SECTION 81.** 108.195 (2) (title) of the statutes is created to read:

12 108.195 (2) (title) UNEMPLOYMENT PROGRAM INTEGRITY FUND.

13 **SECTION 82.** 108.20 (2m) of the statutes is amended to read:

14 108.20 (2m) From the moneys not appropriated under s. 20.445 (1) (gg) that  
15 are received by the administrative account as interest and penalties under this  
16 chapter, the department shall pay the benefits chargeable to the administrative  
17 account under s. 108.07 (5) and the interest payable to employers under s. 108.17  
18 (3m), and may expend the remainder to pay interest due on advances to the  
19 unemployment reserve fund from the federal unemployment account under ~~title XII~~  
20 ~~of the social security act~~, 42 USC 1321 to 1324, to conduct research relating to the  
21 condition of the unemployment reserve fund under s. 108.14 (6), to administer the  
22 unemployment insurance program and federal or state unemployment insurance  
23 programs authorized by the governor under s. 16.54, to assist the department of

1 justice in the enforcement of this chapter, to make payments to satisfy a federal audit  
2 exception concerning a payment from the fund or any federal aid disallowance  
3 involving the unemployment insurance program, or to make payments to the fund  
4 if such action is necessary to obtain a lower interest rate or deferral of interest  
5 payments on advances from the federal unemployment account under ~~title XII of the~~  
6 ~~social security act~~ 42 USC 1321 to 1324, except that any interest earned pending  
7 disbursement of federal employment security grants under s. 20.445 (1) (n) shall be  
8 credited to the general fund.

9 **SECTION 83.** 108.22 (1m) of the statutes is amended to read:

10 108.22 **(1m)** If any person owes any contributions, reimbursements or  
11 assessments under s. 108.15, 108.151, 108.152, 108.155, or 108.19 ~~(1m)~~, benefit  
12 overpayments, interest, fees, payments for forfeitures, other penalties, or any other  
13 amount to the department under this chapter and fails to pay the amount owed, the  
14 department has a perfected lien upon the right, title, and interest in all of the  
15 person's real and personal property located in this state in the amount finally  
16 determined to be owed, plus costs. Except where creation of a lien is barred or stayed  
17 by bankruptcy or other insolvency law, the lien is effective upon the earlier of the date  
18 on which the amount is first due or the date on which the department issues a  
19 determination of the amount owed under this chapter and shall continue until the  
20 amount owed, plus costs and interest to the date of payment, is paid, except as  
21 provided in sub. (8) (d). If a lien is initially barred or stayed by bankruptcy or other  
22 insolvency law, it shall become effective immediately upon expiration or removal of  
23 such bar or stay. The perfected lien does not give the department priority over  
24 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges  
25 whose interests have been recorded before the department's lien is recorded.

\*\*\*NOTE: This adds a missing cross-reference to s. 108.152, which provides for reimbursement financing by Indian tribes.

\*\*\*NOTE: This broadens a reference to s. 108.19 to make it clear it applies to all assessments under s. 108.19, not just those under s. 108.19 (1m).

1           **SECTION 84.** 108.22 (8e) of the statutes is amended to read:

2           108.22 **(8e)** If the department determines a payment has been made to an  
3 unintended recipient erroneously without fault on the part of the intended payee or  
4 payee's authorized agent, the department may issue the correct payment to the  
5 intended payee if necessary, and may recover the amount of the erroneous payment  
6 from the recipient under this section or s. 108.225 or 108.245. Any amount so  
7 recovered shall be credited to the fund's balancing account.

\*\*\*NOTE: This adds a reference to the balancing account, consistent with s. 108.16  
(6) (o).

8           **SECTION 85.** 108.223 (2) (b) of the statutes is amended to read:

9           108.223 **(2)** (b) The department shall enter into agreements with financial  
10 institutions doing business in this state to operate the financial record matching  
11 program under this section. An agreement shall require the financial institution to  
12 participate in the financial record matching program by electing either the financial  
13 institution matching option under sub. (3) or the state matching option under sub.  
14 (4). The financial institution and the department may by mutual agreement ~~make~~  
15 ~~changes to~~ amend the agreement. A financial institution that wishes to choose a  
16 different matching option shall provide the department with at least 60 days' notice.  
17 The department shall furnish the financial institution with a signed copy of the  
18 agreement.

19           **SECTION 86.** 108.23 of the statutes is amended to read:

20           **108.23 Preference of required payments.** In the event of an employer's  
21 dissolution, reorganization, bankruptcy, receivership, assignment for benefit of



1 creditors, judicially confirmed extension proposal or composition, or any analogous  
2 situation including the administration of estates in circuit courts, the payments  
3 required of the employer under this chapter shall have preference over all claims of  
4 general creditors and shall be paid next after the payment of preferred claims for  
5 wages. If the employer is indebted to the federal government for taxes due under the  
6 federal unemployment tax act and a claim for the taxes has been duly filed, the  
7 amount of contributions which should be paid to allow the employer the maximum  
8 offset against the taxes shall have preference over preferred claims for wages and  
9 shall be on a par with debts due the United States, if by establishing the preference  
10 the offset against the federal tax can be secured under s. 26 USC 3302 (a) (3) of the  
11 ~~federal unemployment tax act.~~

12 **SECTION 87.** 108.24 (3) (a) 3. a. of the statutes is amended to read:

13 108.24 (3) (a) 3. a. Refrain from claiming or accepting benefits, participating  
14 in an audit or investigation by the department, or testifying in a hearing held under  
15 s. 108.09, 108.095, or 108.10.

\*\*\*\*NOTE: This adds a cross-reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

16 **SECTION 88.** 108.24 (3) (a) 4. of the statutes is amended to read:

17 108.24 (3) (a) 4. Discriminates or retaliates against an individual because the  
18 individual claims benefits, participates in an audit or investigation by the  
19 department under this chapter, testifies in a hearing under s. 108.09, 108.095, or  
20 108.10, or exercises any other right under this chapter.

\*\*\*\*NOTE: This adds a cross-reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-3684/P1  
MED:cjs

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to repeal* 20.445 (1) (gg), 20.445 (1) (gm), 25.17 (1) (x), 108.02 (1), 108.14  
2         (7) (c), 108.14 (23) (d) and 108.20; *to renumber and amend* 108.19 (4); *to*  
3         *amend* 20.445 (1) (gc), 20.445 (1) (gd), 108.04 (11) (f), 108.07 (5) (a), 108.07 (5)  
4         (c), 108.07 (6), 108.09 (5) (b), 108.14 (2m), 108.14 (3m), 108.14 (12) (d), 108.14  
5         (16), 108.16 (5) (c), 108.16 (6) (k), 108.16 (8) (f), 108.161 (4) (a) and (b), 108.161  
6         (9), 108.162 (7), 108.17 (3), 108.17 (3m), 108.19 (1), 108.19 (1e) (a), 108.19 (2)  
7         and 108.22 (1) (am); and *to create* 20.427 (1) (g) of the statutes; **relating to:**  
8         various changes relating to financing of and appropriations for the  
9         unemployment insurance program.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.427 (1) (g) of the statutes is created to read:

2           20.427 (1) (g) *Agency collections.* All moneys received from fees or other  
3 charges for copying of documents, generation of copies of documents from optical disc  
4 or electronic storage, publication of books, and other services provided in carrying  
5 out the functions of the commission.

      \*\*\*\*NOTE: This creates an appropriation for LIRC to receive moneys for various  
purposes, including transcript fees under s. 108.09 (5) (b).

6           **SECTION 2.** 20.445 (1) (gc) of the statutes is amended to read:

7           20.445 (1) (gc) *Unemployment administration.* All moneys received by the  
8 department under s. 108.19 ~~not otherwise appropriated under this subsection (1)~~ for  
9 the administration of ch. 108.

      \*\*\*\*NOTE: If DWD ever were to assess employers under s. 108.19 (1), the  
contributions would probably have to be deposited in the appropriation account under s.  
20.445 (1) (gc) given how the relevant statutes are currently worded, so this change  
provides as such.

10          **SECTION 3.** 20.445 (1) (gd) of the statutes is amended to read:

11          20.445 (1) (gd) *Unemployment interest and penalty payments.* All moneys  
12 received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13)  
13 (c) and 108.22 except interest and penalties deposited under s. 108.19 (1q), and  
14 forfeitures under s. 103.05 (5), ~~all moneys not appropriated under par. (gg) and all~~  
15 moneys received under s. 108.09 (5) (c), all moneys received under s. 108.14 (16), all  
16 moneys received under s. 108.18 (1) (c), all moneys transferred to this appropriation  
17 account from the appropriation account under par. (gh), and all other nonfederal  
18 moneys received for the employment service or for the administration of ch. 108 that  
19 are not otherwise appropriated under this subsection, for the payment of benefits  
20 specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the  
21 payment of interest to employers under s. 108.17 (3m), for research relating to the

1 condition of the unemployment reserve fund under s. 108.14 (6), for administration  
2 of the unemployment insurance program and federal or state unemployment  
3 insurance programs authorized by the governor under s. 16.54, for satisfaction of any  
4 federal audit exception concerning a payment from the unemployment reserve fund  
5 or any federal aid disallowance concerning the unemployment insurance program,  
6 for assistance to the department of justice in the enforcement of ch. 108, for the  
7 payment of interest due on advances from the federal unemployment account under  
8 title XII of the social security act to the unemployment reserve fund, and for  
9 payments made to the unemployment reserve fund to obtain a lower interest rate or  
10 deferral of interest payments on these advances, ~~except as otherwise provided in s.~~  
11 ~~108.20.~~

\*\*\*\*NOTE: This is the so-called "I&P fund." However, it is not a separate segregated fund, but rather an appropriation account in the general fund. The changes in this SECTION direct certain moneys to this account, as further explained in other SECTIONS of the bill.

12 **SECTION 4.** 20.445 (1) (gg) of the statutes is repealed.

\*\*\*\*NOTE: As currently written, this is a separate appropriation used to dedicate some I&P money to DWD for IT upgrades, etc. It is repealed due to the fact that it is no longer being used.

13 **SECTION 5.** 20.445 (1) (gm) of the statutes is repealed.

\*\*\*\*NOTE: This repeals an appropriation that receives moneys paid for printed copies of a UI Handbook for employers. This money is instead directed to the appropriation under s. 20.445 (1) (gd) along with fees charged for other printed materials.

14 **SECTION 6.** 25.17 (1) (x) of the statutes is repealed.

\*\*\*\*NOTE: See the note under SECTION 31 regarding the former unemployment administration fund. Section 25.17 (1), which gives the SWIB authority to manage the various segregated funds, was apparently erroneously not amended to remove the reference to the fund. This repeals that obsolete reference.

15 **SECTION 7.** 108.02 (1) of the statutes is repealed.

\*\*\*\*NOTE: See the note under SECTION 31 regarding the former unemployment administration fund.

16 **SECTION 8.** 108.04 (11) (f) of the statutes is amended to read:

1           108.04 (11) (f) All amounts forfeited under par. (c) and all collections from  
2 administrative assessments under par. (cm) shall be credited to the administrative  
3 ~~account~~ appropriation under s. 20.445 (1) (gd).

      \*\*\*\*NOTE: This is amended to simply reference s. 20.445 (1) (gd), which provides  
that this money goes into that account.

4           **SECTION 9.** 108.07 (5) (a) of the statutes is amended to read:

5           108.07 (5) (a) If no employer from which the claimant has base period wages  
6 is subject to the contribution requirements of ss. 108.17 and 108.18, the benefits shall  
7 be ~~charged to the administrative account and~~ paid from the appropriation under s.  
8 20.445 (1) (gd).

      \*\*\*\*NOTE: See the note under SECTION 31.

9           **SECTION 10.** 108.07 (5) (c) of the statutes is amended to read:

10          108.07 (5) (c) If 2 or more employers from which the claimant has base period  
11 wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and  
12 one or more employers from which the claimant has base period wages are subject  
13 to the contribution requirements of ss. 108.17 and 108.18, that percentage of the  
14 employee's benefits which would otherwise be chargeable to the fund's balancing  
15 account under sub. (3) or s. 108.04 (1) (f) or (5), or under s. 108.16 (6m) (e) for benefits  
16 specified in s. 108.16 (3) (b), shall be ~~charged to the administrative account and~~ paid  
17 from the appropriation under s. 20.445 (1) (gd).

      \*\*\*\*NOTE: See the note under SECTION 31.

18          **SECTION 11.** 108.07 (6) of the statutes is amended to read:

19          108.07 (6) The department may initially charge benefits otherwise chargeable  
20 ~~to the administrative account payable from the appropriation under s. 20.445 (1) (gd)~~  
21 as provided under this section to the fund's balancing account, and periodically

1 reimburse the charges to the balancing account from the ~~administrative account~~  
2 appropriation under s. 20.445 (1) (gd).

\*\*\*NOTE: See the note under SECTION 31.

3 **SECTION 12.** 108.09 (5) (b) of the statutes is amended to read:

4 108.09 (5) (b) All testimony at any hearing under this section shall be recorded  
5 by electronic means, but need not be transcribed unless either of the parties requests  
6 a transcript before expiration of that party's right to further appeal under this  
7 section and pays a fee to the commission in advance, the amount of which shall be  
8 established by rule of the commission. When the commission provides a transcript  
9 to one of the parties upon request, the commission shall also provide a copy of the  
10 transcript to all other parties free of charge. The transcript fee collected shall be paid  
11 ~~to the administrative account~~ credited to the appropriation account under s. 20.427  
12 (1) (g).

\*\*\*NOTE: See the note under SECTION 1.

13 **SECTION 13.** 108.14 (2m) of the statutes is amended to read:

14 108.14 (2m) In the discharge of their duties under this chapter an appeal  
15 tribunal, commissioner, or other authorized representative of the department or  
16 commission may administer oaths to persons appearing before them, take  
17 depositions, certify to official acts, and by subpoenas, served in the manner in which  
18 circuit court subpoenas are served, compel attendance of witnesses and the  
19 production of books, papers, documents, and records necessary or convenient to be  
20 used by them in connection with any investigation, hearing, or other proceeding  
21 under this chapter. A party's attorney of record may issue a subpoena to compel the  
22 attendance of a witness or the production of evidence. A subpoena issued by an  
23 attorney must be in substantially the same form as provided in s. 805.07 (4) and must

1 be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of  
2 issuance, send a copy of the subpoena to the appeal tribunal or other representative  
3 of the department responsible for conducting the proceeding. However, in any  
4 investigation, hearing, or other proceeding involving the administration of oaths or  
5 the use of subpoenas under this subsection due notice shall be given to any interested  
6 party involved, who shall be given an opportunity to appear and be heard at any such  
7 proceeding and to examine witnesses and otherwise participate therein. Witness  
8 fees and travel expenses involved in proceedings under this chapter may be allowed  
9 by the appeal tribunal or representative of the department at rates specified by  
10 department rules, and shall be paid from the ~~administrative account~~ appropriation  
11 under s. 20.445 (1) (n).

\*\*\*\*NOTE: This specifies for witness and travel fees to be paid from the federal appropriation.

12 **SECTION 14.** 108.14 (3m) of the statutes is amended to read:

13 108.14 (3m) In any court action to enforce this chapter the department, the  
14 commission, and the state may be represented by any licensed attorney who is an  
15 employee of the department or the commission and is designated by either of them  
16 for this purpose or at the request of either of them by the department of justice. If  
17 the governor designates special counsel to defend, in behalf of the state, the validity  
18 of this chapter or of any provision of Title IX of the social security act, the expenses  
19 and compensation of the special counsel and of any experts employed by the  
20 department in connection with that proceeding may be charged to the ~~administrative~~  
21 ~~account~~ appropriation under s. 20.445 (1) (gd). If the compensation is being  
22 determined on a contingent fee basis, the contract is subject to s. 20.9305.

\*\*\*\*NOTE: This provides for the charging of these costs to the I&P account.

23 **SECTION 15.** 108.14 (7) (c) of the statutes is repealed.

\*\*\*NOTE: This provision about printing of various types of documents is repealed, with the language incorporated into s. 108.14 (16) instead.

1       **SECTION 16.** 108.14 (12) (d) of the statutes is amended to read:

2       108.14 (12) (d) If it is finally determined that moneys thus received have been  
3       thus lost or improperly expended, ~~then~~ the department shall either make the  
4       necessary replacement from those moneys in the administrative account specified in  
5       ~~s. 108.20 (2m)~~ the appropriation under s. 20.445 (1) (gd) or shall submit, at the next  
6       budget hearings conducted by the governor and at the budget hearings conducted by  
7       the next legislature convened in regular session, a request that the necessary  
8       replacement be made by an appropriation from the general fund.

\*\*\*NOTE: See the note under SECTION 31.

9       **SECTION 17.** 108.14 (16) of the statutes is amended to read:

10       108.14 (16) The department shall have duplicated or printed, ~~and shall~~  
11       ~~distribute without charge, such employment security~~ any reports, studies and,  
12       forms, records, decisions, regulations, rules, or other materials, including the text of  
13       this chapter ~~and, the handbook under sub. (23), and other~~ instructional or  
14       explanatory pamphlets for employers or workers, as that it deems necessary for  
15       public information or for the proper administration of this chapter; ~~but the.~~ The  
16       department may collect a reasonable charge, which shall be credited to the  
17       ~~administrative~~ appropriation account under s. 20.445 (1) (gd), for any such item the  
18       cost of which is not fully covered by federal administrative grants.

\*\*\*NOTE: This directs moneys received for printed materials to the I&P account.  
See SECTION 31.

\*\*\*NOTE: See also the notes under SECTIONS 15 and 18.

19       **SECTION 18.** 108.14 (23) (d) of the statutes is repealed.

\*\*\*NOTE: This repeals a provision specifically governing charges for printed copies of a UI Handbook for employers. This would instead be governed by s. 108.14 (16), and the handbook is referenced there instead. (This does not repeal the requirement that DWD create the handbook.) See the note under SECTION 17.



1           **SECTION 19.** 108.16 (5) (c) of the statutes is amended to read:

2           108.16 **(5)** (c) While the state has an account in the “Unemployment Trust  
3 Fund”, public deposit insurance charges, on the fund’s balances held in banks,  
4 savings banks, savings and loan associations, and credit unions in this state, the  
5 premiums on surety bonds required of the fund’s treasurer under this section, and  
6 any other expense of administration otherwise payable from the fund’s interest  
7 earnings, shall be paid from the ~~administrative account~~ appropriation under s.  
8 20.445 (1) (n) or (ne).

          \*\*\*\*NOTE: This adds cross-references to s. 20.445 (1) (n) and (ne), both of which  
could be used to pay banking costs.

9           **SECTION 20.** 108.16 (6) (k) of the statutes is amended to read:

10           108.16 **(6)** (k) All payments to the fund from the ~~administrative account~~ as  
11 ~~authorized under s. 108.20 (2m)~~ appropriation under s. 20.445 (1) (gd).

          \*\*\*\*NOTE: Sections 20.445 (1) (gd) and 108.20 (2m) allow for “payments to the fund  
if such action is necessary to obtain a lower interest rate or deferral of interest payments  
on advances from the federal unemployment account under title XII of the social security  
act.” This therefore replaces this language with a reference to s. 20.445 (1) (gd), the I&P  
account.

12           **SECTION 21.** 108.16 (8) (f) of the statutes is amended to read:

13           108.16 **(8)** (f) The successor shall take over and continue the transferor’s  
14 account, including its positive or negative balance and all other aspects of its  
15 experience under this chapter in proportion to the payroll assignable to the  
16 transferred business and the liability of the successor shall be proportioned to the  
17 extent of the transferred business. The transferor and the successor shall be jointly  
18 and severally liable for any amounts owed by the transferor ~~to the fund and to the~~  
19 ~~administrative account~~ under this chapter at the time of the transfer, but a successor  
20 under par. (c) is not liable for the debts of the transferor except in the case of fraud  
21 or malfeasance.

\*\*\*NOTE: Deletes a reference to the administrative account (see SECTION 31) in favor of a more general reference to ch. 108.

1           **SECTION 22.** 108.161 (4) (a) and (b) of the statutes are amended to read:

2           108.161 (4) (a) Stating for which such purposes and in what amounts the  
3 appropriation is being made ~~to the administrative account created by s. 108.20.~~

4           (b) Directing the fund's treasurer to transfer the appropriated amounts to the  
5 ~~administrative account~~ the appropriation account under s. 20.445 (1) (n) only as and  
6 to the extent that they are currently needed for such expenditures, and directing that  
7 there shall be restored to the account created by sub. (1) any amount thus transferred  
8 ~~which~~ that has ceased to be needed or available for such expenditures.

\*\*\*NOTE: See the note under SECTION 31.

9           **SECTION 23.** 108.161 (9) of the statutes is amended to read:

10           108.161 (9) Any land and building or office quarters acquired under this section  
11 shall continue to be used for employment security purposes. Realty or quarters may  
12 not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am)  
13 or 16.848 (1) and may not be sold or transferred without the governor's approval. The  
14 proceeds from the sale, or the value of realty or quarters upon transfer, shall be  
15 credited to the account established in sub. (1) or credited to the ~~fund established in~~  
16 ~~s. 108.20~~ appropriate appropriation account under s. 20.445, or both as determined  
17 by the department in accordance with federal requirements. Equivalent substitute  
18 rent-free quarters may be provided, as federally approved. Amounts credited under  
19 this subsection shall be used solely to finance employment security quarters  
20 according to federal requirements.

\*\*\*NOTE: As described in the note under SECTION 31, there is no longer a fund established under s. 108.20.

21           **SECTION 24.** 108.162 (7) of the statutes is amended to read:

1           108.162 (7) Any amount appropriated under s. 20.445 (1) (na) ~~which~~ that has  
2 not been obligated shall be available for employment security local office building  
3 projects, consistent with this section and ~~ss. s. 108.161 and 108.20.~~

\*\*\*NOTE: See the note under SECTION 31.

4           **SECTION 25.** 108.17 (3) of the statutes is amended to read:

5           108.17 (3) If an employing unit ~~makes application~~ applies to the department  
6 to adjust an alleged overpayment by the employer of contributions or interest under  
7 this chapter, and files such an application within 3 years after the close of the  
8 calendar year in which such payment was made, the department shall ~~make a~~  
9 ~~determination~~ determine under s. 108.10 ~~as to the existence and whether and to~~  
10 ~~what~~ extent of any such an overpayment, and ~~said section shall apply to such~~  
11 ~~determination~~ exists. Except as provided in sub. (3m), the department shall allow  
12 an employer a credit for any amount determined under s. 108.10 to have been  
13 erroneously paid by the employer, without interest, against its future contribution  
14 payments; or, if the department finds it impracticable to allow the employer such a  
15 credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from  
16 the fund or the ~~administrative account, as the case may be~~ appropriate appropriation  
17 under s. 20.445.

\*\*\*NOTE: This substitutes a reference to “the appropriate appropriation,” though  
it would most likely be the s. 20.445 (1) (gd) account in the case of a refund of any interest  
or penalties.

18           **SECTION 26.** 108.17 (3m) of the statutes is amended to read:

19           108.17 (3m) If an appeal tribunal or the commission issues a decision under  
20 s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is  
21 determined that an amount has been erroneously paid by an employer, the  
22 department shall, from the ~~administrative account~~ appropriation under s. 20.445 (1)

1 (gd), credit the employer with interest at the rate of 0.75 percent per month or  
2 fraction thereof on the amount of the erroneous payment. Interest shall accrue from  
3 the month which the erroneous payment was made until the month in which it is  
4 either used as a credit against future contributions or refunded to the employer.

\*\*\*NOTE: This substitutes a reference to the I&P account for these payments. See  
SECTION 31.

5 **SECTION 27.** 108.19 (1) of the statutes is amended to read:

6 108.19 (1) Each employer subject to this chapter shall regularly contribute to  
7 ~~the administrative account at the rate of two-tenths of one~~ pay an assessment equal  
8 to 0.2 percent per year on its payroll, except that the department may prescribe at  
9 the close of any fiscal year such lower rates of contribution under this section  
10 subsection, to apply to classes of employers throughout the ensuing fiscal year, as will  
11 in the department's judgment adequately finance the administration of this chapter,  
12 and as will in the department's judgment fairly represent the relative cost of the  
13 services rendered by the department to each such class.

\*\*\*NOTE: Deletes reference to the administrative account. See the note under  
SECTION 31.

14 **SECTION 28.** 108.19 (1e) (a) of the statutes is amended to read:

15 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an  
16 employer that finances benefits by reimbursement in lieu of contributions under s.  
17 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable  
18 under s. 108.18 and this section, pay an assessment ~~to the administrative account~~  
19 for each year ~~prior to~~ before the year 2010 equal to the lesser of 0.01 percent of its  
20 payroll for that year or the solvency contribution that would otherwise be payable  
21 by the employer under s. 108.18 (9) for that year.

\*\*\*NOTE: Deletes a reference to the administrative account. See SECTION 31.

22 **SECTION 29.** 108.19 (2) of the statutes is amended to read:

1           108.19 (2) If the department finds, at any time within a fiscal year for which  
2 it has prescribed lower contribution rates to the administrative account than the  
3 maximum rate permitted under sub. (1), that such lower rates will not adequately  
4 finance the administration of this chapter or are excessive for that purpose, the  
5 department may by general rule prescribe a new schedule of rates in no case  
6 exceeding the specified maximum to apply under this section for the balance of the  
7 fiscal year.

\*\*\*\*NOTE: Deletes a reference to the administrative account. See SECTION 31.

8           **SECTION 30.** 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and  
9 amended to read:

10           108.18 (1) (c) If Notwithstanding par. (b), if section 303 (a) (5) of title III of the  
11 social security act and section 3304 (a) (4) of the internal revenue code are amended  
12 to permit a state agency to use, in financing administrative expenditures incurred  
13 in carrying out its employment security functions, some any part of the moneys  
14 collected or to be collected under the state unemployment insurance law, an  
15 employer's contributions in partial or complete substitution for grants under  
16 title III, then this chapter shall, by rule of the department, be modified in the manner  
17 and to the extent and within the limits necessary to permit such use by the  
18 department under this chapter; and the modifications shall become effective on the  
19 same date as such use becomes permissible under the federal amendments the  
20 department may credit any portion of that part of an employer's contributions to the  
21 appropriation under s. 20.445 (1) (gd).

\*\*\*\*NOTE: This provision dates to Chapter (Act) 181, Laws of 1943, and reads essentially the same today as it did then. The changes here move the provision to s. 108.18, where it is more relevant, and specifically provide that, in the event that federal law is changed so as to allow a portion of contributions to be used for administrative purposes, those moneys would be directed to the I&P account.



**D21-03**  
**Reimbursable Employer Debt Assessment Charging**

Date: March 18, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Reimbursable Employer Debt Assessment Charging**

**1. Description of Proposed Change**

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.<sup>1</sup> 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. Through February 2021, about \$289,000 of identity theft charges have been restored from these funds and about \$208,000 of interest has accrued on the funds, leaving a balance of about \$1.918 million.

When non-profit reimbursable employers fail to pay for the benefits charged, the Department may apply payments from those employers’ assurances.<sup>2</sup> Government units and Indian tribes are not required to submit an assurance to qualify for reimbursable financing. Currently, a non-profit reimbursable employer’s assurance must be a surety bond, letter of credit, certificate of deposit, or another nonnegotiable instrument of fixed value.<sup>3</sup>

If a non-profit reimbursable employer closes but its assurance is insufficient to cover all benefit charges to that employer, the Department may attempt to collect the remaining charges. If a non-profit reimbursable employer’s benefit charges are uncollectible, the Department assesses

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<sup>1</sup> Wis. Stat. § 108.155.

<sup>2</sup> Wis. Stat. § 108.151(4).

<sup>3</sup> Wis. Stat. § 108.151(4)(a).

**D21-03**  
**Reimbursable Employer Debt Assessment Charging**

other non-profit reimbursable employers for the uncollectible amounts.<sup>4</sup> This is known as the reimbursable employer debt assessment or “REDA.”

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 the assessment 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 not being assessed the REDA. The REDA process has administrative costs for the Department and employers, such as the issuance of small bills to employers, answering employers’ questions about the assessment, and collecting the assessment.

The Department proposes that a limited amount of the reimbursable employer identity theft fraud funds set aside in the balancing account be made available to recover uncollectible reimbursements instead of assessing the REDA (or to reduce the amount of the REDA). This would greatly reduce administrative costs to the Department and non-profit reimbursable employers and relieve those employers of having to pay the REDA. The Department proposes that the identity theft fraud funds 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 would ensure that the bulk of the identity theft fraud funds are available for restoring identity theft charges.

The Department also proposes to increase the minimum amount of the REDA from \$10 to \$20, which would reduce the administrative costs of assessing the REDA.

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<sup>4</sup> Wis. Stat. § 108.151(7).



**D21-03**  
**Reimbursable Employer Debt Assessment Charging**

**2. Proposed Statutory Changes**

**Section 108.151 (7) (c) of the statutes is amended to read:**

The fund's treasurer shall determine the total amount due from employers electing reimbursement financing under this section that is uncollectible as of June 30 of each year, but not including any amount that the department determined to be uncollectible ~~prior to~~ before January 1, 2004. No amount may be treated as uncollectible under this paragraph unless the department has exhausted all reasonable remedies for collection of the amount, including liquidation of the assurance required under sub. (4). The department shall charge the total amounts so determined to the uncollectible reimbursable benefits account under s. 108.16 (6w). Whenever, as of June 30 of any year, ~~this~~ that account has a negative balance of \$5,000 or more, the treasurer shall, except as provided in par. (i), determine the rate of an assessment to be levied under par. (b) for that year, which shall then become payable by all employers that have elected reimbursement financing under this section as of that date.

**Section 108.151 (7) (f) of the statutes is amended to read:**

If any employer would otherwise be assessed an amount less than ~~\$10~~ \$20 for a calendar year, the department shall, in lieu of requiring that employer to pay an assessment for that calendar year, apply the amount that the employer would have been required to pay to the other employers on a pro rata basis.

**Section 108.151 (7) (i) of the statutes is created to read:**

In lieu of or in addition to assessing employers as provided in par. (c), the fund's treasurer may apply amounts set aside in the fund's balancing account under s. 108.155 (2) (a) to amounts determined to be uncollectible under par. (c) by transferring those amounts to the account under s. 108.16 (6w). The fund's treasurer may not act under this paragraph whenever the balance

**D21-03**  
**Reimbursable Employer Debt Assessment Charging**

remaining of the amount set aside under s. 108.155 (2) (a) is less than \$1,750,000 and may not act to reduce the amount set aside below that amount.

**Section 108.155 (2) (a) of the statutes is amended to read:**

On October 2, 2016, the fund’s treasurer shall set aside \$2,000,000 in the balancing account for accounting purposes. On an ongoing basis, the fund’s treasurer shall tally the amounts allocated to reimbursable employers’ accounts under s. 108.04 (13) (d) 4. c. and all amounts transferred to the account under s. 106.16 (6w) as provided in s. 108.151 (7) (i) and shall deduct those amounts from the amount set aside plus any interest calculated thereon.

**Section 108.16 (6m) (j) of the statutes is created to read:**

Any amount transferred to the account under sub. (6w) as provided in s. 108.151 (7) (i).

**Section 108.16 (6w) of the statutes is amended to read:**

The department shall maintain within the fund an uncollectible reimbursable benefits account to which the department shall credit all amounts received from employers under s. 108.151 (7) and all amounts transferred from the fund's balancing account as provided in s. 108.151 (7) (i).

**3. Effects of Proposed Change**

- a. **Policy:** The proposal will reduce administrative burdens and increase the efficiency of recovering uncollectible reimbursements.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**D21-03**  
**Reimbursable Employer Debt Assessment Charging**

**5. Proposed Effective/Applicability Date**

This proposal would be effective with other changes made as part of the agreed bill cycle.

**D21-03**  
**Reimbursable Employer Debt Assessment Charging**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**Trust Fund Impact:**

This law change proposal could have a negative Trust Fund impact of up to \$330,000 in a given year. This impact could be greater, significantly less, or none depending on the year.

**IT and Administrative Impact:**

This law change proposal has no IT impact. One-time administrative impact is negligible.

This law change proposal will result in minimal ongoing administrative savings depending on the year. However, most of this savings comes from staff hours that would now be spent doing other higher-value added work.

**Summary of Law Change Proposal:**

This law change proposes that a limited amount of the reimbursable employer identity theft fraud (REITF) funds set aside in the balancing account be made available to recover uncollectible reimbursements instead of assessing the Reimbursable Employer Debt Assessment (REDA), or to reduce the amount of the REDA. The REITF funds will be used to pay REDA only if the use of those funds would not reduce the balance of the funds below \$1,750,000. This proposal also increases the minimum amount of the REDA from \$10 to \$20.

**Trust Fund Methodology:**

This law change proposal could have a negative Trust Fund impact of up to \$330,000 based the current amount of REITF funds available (\$2 million plus \$104,000 in interest). This impact would be due to writing off reimbursable debt in lieu of billing and is at the fund's treasurer's discretion. This Trust Fund impact could become greater if the amount of REITF funds increases; or, the impact could be significantly less, or none, if less REDA or no REDA is written off in a given year.

**IT and Administrative Impact Methodology:**

This law change proposal has no IT impact and negligible one-time administrative costs for staff training purposes.

The ongoing administrative savings is estimated as \$3,169. This impact could be significantly less or none depending on the year. This is based on printing and mailing cost savings of approximately \$700 when REDA is not assessed. It is also based on administrative staff time savings of approximately 40 hours or about \$2,469 when REDA is not assessed. However, these hours would now be spent doing other higher-value added work. If REDA is assessed, increasing the minimum amount of REDA from \$10 to \$20 reduces the ongoing administrative burden by eliminating several accounts requiring the assessment.

**D21-04**  
**Department Reports to Legislature**

Date: March 18, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Department Reports to Legislature**

**1. Description of Proposed Change**

Currently, the Department must submit a statement regarding the unemployment insurance financial outlook to the Governor and the Legislature by April 15 of every odd-numbered year.<sup>1</sup> The statement includes financial projections of the unemployment insurance trust fund, such as benefit payments and tax collections. The statement must also project whether the Department will need to borrow federal funds to pay benefits. The statement must include the proposed changes to the unemployment insurance law as well as projections regarding the effect of those changes on the trust fund.

By May 15 of each odd-numbered year, the Department must submit a report “summarizing the deliberations of the council on unemployment insurance and the position of the council, if any, concerning each proposed change in the unemployment insurance laws submitted under [section 16.48(1)(a)].”<sup>2</sup> This report is sometimes referred to as the “UIAC Activities Report.” When the Governor receives the Department’s report and statement, the Governor may convene a committee to review the report and statement.<sup>3</sup> The committee then recommends a course of action on the proposals.

In 1983, in response to a severe recession in the early 1980s, Governor Anthony Earl appointed a “Special Unemployment Compensation Study Committee” tasked with conducting a thorough review of the process for UI policy development in Wisconsin and methods to keep the

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<sup>1</sup> Wis. Stat. § 16.48(1)(a).

<sup>2</sup> Wis. Stat. § 16.48(1)(b).

<sup>3</sup> Wis. Stat. § 16.48(2).

**D21-04**  
**Department Reports to Legislature**

Legislature informed of the status of the UI Trust Fund.<sup>4</sup> The changes recommended by the committee were adopted in 1983 Wis. Act 388 and enacted May 1, 1984.

1983 Wis. Act 388 created a statutory requirement that the Department submit a statement of unemployment insurance financial outlook to the Governor and Legislative Leadership every two years. 1983 Wis. Act 388 also contained a provision that required the Secretary to submit, along with the financial outlook statement, a report summarizing the deliberations of the council on unemployment insurance and the position of the Council, if any, concerning each proposed change in unemployment insurance law included in the financial outlook.

Early versions of the UIAC Activities Report included Council meeting agendas and minutes; summarized the public hearing comments received by the Council; and documented all matters on which the Council voted during the reporting period. Later versions of the UIAC Activities Report shifted to summarizing proposed law changes to the UI program that were approved by the Council for recommendation to the Legislature, as well as documenting the Council's current position on legislative provisions pending with the Council at the time the report was submitted (regardless of whether the pending item originated from the Council, the Governor, the Legislature, or the Department).

The early versions of the financial outlook statement and the UIAC Activities Report, and the recommended law changes included in the reports, served in many ways as supporting documents for the UIAC agreed bill by detailing the analysis and rationale behind the recommended law changes. The legislative recommendations in the financial outlook were endorsed by the Council; however, both sides of the Council could express their stance on areas of the legislative package they felt could have been improved.

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<sup>4</sup> One of the committee members was future Gov. Thompson.

**D21-04**  
**Department Reports to Legislature**

2013 Wis. Act 36 modified the due dates of the financial outlook and UIAC activities reports, resulting in staggered deadlines of April 15 and May 15 respectively (as opposed to concurrently as had been required previously).

The Governor typically introduces the budget bill to the Legislature in February of each odd-numbered year, while the Council typically introduces its law change proposals to the Legislature in the fall of odd-numbered years or no later than January of the even-numbered year. Based on this schedule, the Department proposes to change the date for the submission of the financial outlook report to May 31 of every even-numbered year, beginning in 2020. The Department proposes to submit this report to the UIAC and the Governor. This will provide the Governor and UIAC time to review the health of the unemployment insurance Trust Fund before the biennial budget bill is submitted to the Legislature and for the UIAC to consider any recommendations contained in the financial outlook report for inclusion in the UIAC agreed bill.

The UIAC Public Hearing is typically held in the autumn of even-numbered years. Completing the financial outlook by May 31 of the even-numbered years provides the public with an understanding of the health of the Trust Fund before the public hearing, and an opportunity to suggest changes to the unemployment law regarding the Trust Fund at the public hearing. So, the Department also proposes to codify the existing practice of posting the financial outlook report on its website.

The Department proposes to repeal section 16.48(1)(a)5., which requires the Department to explain why significant cash reserves should be retained in the unemployment trust fund, if those reserves exist. Federal unemployment law includes the “withdrawal standard,” which permits, with few exceptions, the withdrawal of funds from the Trust Fund only for the payment

**D21-04**  
**Department Reports to Legislature**

of unemployment benefits.<sup>5</sup> Because the Trust Fund may only be used for the payment of unemployment benefits, the cash reserves in the Trust Fund must always be retained for that purpose. And, maintaining a large Trust Fund balance results in lower taxes for employers and ensures that funds are available to pay benefits.

The Department proposes to amend section 16.48(1)(a)6., which requires the Department to explain why it is not proposing to liquidate any unemployment insurance program debt. The amended statute would instead require the Department to propose methods to liquidate the debt. The purpose of this change is to provide options to reduce or eliminate any unemployment insurance program debt.

The Department further proposes to repeal section 16.48(2), which permits the Governor to convene a special committee to review the financial outlook report and attempt to reach a consensus regarding proposed changes to the unemployment insurance law. It appears that a special committee described in this section has not been convened since the 1980s. The Governor could, at any time, convene a special committee described in this section by executive order.

The Department also recommends that the deadline for the UIAC Activities Report be changed to January 31 of every even-numbered year. The intent of this change is that the UIAC Activities Report (together with the financial outlook report) would be submitted to the Governor and the Legislature contemporaneously with the Council's Agreed Bill. This report would, in most biennia, be submitted earlier than January 31 of the even-numbered year because the Agreed Bill is typically introduced before January 31 of the even-numbered year.

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<sup>5</sup> 26 USC § 3304(a)(4); 42 USC § 503(a)(5).



**D21-04**  
**Department Reports to Legislature**

**2. Proposed Statutory Change**

**Section 16.48 (1) (a) (intro.) of the statutes is renumbered 16.48 (1) (intro.) and amended to read:**

No later than ~~April 15~~ May 31 of each ~~odd-numbered~~ even-numbered year, the secretary of workforce development shall prepare and furnish to the governor, the speaker of the assembly, the minority leader of the assembly, ~~and~~ the majority and minority leaders of the senate, and the council on unemployment insurance, a statement of unemployment insurance financial outlook, which shall contain all of the following, together with the secretary's recommendations and an explanation for such recommendations:

**Section 16.48 (1) (a) 1., 2., 3., 4., 5. and 6. of the statutes are renumbered 16.48 (1) (am), (bm), (c), (d), (e) and (f), and 16.48 (1) (bm), (c) and (f), as renumbered, are amended to read:**

16.48 (1) (bm) Specific proposed changes, if any, in the laws relating to unemployment insurance financing, benefits, and administration.

(c) Projections specified in ~~subd. 4. par. (am)~~ under the proposed laws.

(f) If unemployment insurance program debt is projected at the end of the forecast period, ~~the reasons why it is not~~ methods proposed to liquidate the debt.

**Section 16.48 (1) (b) of the statutes is repealed.**

**Section 16.48 (2) of the statutes is repealed.**

**Section 16.48 (3) of the statutes is amended to read:**

~~No Biennially, no later than June 15~~ January 31 of each ~~odd-numbered~~ even-numbered year, the secretary of workforce development, ~~under the direction of~~ shall submit to the governor, ~~shall submit to each member of the legislature an updated~~ speaker of the assembly, the

**D21-04**  
**Department Reports to Legislature**

minority leader of the assembly, the majority and minority leaders of the senate, and the council on unemployment insurance the statement of unemployment insurance financial outlook which shall contain the information specified in prepared under sub. (1) (a), together with the governor's recommendations and an explanation for such recommendations, and a copy of the a report required that summarizes the deliberations of the council and the position of the council regarding any proposed change to the unemployment insurance laws submitted under sub. (1) (b).

Section 16.48 (4) of the statutes is created to read:

The department shall post the most recent version of the statement prepared under sub. (1) and the most recent version of the report prepared under sub. (3) on the department's Internet site.

**3. Effects of Proposed Change**

- a. **Policy.** The proposed change will result in changes to the dates by which certain reports must be submitted to the Governor and Legislature, to better facilitate the legislative process.
- b. **Administrative.** None expected.
- c. **Fiscal.** No fiscal effect is expected.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective **February 1, 2022.**

**D21-04**  
**Department Reports to Legislature**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**UI Trust Fund Impact:**

This proposal would not impact the UI Trust Fund.

**IT and Administrative Impact:**

This proposal does not have any one-time IT or administrative impacts.

**Summary of Proposal:**

Currently, the Department must submit the Financial Outlook to the Governor and Legislature by April 15 of every odd-numbered year and the UIAC Activities Report by May 15 of every odd-numbered year. This law change proposes changing the submission date of the Financial Outlook to May 31 of every even-numbered year, and the submission date of the UIAC Activities Report to January 31 of every even-numbered year to better facilitate the legislative process. This proposal also makes changes to the report requirements to better support the functions of these reports.

**UI Trust Fund Methodology:**

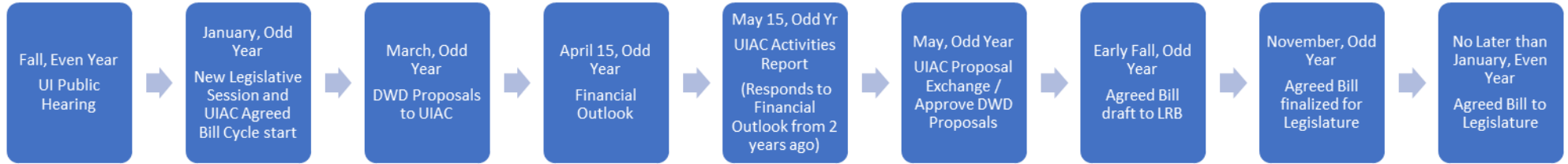
This proposal would not impact the UI Trust Fund.

The proposed change will result in changes to the dates by which certain reports must be submitted to the Governor and Legislature to better facilitate the legislative process.

**IT and Administrative Impact Methodology:**

This proposal does not have any one-time IT or administrative impacts.

## Current Timeline



## Proposed Timeline



**D21-05**  
**Collection of DWD-UI Debts**

Date: March 18, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Collection of DWD-UI Debts**

**1. Description of Proposed Change**

Section 71.93(8)(b) requires State agencies and DOR to enter into an agreement to have DOR collect debts owed to agencies. The debts are only referred to DOR if: (1) they are 90+ days delinquent; (2) the agency is not actively negotiating payment terms with the debtor; (3) the debt is not under appeal; (4) the debtor is not making acceptable payments to the agency. Before referring a debt to DOR, the agency must give the debtor 30 days' notice of the referral. The DOR Secretary may waive the referral of certain debts.

When a debt is referred to DOR, DOR must charge the debtor a collection fee, which is added to the debt. The fee is used to pay DOR's administrative costs of collection; any excess amount of fees lapses to the general fund. DOR apparently collects this fee before applying payments to the underlying debt. The expected amount of the fee is 15% of the total debt.

If DOR were to assume collection of debts owed to the Unemployment Insurance Division, DWD estimates that it will take about 5,000 to 7,000 hours of work by information technology staff to cease DWD's automated collections actions, which would cost DWD between \$445,000 to \$623,000 in technology costs alone to refer DWD-UI debts to DOR. This sum does not include DWD collections staff time to handle the referral of debts at the beginning of the referral process or on an ongoing basis.

The assessment of the collection fee and the application of payments to the collection fee before the underlying debt raise two important issues for DWD. First, the fee will increase the total amount owed by debtors—employers who owe delinquent taxes and claimants who owe benefit overpayments—to DWD.

**D21-05**  
**Collection of DWD-UI Debts**

Second, DOR's application of amounts collected to the collection fee before the underlying debt will have a negative effect on the balance of the Unemployment Reserve Fund, the Unemployment Interest Payment Fund, the Interest and Penalty appropriation, and the Unemployment Program Integrity Fund. The collection on the underlying debts will necessarily be reduced by the amount of the collection fee—15%—which will result in delayed satisfaction of debts. DWD collected about \$428 million during the period of 2011 through March 2018. If the 15% fee applied to that entire amount, DOR would have charged \$64.2 million in fees during that period.

A higher Reserve Fund balance typically results in lower contribution rates for most employers. If DWD is unable to recover delinquent contributions and benefit overpayments, which are deposited into the Trust Fund, as it currently does due to the imposition of the collection fee, the Reserve Fund balance will decrease. This could result in a change to a schedule with higher tax rates. When compared to other debts, unemployment debts are therefore unique because *the increased collection of unemployment debts directly results in reduced unemployment taxes for Wisconsin employers.*

DWD charges interest on delinquent contributions at a rate of 0.75% per month, which is 9.00% annually. DWD does not assess interest on interest, penalties, or benefit overpayments.<sup>1</sup> When a debt is referred to DOR for collection, it “may assess interest” on the debt as it does with taxes owed to DOR.<sup>2</sup> DOR charges 12% annual interest on unpaid taxes that are not delinquent but charges 18% annual interest on delinquent taxes.<sup>3</sup>

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<sup>1</sup> Wis. Stat. § 108.16(10m) (DWD may not charge interest on benefit overpayments.).

<sup>2</sup> Wis. Stat. § 71.93(8)(b)5.

<sup>3</sup> Wis. Stat. §§ 71.82(2)(a) and (b); Wis. Admin. Code §§ Tax 2.88(1) and (2).

**D21-05**  
**Collection of DWD-UI Debts**

It is unclear whether the DOR 12% interest rate is charged on the interest that accrued before the debt is referred to DOR. If so, it would result in interest being charged on interest, which DWD does not currently do.

After debts are referred to DOR for collection, DOR must apply payments to debts according to a statutory priority list.<sup>4</sup> Amounts owed to DOR are paid first. Then, delinquent child support is paid. Third, criminal restitution debts are satisfied. Debts referred to DOR collection are paid fourth. As discussed above, DWD expects a reduced collection rate due to the collection fee, which will likely cause an increase in employer taxes. DWD should also expect the subordinate treatment of its debts to have a similar effect on the Trust Fund and employer taxes.

The Department proposes a law change to prohibit DOR from collecting debts on behalf of the Unemployment Insurance Division. This change will ensure that employers and claimants are not assessed additional fees when repaying their debts. And, this law change will ensure that state recoveries of debts owed to the Unemployment Insurance Division continue to be maximized for the benefit of the Trust Fund. DWD has just as many, if not more, collection tools available to it as DOR. DWD should not expect to increase its debt recovery rate if it refers its debts to DOR. As discussed above, *the imposition of the collection fee will reduce DWD's recoveries.*

**2. Proposed Statutory Changes**

**Section 71.93(8)(b)2. of the statutes is amended to read:**

The department may enter into agreements described under subd. 1. with the courts, the legislature, authorities, as defined in s. 16.41 (4), and local units of government. The department may not enter into an agreement described under subd. 1 to collect amounts owed under ch. 108.

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<sup>4</sup> Wis. Stat. § 71.93(3).

**D21-05**  
**Collection of DWD-UI Debts**

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change is expected to ensure that debtors who owe debts to the Unemployment Insurance Division are not subjected to unnecessary surcharges.
- b. **Administrative:** None expected.
- c. **Fiscal:** None expected.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

Based on DWD's reading of DOR's debt referral contract, DWD must remit any amounts it recovers for a referred debt to DOR. US-DOL may consider this to be a violation of the immediate deposit standard, which would cause Wisconsin to not substantially comply with federal law. And, US-DOL may consider this type of remittance to be a violation of the withdrawal standard, which permits, with few exceptions, the withdrawal of funds from the Trust Fund only for the payment of unemployment benefits.<sup>5</sup>

**5. Proposed Effective/Applicability Date**

This proposal would be effective with the proposed changes in the UIAC Agreed Bill.

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<sup>5</sup> 26 USC § 3304(a)(4); 42 USC § 503(a)(5).



**D21-06**  
**Departmental Error**

Date: March 18, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Departmental Error**

**1. Description of Proposed Change**

Current law provides that the Department “shall waive recovery of benefits that were erroneously paid if the overpayment was the result of a departmental error...”<sup>1</sup> “Departmental error” includes errors that the Department made “in computing or paying benefits which results exclusively from...a mathematical mistake, miscalculation, misapplication or misinterpretation of law or mistake of evidentiary fact, whether by commission or omission...”<sup>2</sup> But an amendment, modification, or reversal of a Department determination by an appeal tribunal, the commission, or a court is not departmental error for the purposes of waiving the overpayment.<sup>3</sup>

The Department disagrees with the Labor and Industry Review Commission’s interpretation of these statutes in determining when to waive benefit overpayments. To guard against erroneous interpretations of law the Department proposes to amend the definition of “departmental error” to confirm the Department’s interpretation of the statute. Under the proposed changes, a departmental error would include only certain errors made by the Department in issuing initial determinations, not appeal tribunals.

The Commission currently waives some overpayments if the Commission finds that an appeal tribunal allows benefits in error. The Commission considers appeal tribunals to be part of the Department because the administrative law judges are Department employees. Based on the Department’s review of the legislative history of the departmental error and overpayment waiver

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<sup>1</sup> Wis. Stat. § 108.22(8)(c)1.a.

<sup>2</sup> Wis. Stat. § 108.02(10e)(am)1.

<sup>3</sup> Wis. Stat. § 108.22(8)(c)2. (created by 1993 Act 373.)

**D21-06**  
**Departmental Error**

statutes, the Department believes that the intent of these statutes was originally to limit the finding of department error to errors made by Department staff, not appeal tribunals, the Commission, or the courts. So, the Department proposes a law change to clarify that an error by an appeal tribunal is not “departmental error.”

**2. Proposed Statutory Change**

**Section 108.02 (10e) (c) of the statutes is created to read:**

“Departmental error” does not include an error made by an appeal tribunal appointed under s. 108.09 (3).

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will result in the increased recovery of benefits that were erroneously paid to claimants.
- b. **Administrative:** This proposal will require training for benefits staff.
- c. **Fiscal:** A fiscal estimate is attached.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective with other changes made as part of the agreed bill cycle.

**D21-06**  
**Departmental Error**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**UI Trust Fund Impact:**

This law change proposal would save the UI Trust Fund approximately \$5,200 annually. The Trust Fund savings may be less going forward. This would be considered a positive but negligible impact on the Trust Fund.

**IT and Administrative Impact:**

This law change proposal would have no IT impact and a negligible one-time administrative impact.

**Summary of Proposal:**

This law change proposal is intended to clarify that an error by an appeal tribunal is not “departmental error.”

**Trust Fund Methodology:**

To determine the impact of the proposed change, 2015-2017 data was reviewed for LIRC determinations that found departmental error based on appeal tribunal determinations. There were no LIRC decisions that found departmental error in 2016 or 2017 and in 2015, there were approximately 10 determinations. The total overpayment for all affected determinations was approximately \$6,560, which claimants would now be required to pay back if departmental error could not be found on appeal tribunal determinations. At an 80% collection rate, this results in an average savings to the Trust Fund of \$5,200 annually. Since there were no LIRC decisions that found departmental error in 2016 or 2017, the Trust Fund savings may be less going forward.

**IT and Administrative Impact Methodology:**

This law change proposal would not have an IT impact. It may have a negligible administrative impact to train staff on these changes.

**D21-07**  
**Effect of a Criminal Conviction**

Date: March 18, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Effect of a Criminal Conviction**

**1. Description of Proposed Change**

When the Department refers matters for criminal prosecution, it has usually already issued an administrative determination that the individual concealed information with the amount of the overpayment and penalty owed to the Department. The Department may use its statutory administrative collections powers, such as issuing warrants or levies, the Treasury Offset Program, interception of state income tax refunds, etc., to collect debts assessed by administrative determinations under the unemployment law. At the end of the criminal case, the Department may continue to collect the debt as assessed under the administrative determination. Or, the Department of Corrections may collect restitution, which would be credited toward the administratively determined debt.

In some circumstances, however, 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. Examples could include submitting forged documents to the Department with the expectation that the forger would receive a benefit; submitting false unemployment benefit claims by using a fictitious employer scheme; or filing benefit claims using stolen identities. In certain circumstances, these acts could be federal crimes, such as mail or wire fraud. These serious crimes may result in convictions and court-ordered restitution without the Department having first issued an administrative determination.

The Department proposes a law change to make criminal conviction judgments binding on criminal defendants for the purposes of proceedings that arise under the unemployment law.

**D21-07**  
**Effect of a Criminal Conviction**

This is consistent with federal law.<sup>1</sup> The standard of proof in criminal cases is beyond a reasonable doubt, which is a greater burden than in civil unemployment cases. It is not the intent of this proposal to change the Department's practice with respect to nearly all cases referred for criminal prosecution. The Department intends to continue to refer most cases for prosecution after its administrative determination is final.

**2. Proposed Statutory Changes**

**Section 108.101(5) of the statutes is created to read:**

Notwithstanding sub. (4), a final order or judgment of conviction for a crime entered by a court is binding on the convicted person in an action or proceeding under this chapter that relates to the criminal conviction. A person convicted of a crime is precluded from denying the essential allegations of the criminal offense that is the basis for the conviction in an action or proceeding under this chapter.

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change is expected to result in improved collection of debts owed to the Department.
- b. **Administrative:** None expected.
- c. **Fiscal:** This proposal is expected to have a positive effect on the UI Trust Fund.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

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<sup>1</sup> "A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim." 18 USC § 3664(l).

**D21-07**  
**Effect of a Criminal Conviction**

**5. Proposed Effective/Applicability Date**

This proposal would be effective with the proposed changes in the UIAC Agreed Bill.

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**UI Trust Fund Impact:**

This proposal may have a positive but negligible impact to the UI Trust Fund based on increased overpayment collections.

**IT and Administrative Impact:**

This proposal is not expected to have any one-time IT or administrative impacts.

**Summary of Proposal:**

This law change proposes making criminal conviction judgments binding on criminal defendants for the purposes of civil proceedings that arise under Wisconsin unemployment law.

**UI Trust Fund Methodology:**

Without an unemployment administrative determination, the collection of unemployment debt based on the criminal conviction relies solely on court ordered restitution collection methods. This proposal will allow the Department to issue an administrative determination after the criminal conviction, which would then allow UI collections to use all mechanisms available to collect the debt. Though an uncommon scenario, this could result in faster unemployment debt recovery and a higher percentage of unemployment debt collection, resulting in a negligible but positive impact on the Trust Fund.

**IT and Administrative Impact Methodology:**

This proposal would not change the current practice with respect to nearly all cases determined and then referred for prosecution. This proposal is not expected to have any one-time IT or administrative impacts.

**D21-08**  
**Fiscal Agent Election of Employer Status**

Date: March 18, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Fiscal Agent Election of Employer Status**

**1. Description of Proposed Change**

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.<sup>1</sup> Currently, approximately 16,000 employers in Wisconsin receive government-funded care and use a fiscal agent.

During the previous legislative session, the Legislature enacted the Department's proposal to permit the Department to assess fiscal agents with joint and several liability for the unemployment tax of employers who use fiscal agents.<sup>2</sup>

2011 WI Act 198 created a provision that permits home health care providers to elect to be the employer of workers who provide home health care services under chapter 49.<sup>3</sup> A home health care provider electing coverage as the employer must notify the recipient of the election and must be treated as the employer for federal unemployment tax purposes.

The Department proposes another law change related to fiscal agents that would permit 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 agents would be required to inform the

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<sup>1</sup> Wis. Stat. § 46.27(5)(i).

<sup>2</sup> Wis. Stat. § 108.22(10).

<sup>3</sup> Wis. Stat. § 108.065(3).

**D21-08**  
**Fiscal Agent Election of Employer Status**

recipient of care of the election and would need to be treated as the employer for federal unemployment tax purposes. This proposal is expected to simplify unemployment insurance reporting requirements for fiscal agents.

If the worker is one of a certain class of family members of the person receiving care, the worker is currently ineligible for unemployment benefits when the employment relationship ends.<sup>4</sup> Under this proposal, a worker who is a family member of the person receiving care would be an employee of the fiscal agent and would be eligible for unemployment benefits. Benefits would be charged to the fiscal agent's account, which would affect its experience rating.

**2. Proposed Statutory Changes**

**Section 108.02 (13) (k) of the statutes is amended to read:**

~~“Employer”~~ Except as provided in s. 108.065 (3m), “employer” does not include a county department, an aging unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent under s. ~~46.27 (5) (i)~~, 46.272 (7) (e); or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c).

**Section 108.065 (1e) (intro.) of the statutes is amended to read: 1**

Except as provided in subs. (2) ~~and (3)~~ to (3m), if there is more than one employing unit that has a relationship to an employee, the department shall determine which of the employing units is the employer of the employee by doing the following:

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<sup>4</sup> Wis. Stat. § 108.02(15)(km) (“‘Employment,’ as applied to work for a given employer other than a government unit or a nonprofit organization, except as the employer elects otherwise with the department’s approval, does not include service provided by an individual to an ill or disabled family member who is the employing unit for such service, if the service is personal care or companionship. For purposes of this paragraph, ‘family member’ means a spouse, parent, child, grandparent, or grandchild of an individual, by blood or adoption, or an individual’s step parent, step child, or domestic partner. In this paragraph, ‘domestic partner’ has the meaning given in s. 770.01 (1).”)



**D21-08**  
**Fiscal Agent Election of Employer Status**

**Section 108.065 (3m) of the statutes is created to read:**

A private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent to recipients of services under ch. 46, 47, or 51 may elect to be the employer of one or more employees providing those services. As a condition of eligibility for election to be the employer of one or more employees providing those services, the private agency shall notify in writing the recipient of any such services of its election, for purposes of the unemployment insurance law, to be the employer of any worker providing such services to the recipient, and must be treated as the employer under 26 USC 3301 to 3311 for purposes of federal unemployment taxes on the worker's services.

**Section 108.22 (10) of the statutes is amended to read:**

A private agency that serves as a fiscal agent under s. 46.2785 or contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.272 (7) (e) or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c) may be found jointly and severally liable for the amounts owed by the person under this chapter, if, at the time the person's quarterly report is due under this chapter, the private agency served as a fiscal agent for the person. The liability of the agency as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the person and shall be set forth in a determination or decision issued under s. 108.10. An appeal or review of a determination under this subsection shall not include an appeal or review of determinations of amounts owed by the person. This subsection does not apply with respect to a private agency that has made an election under s. 108.065 (3m).

**D21-08**  
**Fiscal Agent Election of Employer Status**

**3. Effects of Proposed Change**

- a. **Policy:** This proposal will simplify reporting requirements for fiscal agents.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective **January 1, 2023**.

**D21-08**

**Fiscal Agent Election of Employer Status**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**Trust Fund Impact:**

The immediate Trust Fund impact of this law change proposal cannot be determined. It may result in additional tax revenue as well as additional benefit payments. The assumption is that over time this proposal would have a net-zero impact on the Trust Fund.

**IT and Administrative Impact:**

This law change proposal is not expected to have an IT impact.

The one-time administrative *cost* is estimated at 80 hours or \$3,830. The ongoing administrative *savings* is estimated at 3 FTE positions or a savings of \$300,000 annually; however, these staff savings would be absorbed through other higher value-added work.

**Summary of Proposal:**

This law change proposal would permit private fiscal agents (not government units) to elect to be the employer of workers who provide care services to individuals who receive long-term support services in their home through government-funded care programs. The fiscal agents 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.

**Trust Fund Methodology:**

Though this law change proposal would result in the employer accounts of individuals who receive long-term care to be converted and condensed into the employer accounts of fiscal agents, it is assumed that the overall amount of tax revenue and benefits paid would remain neutral. However, this does not take into account the 108.02(15)(km) exclusion (*the exclusion of personal care services performed by an individual to an ill or disabled family member who directly employs individual*). The fiscal agent, now the employer in lieu of the family member receiving care, would be required to report such caregivers' wages and pay unemployment taxes on these employees, which could potentially affect the fiscal agents experience rating.

Excluded wages are not reported to the Unemployment Insurance Division, thus the amount of employee wages currently excluded that would now become reportable cannot be determined.

In 2018, there were approximately 93 determinations excluding wages from benefit claims under 108.02(15)(km). Assuming the individual had no other base period wages this would result in approximately \$354,330 in additional benefits paid annually (assuming an average weekly benefit amount of \$300 and average weeks paid of 12.7). Adjusting for taxes, this would result in an approximately \$233,857 cost to the Trust Fund. However, this does not take into account the additional tax revenue on employee whose wages would no longer be excluded from UI coverage.

**D21-08**  
**Fiscal Agent Election of Employer Status**

In summary, this proposal could result in:

- More tax revenue received and more benefits paid based on previously excluded wages under 108.02(15)(km); however, this amount cannot be established.
- Fewer benefit overpayments based on the 108.02(15)(km) exclusion estimated at \$100,000 annually. This is because under this proposal these benefits would now be payable. However, most overpayments are collected (at least 80%) thus this would not have a significant impact on the Trust Fund.

The Trust Fund impact of this law change proposal cannot be determined. It may result in additional tax revenue as well as additional benefit payments as more workers now become covered employees. The assumption is that over time taxes will balance to offset benefit payments so that the net effect to the Trust Fund will be approximately zero.

**IT and Administrative Impact Methodology:**

Per subject matter experts, this law change proposal is not expected to have an IT impact. There would be minimal changes needed within SUITES.

Per subject matter experts, this law change proposal is estimated to have a one-time administrative cost of approximately 80 hours or about \$3,830 to collapse 14,400 employer accounts into approximately 18 fiscal agent accounts, assuming the majority (per subject matter expert) would take the election.

This proposal would significantly reduce the ongoing administrative burden and decrease confusion about employer identities. Subject matter experts estimate the ongoing administrative staff savings of approximately 3 FTE positions or about \$300,000 annually. However, these staff savings would be absorbed through other higher value-added work.

**D21-09**  
**Clarification of Employee Status Statute**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Clarification of Employee Status Statute**

**1. Description of Proposed Change**

When an individual performs services for pay for an employing unit, it is presumed the individual is an employee for purposes of Wisconsin Unemployment Insurance law.<sup>1</sup> The employing unit must prove that the individual meets the conditions of a two-part test to overcome that presumption and be excluded from the definition of employee.<sup>2</sup>

In 1982, the Wisconsin Supreme Court decided *Star Line Trucking Corp. v. Dep't of Indus., Labor & Human Relations*, 109 Wis. 2d 266, 325 N.W.2d 872 (1982). *Star Line* held that the mere inclusion of required Public Service Commission Administrative Code language regarding the “exclusive possession, control, and use of the motor vehicle” in a trucking lease contract was insufficient to show that the carrier has direction and control over the driver. The Public Service Commission rule required motor vehicle leases to include the possession, control, and use language.

Under current law, in deciding whether an individual meets the conditions of the two-part test the Department and appeal tribunals are prohibited from considering “documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses” when analyzing certain factors of the test.<sup>3</sup> This provision was included in

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<sup>1</sup> Wis. Stat. § 108.02(12)(a).

<sup>2</sup> Wis. Stat. §§ 108.02(12)(bm) and (c).

<sup>3</sup> Wis. Stat. §§ 108.09(2)(bm) and 108.09(4s). *See also* Wis. Admin. Code DWD §§ 105.02 and 107.02 (“The department believes it is unreasonable to consider mandates of law as evidence because they have not been imposed on the relationship between the parties of their own volition.”)

**D21-09**  
**Clarification of Employee Status Statute**

the unemployment law in 1995, when the Worker's Compensation employee status test was adopted.<sup>4</sup>

The Department proposes to amend sections 108.09(2)(bm) and 108.09(4s) to provide that all issues of unemployment insurance employee status may only be determined under Wisconsin unemployment statutes and rules. This proposal will provide consistency in determining individuals' eligibility for unemployment benefits and employers' unemployment insurance tax liability by limiting the employee status inquiry to the provisions of the unemployment insurance law.

Under this law change, for example, it would be clear that the Department would not rely on the fact that a salon requires its cosmetologists to have a cosmetology license when analyzing the cosmetologists' services under the employee status test because cosmetologists are required by law to have a license to perform those services in Wisconsin.

**2. Proposed Statutory Changes**

**Section 108.09(2)(bm) of the statutes is renumbered 108.02 (12) (cm) and amended to read:**

(cm) In determining whether an individual meets the conditions specified in ~~s. 108.02 (12) (bm)~~ 2. b. or c. or (e) 1., the department shall not consider paragraphs (a), (bm), and (c), only this chapter and the rules promulgated by the department under the authority granted to the department by this chapter shall apply. Any other state or federal law, rule, regulation, or guidance shall not apply. ~~documents~~ Documents granting operating authority or licenses shall not be considered ~~or any other state or federal laws or federal regulations granting such authority or licenses.~~

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<sup>4</sup> 1995 WI Act 118.

**D21-09**  
**Clarification of Employee Status Statute**

**Section 108.09(4s) of the statutes is repealed:**

~~Employee status. In determining whether an individual meets the conditions specified in s. 108.02 (12) (bm) 2. b. or c. or (c) 1., the appeal tribunal shall not take administrative notice of or admit into evidence documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.~~

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will prevent confusion and provide consistency when determining whether an individual's services meet the conditions for the individual to be classified as an employee under unemployment insurance law.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached, based on 2017 cases.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective for services performed on and after January 1, 2022.

**D21-09**  
**Clarification of Employee Status Statute**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**Trust Fund Impact:**

This law change proposal would have a positive but negligible impact on the Trust Fund.

**IT Impact and Administrative Impact:**

This law change proposal would have no IT impact and a negligible one-time administrative impact.

**Summary of Proposal:**

This proposal amends sections 108.09(2)(bm) and 108.09(4s) to provide that all issues of unemployment insurance employee status may only be determined under Wisconsin unemployment statutes and rules. This proposal will provide consistency in determining individuals' eligibility for unemployment benefits and employers' unemployment insurance tax liability by limiting the employee status inquiry to the provisions of the unemployment insurance law.

**Trust Fund Methodology:**

Cases from 2017 dealing with employee status that may be affected by this law change proposal that were appealed to the ALJ level were reviewed for this estimate. In these cases, the claimants were consistently ruled as employees on the adjudication level, but that classification may have been overturned at the ALJ level and the claimants ruled as independent contractors. This may be because employee status was not determined exclusively under Wisconsin unemployment statutes and rules. This law change proposal intends to bring consistency to the employee status ruling by limiting the employee status inquiry to the provisions of the unemployment insurance law. However, based on the quantity of cases appealed, it would not have a significant impact on the Trust Fund.

**IT and Administrative Impact Methodology:**

Per subject matter experts, this proposal is codifying current practice and would not have any IT or administrative impact on the adjudication level. This is expected to have a negligible one-time administrative impact on the ALJ level due to staff training.



**D21-10**  
**SUTA Dumping Penalty**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**SUTA Dumping Penalty**

**1. Description of Proposed Change**

A transferee of a business transfer is a mandatory successor to the unemployment insurance account of a transferor if: (1) the transferor and transferee are owned, managed, or controlled by the same interests; (2) the transferee continues the transferor's business or employs the same employees; and (3) the same unemployment financing provisions apply to the transferor and transferee.<sup>1</sup> Assessing mandatory successor status to a transferee dissuades employers from closing down a business with a high unemployment insurance tax rate and opening a "new" business to obtain a lower tax rate. This is known as "SUTA dumping."

If a substantial purpose of a business transfer is to obtain a reduced contribution rate, the transferee will not receive the lower contribution rate.<sup>2</sup>

The federal SUTA Dumping Prevention Act<sup>3</sup> requires states to enact "meaningful civil and criminal penalties" for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to "dump" their unemployment insurance experience.

Current law penalizes for making false statements to the Department regarding a mandatory successor investigation and for advising others to do so.<sup>4</sup> If the person making the false

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<sup>1</sup> Wis. Stat. § 108.16(8)(e).

<sup>2</sup> Wis. Stat. §§ 108.16(8)(em) and (im).

<sup>3</sup> 42 U.S.C. § 503(k).

<sup>4</sup> Wis. Stat. § 108.16(8)(m).

**D21-10**  
**SUTA Dumping Penalty**

statement or the person who advised the person to make the false statement are not employers, the person forfeits up to \$5,000.

The Department recommends a \$10,000 civil penalty and a class A misdemeanor criminal penalty for knowingly violating or attempting to violate mandatory successor requirements in amounts that the Council chooses.

The Department also proposes to modify the \$5,000 forfeiture for making false statements or advising someone to make false statements to be a penalty of \$5,000 that will be deposited into the program integrity fund. This will make the treatment of the existing forfeiture provision consistent with the new proposed penalty.

**2. Proposed Statutory Changes**

**Section 108.16 (8) (m) 2. of the statutes is amended to read:**

2. If the person is not an employer, ~~the person may be required to forfeit not more than the~~ department shall assess the person a penalty of \$5,000 in a determination under s. 108.10, which shall be deposited in the unemployment program integrity fund.

**Section 108.16 (8) (mm) of the statutes is created to read:**

1. Any person identified under pars. (em) or (im), or any person that knowingly advises another person to transfer a business asset or activity solely or primarily for the purpose of obtaining a lower contribution rate, including by willful evasion, nondisclosure, or misrepresentation, is subject to the following penalties:

a. If the person is an employer, the department shall assess the employer a penalty in the amount of \$10,000.

b. If the person is not an employer, the department shall assess the person a penalty of \$10,000 in a determination under s. 108.10.

**D21-10**  
**SUTA Dumping Penalty**

c. The person is guilty of a class A misdemeanor.

2. Assessments under a. and b. shall be deposited in the unemployment program integrity fund.

3. For the purposes of this paragraph and par. (m), “knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the statute violated.

**Section 108.16 (8) (o) of the statutes is amended to read:**

Paragraphs (e) 1., (em), (h), (im), ~~and (m)~~, and (mm) shall be interpreted and applied; ~~insofar as possible~~, to meet the minimum requirements of any guidance issued by or regulations promulgated by the U.S. department of labor.

**Section 108.18 (1) (a) of the statutes is amended to read:**

Unless a penalty applies under s. 108.16 (8) (m), each employer shall pay contributions to the fund for each calendar year at whatever rate on the employer’s payroll for that year ~~duly~~ applies to the employer ~~pursuant to~~ under this section.

**Section 108.19 (1s) (a) 7. of the statutes is created to read:**

Assessments under ss. 108.16 (8) (m) 2. and (mm).

**3. Effects of Proposed Change**

- a. **Policy:** The proposed is expected to deter employers from attempting to “dump” their unemployment insurance experience rating and delinquent taxes.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached based on 2017 data.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity

**D21-10**  
**SUTA Dumping Penalty**

review. The SUTA Dumping Prevention Act requires states to enact “meaningful civil and criminal penalties” for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to “dump” their unemployment insurance experience.

**5. Proposed Effective/Applicability Date**

This proposal would be effective for transfers of business occurring on or after the effective date of the law change.

**D21-10**  
**SUTA Dumping Penalty**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**Trust Fund Impact:**

This law change proposal would save the Trust Fund up to \$7,000 annually in increased taxes, which is considered a positive but negligible impact on the Trust Fund.

**IT and Administrative Impact:**

The one-time IT impact would be approximately 250 hours or \$22,000. The one-time administrative impact would be approximately 30% of the IT impact or \$6,600. The total one-time impact is estimated at \$28,600.

Any penalties would flow to the UI Program Integrity Fund.

**Summary of Proposal:**

This law change proposal would create meaningful civil and criminal penalties for knowingly violating or attempting to violate mandatory successor requirements. The penalty will be deposited into the UI Program Integrity Fund. Criminal penalties will be created. This law change proposal would also modify the forfeiture for making false statements or advising someone to make false statements to be a penalty of \$5,000 that will be deposited into the UI Program Integrity Fund.

**Trust Fund Methodology:**

Based on 2017 data, the Trust Fund impact would be up to \$7,000 annually in increased tax revenue, if SUTA dumping is eliminated based on incentivized compliance.

**IT and Administrative Impact Methodology:**

Based on subject matter expert assessment, the one-time IT impact would be approximately 250 hours or \$22,000. This estimate is based on changes required to SUITES. The one-time administrative impact would be approximately 30% of the IT impact or \$6,600. The total one-time impact is estimated at \$28,600.

Any penalties would flow to the UI Program Integrity Fund. Based on 2017 data, approximately 7 employers during that timeframe could have been subject to the civil penalty, none of which included false statements that would be subject to the \$5,000 penalty. This penalty is intended to enforce tax compliance.

**D21-11**  
**Work Share Revisions**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Work Share Revisions**

**1. Description of Proposed Change**

The work share program permits employers to reduce employees' hours under a plan that permits employees to receive a work share benefit. Under pre-pandemic law, employers could reduce employees' hours by 10-50% and employees would receive a work share benefit that is a pro-rated amount of unemployment insurance based on the reduction in hours. For example, an employee who usually works 40 hours per week could work 20 hours per week in a work share plan and receive a work share benefit of 50% of their maximum UI weekly benefit amount.

Work share plans also require employers to maintain existing health insurance and defined benefit or defined contribution retirement plans. Employees in work share plans are not required to complete four work search actions or register for work. Work share plans are designed to prevent layoffs but are not intended to become a permanent part of the employer's business model. During the pandemic, employees who participated in work share plans also received the \$300 or \$600 weekly Federal Pandemic Unemployment Compensation.

Federal legislation enacted during the pandemic encouraged increased employer participation in work share because the federal government currently pays the work share benefit costs. State legislation, 2019 Wis. Act 185 and 2021 Wis. Act 4, provided greater flexibility for work share plans as follows:

1. Reducing the minimum number of employees in work share from 20 to 2, which especially benefited small businesses.

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**Work Share Revisions**

2. Increasing the maximum reduction in employees' hours from 50% to 60%, which is the maximum allowed under federal law.
3. Permits work share plans to cover any employees, not just employees in a particular work unit.
4. Eliminates the requirement that hours be apportioned equitably among employees in the work share plan.
5. Provides that work share plans become effective on the later of the Sunday of or after approval of the work-share plan, instead of the second Sunday after approval of the plan, unless a later Sunday is specified.

State law allows the Department's Secretary to waive provisions of the work share statutes if doing so is necessary for state law to conform to federal requirements or if a waiver would result in increased federal funding of work share benefits. During the pandemic, the Secretary waived the requirement that a work share plan may only extend for a period of up to six months in a 5-year period, permitting plans to last up to 12 months in a 5-year period, as long as federal funding for work share benefits exists.

The Department proposes that the temporary changes to the work share statutes during the pandemic should be made permanent, as well as a permanent law change to permit plans to extend up to 12 months in a 5-year period. These changes will give employers greater flexibility when creating work share plans and may encourage more employers to use work share, which would reduce layoffs while preserving employee work benefits.

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**2. Proposed Statutory Changes**

**Section 108.062 (1) (c) is repealed.**

~~(c) “Work unit” means an operational unit of employees designated by an employer for purposes of a work share program, which may include more than one work site.~~

**Section 108.062 (2) (b) and (e) are repealed.**

~~(b) Provide for inclusion of at least 10 percent of the employees in the affected work unit on the date of submittal.~~

~~(e) Provide for apportionment of reduced working hours equitably among employees in the work share program.~~

**Section 108.062 (2) (a) (c), (d), (h), and (m) are amended to read:**

(a) Specify the ~~work unit in which the plan will be implemented,~~ the affected positions, and the names of the employees filling those positions on the date of submittal.

(c) Provide for initial coverage under the plan of at least ~~20~~ 2 positions that are filled on the effective date of the work-share program.

(d) Specify the period or periods when the plan will be in effect, which may not exceed a total of ~~6~~ 12 months in any 5-year period ~~within the same work unit.~~

(h) Specify the normal average hours per week worked by each employee ~~in the work unit~~ and the percentage reduction in the average hours of work per week worked by that employee, exclusive of overtime hours, which shall be applied in a uniform manner and which shall be at least 10 percent but not more than ~~50~~ 60 percent of the normal hours per week of that employee.

(m) Indicate whether the plan includes employer-sponsored training to enhance job skills and acknowledge that the employees in the ~~work unit~~ work-share program may participate in training funded under the federal Workforce Innovation and Opportunity Act, 29 USC 3101 to 3361, or



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another federal law that enhances job skills without affecting availability for work, subject to department approval.

**Section 108.062 (3) is amended to read:**

(3) Approval of plans. The department shall approve a plan if the plan includes all of the elements specified in sub. (2) ~~or (20), whichever is applicable~~. The approval is effective for the effective period of the plan unless modified under sub. (3m).

**Section 108.062 (3r) is amended to read:**

(3r) Applicability of laws. A work-share program shall be governed by the law that was in effect when the plan or modification was last approved under sub. (3) or (3m), until the program ends as provided in sub. (4), but an employer with a work-share program governed ~~by sub. (2)~~ by a previous version of this section may, ~~while sub. (20) is in effect~~, apply for a modification under sub. (3m), and that modification application shall be governed by ~~sub. (20)~~ the law in effect when the modification is approved.

**Section 108.062 (4) is amended to read:**

(4) Effective period.

(a)

~~1. Except as provided in subd. 2., a~~ A work-share program becomes effective on the later of the Sunday of ~~the 2nd week beginning~~ or after approval of a work-share plan under sub. (3) or any Sunday after that day specified in the plan.

~~2. With respect to a work share plan approved during a period described under sub. (20), the work share program becomes effective on the later of the Sunday of or after approval of a work share plan under sub. (3) or any Sunday after that day specified in the plan.~~

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(b) A work-share program ends on the earlier of the last Sunday that precedes the end of the ~~6-~~  
~~month~~ 12-month period beginning on the effective date of the program or any Sunday before that  
day specified in the plan unless the program terminates on an earlier date under sub. (5), (14), or  
(15).

**Section 108.062 (6) (b) is amended to read:**

(b) No employee who is included in a ~~work-unit~~ work-share program is eligible to receive any  
benefits for a week in which the plan is in effect in which the employee is engaged in work for the  
employer that sponsors the plan which, when combined with work performed by the employee for  
any other employer for the same week, exceed 90 percent of the employee's average hours of work  
per week for the employer that creates the plan, as identified in the plan.

**Section 108.062 (15) is amended to read:**

(15) Involuntary termination. If in any week there are fewer than ~~20~~ 2 employees who are included  
in a work-share program of any employer, the program terminates on the 2nd Sunday following  
the end of that week. ~~This subsection does not apply to a work-share program to which sub. (20)~~  
~~applies.~~

**Section 108.062 (19) is amended to read:**

(19) Secretary may waive compliance. The secretary may ~~do any of the following~~ waive  
compliance with any requirement under this section if the secretary determines that doing so is  
necessary to permit continued certification of this chapter for grants to this state under Title III of  
the federal Social Security Act, for maximum credit allowances to employers under the federal  
Unemployment Tax Act, or for this state to qualify for full federal financial participation in the  
cost of administration of this section and financing of benefits to employees participating in work-  
share programs under this section.

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~~(a) Waive compliance with any requirement under this section.~~

~~(b) Waive the application of sub. (20), in whole or in part, to the extent necessary for any of the purposes specified in this subsection or, to the extent necessary for any of those purposes, require the continued application of any requirement under sub. (2).~~

**Section 108.062 (20) of the statutes is repealed.**

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change may encourage more employers to set up work share plans, thereby potentially reducing layoffs and ensuring that employees' benefits are uninterrupted.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective for work share plans submitted on or after the effective date of the law changes.

Date: 05/13/21  
Prepared by: Technical Services Section

## **FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

### **Summary of Proposal:**

This proposal would amend Wisconsin law to make the temporary changes to the work share statutes, during the pandemic, permanent, as well as a permanent law change to permit plans to extend up to 12 months in a 5-year period. These changes will give employers greater flexibility when creating work share plans and may encourage more employers to use work share, which would reduce layoffs while preserving employee work benefits.

### **UI Trust Fund Impact:**

This proposal is not expected to have a measurable impact on the UI Trust Fund

### **IT and Administrative Impact:**

This proposal would require 180 hours of IT work at a cost of approximately \$16,000. There is expected to be a one-time \$5,287 administrative impact.

### **Trust Fund Methodology:**

Prior to the Pandemic, work-share was a lightly used program. As the economy exits the pandemic, it is expected that work-share usage will return to pre-pandemic levels. As such, changes in work-share will not have a measurable impact on UI benefits or the UI Trust Fund.

**D21-12**  
**Department Flexibility for Federal Funding**

Date: April 15, 2021  
Proposed by: DWD  
Drafted by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Department Flexibility for Federal Funding**

**1. Description of Proposed Change**

Current law sets forth three separate provisions that allow the department to suspend provisions of the UI law in specific circumstances: a general savings clause, provisions concerning the work share statutes and occupational drug testing.

The savings clause provides: “The department may, with the advice of the council on unemployment insurance, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter for [federal administrative] grants...and for maximum credit allowances to employers under the federal unemployment tax act.”<sup>1</sup> Likewise, the Department’s Secretary may waive compliance with any part of the work share statute to ensure that the statute conforms to federal requirements and for Wisconsin to “qualify for full federal financial participation in the cost of administration of [the work share program] and financing of benefits to employees participating in work-share programs.”<sup>2</sup> The Department’s Secretary may also waive compliance with the occupational drug testing statutes to ensure federal conformity.<sup>3</sup>

The flexibility in current law ensures that the Department will maintain its primary source of funding for the unemployment program and can maximize the federal funding for work share benefits. Indeed, during the past year the Department has ensured that employers may maintain work share plans longer than six months in a 5-year period so that Wisconsin could

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<sup>1</sup> Wis. Stat. § 108.14(13).

<sup>2</sup> Wis. Stat. § 108.062(19).

<sup>3</sup> Wis. Stat. § 108.133(5)(d).

**D21-12**  
**Department Flexibility for Federal Funding**

receive an increased amount of federally-funded work share benefits by waiving the 6-month requirement.

On March 27, 2020, the federal CARES Act was enacted. It provided full federal funding for the first week of unemployment insurance benefits for states that did not have a waiting week. Wisconsin has a waiting week, but the Legislature temporarily suspended the waiting week under 2019 Wis. Act 185, retroactive to March 15, 2020. However, because Act 185 was not enacted until April 15, 2020, the US Department of Labor determined that no federal funding for the first week of unemployment was payable for the 3-week period of March 29, 2020-April 18, 2020. This resulted in a loss of an estimated **\$43.5 million** in total federal reimbursement of benefits for the Trust Fund and reimbursable employers.<sup>4</sup>

The Department proposes a law change that would permit the Department's Secretary to issue an order (which is not a rule), published in the register, waiving or suspending any part of chapter 108 to facilitate full federal funding of unemployment benefits. This proposal would also permit the Department's Secretary to issue an emergency rule without the requirement of showing an emergency to waive, suspend, or amend any part of chapter 108 to facilitate full or partial federal funding of benefits or to receive additional program administration funding.

These changes would ensure that Wisconsin maximizes its receipt of federal funding.

**2. Proposed Statutory Change**

**Section 108.14 (13) of the statutes is renumbered to section 108.14 (13) (a).**

**Section 108.14 (13) (b) and (c) of the statutes is created to read:**

(b) The secretary may waive compliance with any requirement under this chapter if the secretary determines that doing so will permit full federal financing of benefits. A waiver under this

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<sup>4</sup> This amount is subject to revision as the Department completes the benefit recharging under section 108.07(5)(bm).

**D21-12**  
**Department Flexibility for Federal Funding**

paragraph is not a rule under s. 227.01(13) and shall be effective upon publication in the Wisconsin administrative register.

(c) The department may, with the advice of the council on unemployment insurance, by rule, modify or suspend any provision of this chapter if and to the extent necessary to receive additional federal program administration funding or financing of benefits to employees. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

**3. Effects of Proposed Change**

- a. **Policy:** This proposal will ensure that the Department has the flexibility to secure maximum federal funding of unemployment benefits and administrative costs.
- b. **Administrative:** The Department will need to train staff on the changes in this proposal.
- c. **Fiscal:** A fiscal estimate is not yet available.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective with the other changes in the agreed bill.

Date: 05/13/2021

Prepared by: Technical Services Section

## FISCAL ANALYSIS OF PROPOSED LAW CHANGE

### **Summary of Proposal:**

This proposal would amend Wisconsin law to permit the Department's Secretary to issue an order (which is not a rule), published in the register, waiving or suspending any part of chapter 108 to facilitate full federal funding of unemployment benefits.

This proposal would also permit the Department's Secretary to issue an emergency rule without the requirement of showing an emergency to waive, suspend, or amend any part of chapter 108 to facilitate full or partial federal funding of benefits or to receive additional program administration funding.

These changes would ensure that Wisconsin maximizes its receipt of federal funding.

### **UI Trust Fund Impact:**

The UI Trust Fund impact is indeterminate but is expected to be positive or neutral.

### **IT and Administrative Impact:**

The IT costs and administrative impacts are indeterminate. Typically, the federal government provides grant money to implement programs and changes that are created by the federal law.

### **Trust Fund Methodology:**

Since the exact situation is not known, the impact cannot be calculated..



**D21-13**

**Construction Employer Initial Contribution Rates**

Date: April 15, 2021

Proposed by: DWD

Drafted by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**

**Construction Employer Initial Contribution Rates**

**1. Description of Proposed Change**

New businesses with employees must register as employers with the Department. The Department then assigns a tax rate to the employer. If the new employer is a non-construction employer, the employer’s contribution rate is 2.5% for the first three years.<sup>1</sup> But, if the new employer is a construction employer, the employer’s initial contribution rate is “the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate” for the first three calendar years.<sup>2</sup> All employers are also assigned a solvency rate, which, when combined with the contribution rate, provides for a total tax rate.<sup>3</sup>

Construction employers are given an initial contribution rate that is the average of all construction employers because, historically, construction employers have had higher contribution rates due to seasonal layoffs. This has resulted in construction employers having initial contribution rates higher than 2.5%. The higher initial contribution rates resulted in employers building up their reserve fund balances.

In 2021, the total tax rates for new employers are as follows:

	<b>Non-construction</b>	<b>Construction</b>
Payroll<\$500,000	3.05%	2.90%
Payroll>\$500,000	3.25%	3.10%

<sup>1</sup> Wis. Stat. § 108.18(2)(a).

<sup>2</sup> Wis. Stat. § 108.18(2)(c).

<sup>3</sup> Wis. Stat. § 108.18(9).

**D21-13**  
**Construction Employer Initial Contribution Rates**

So, for 2021, the initial rate for new construction employers is **lower** than non-construction employers. The Department proposes amending the initial tax rate for construction employers to be the greater of the initial rate for non-construction employers or the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate.

**2. Proposed Statutory Change**

**Section 108.18 (2)(c) of the statutes is amended to read:**

An employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects shall pay contributions for each of the first 3 calendar years at either the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate, or the rate specified in par. (a), whichever is greater. This rate may in no case be more than the maximum rate specified in the schedule in effect for the year of the computation under sub. (4).

**3. Effects of Proposed Change**

- a. **Policy:** This proposal will ensure that new construction employers do not have a lower initial contribution rate than other new employers.
- b. **Administrative:** The Department will need to train staff on the changes in this proposal.
- c. **Fiscal:** A fiscal estimate is not yet available.

**D21-13**

**Construction Employer Initial Contribution Rates**

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective January 1, 2022.

Date: 05/17/21  
Prepared by: Technical Services Section

## **FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

### **Summary of Proposal:**

This proposal would amend the Unemployment Insurance (UI) initial tax rate for construction employers to be the greater of the initial rate for non-construction employers or the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate.

### **UI Trust Fund Impact:**

This proposal is expected to have no measurable effect on the UI Trust Fund in most circumstances.

### **IT and Administrative Impact:**

This proposal would have an approximate \$6,408 one-time IT and \$2,115 administrative impact. There would be no ongoing costs.

### **Trust Fund Methodology:**

This is only expected to occur in unique circumstances, so it is not expected to have an annual impact on the UI Trust Fund. When applicable, it is expected to have a small but positive impact on the UI Trust Fund through higher UI tax revenue.

**D21-14**  
**Amend Administrative Rules Regarding UI Hearings**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Amend Administrative Rules Regarding UI Hearings**

**1. Description of Proposed Change**

Current law provides that unemployment insurance hearings may be held in-person, by telephone, or by videoconference. Under current DWD § 140.11, an appeal tribunal may conduct a telephone or videoconference hearing “when it is impractical for the appeal tribunal to conduct an in-person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location.” That section also provides that a party may appear in person at the appeal tribunal’s location if the hearing is scheduled by telephone or videoconference. However, the Department has limited hearing office space.

Between November 2019-March 2020, about 99.6% of Wisconsin unemployment insurance benefit appeal hearings were held by telephone. During the pandemic, nearly all UI benefit hearings were held by telephone with limited use of videoconference. Other states hold nearly all their unemployment hearings by telephone:

<b>State</b>	<b>Percent of UI hearings by phone (2019)</b>
Illinois	99.9%
Minnesota	99.9%
Michigan	94%
Iowa	98%
Indiana	96%
Nebraska	99% (2 in-person/year)
Ohio	98%
Kansas	99%

**D21-14**  
**Amend Administrative Rules Regarding UI Hearings**

The Department proposes to amend chapter DWD 140 to provide that, while parties may continue to request in-person hearings, it is the hearing office's discretion whether to grant that request. The Department also proposes to clarify language in DWD chapter 140 regarding hearing records, Department assistance for people with disabilities at hearings, and to correct minor and technical language in DWD chapter 140.

**2. Proposed Rule Changes**

If the attached draft scope statement is approved, the Department will draft amendments to DWD chapter 140 to provide the guidelines under which parties may request in-person unemployment insurance hearings, as well as other changes to DWD chapter 140. The Department will present that draft to the Council for review before the rule is finalized.

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will amend Wisconsin's unemployment insurance administrative rules to ensure that the hearing office has discretion to grant or deny a request for an in-person hearing.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** This proposal is expected to reduce travel costs for parties and witnesses attending unemployment insurance hearings.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective when the Legislature approves the amended rule.

## **STATEMENT OF SCOPE**

### **Department of Workforce Development**

**Rule No:** DWD Chapter 140

**Relating to:** Unemployment insurance hearings.

**Rule Type:** Permanent

#### **Detailed description of the objective of the proposed rule.**

The proposed rule will amend sections of DWD chapter 140 related to hearing notices, in-person, telephone, and videoconference unemployment insurance hearings procedures, hearing records, and accessibility for attending hearings. The rule will specify the conditions by which a party or witness may request to attend a hearing in-person.

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

Currently, DWD chapter 140 (Unemployment Insurance Appeals) specifies the requirements for unemployment insurance hearing notices, the procedures for conducting telephone or videoconference hearings, the treatment of hearing records, and Department assistance for people with disabilities at hearings.

The department proposes to amend DWD chapter 140 to confirm that the hearing notice shall provide the method of the hearing (in person, telephone, or videoconference). Also, the Department proposes to amend DWD chapter 140 to provide that it is within the discretion of the hearing office whether to hold an in-person hearing or to require the parties to appear by telephone or videoconference and to provide the guidelines under which parties may request an in-person hearing. In Ohio, Nebraska, Minnesota, Michigan, Kansas, Iowa, Indiana, and Illinois, 94-99.9% of pre-pandemic unemployment benefit hearings are held by telephone. The Department also proposes to clarify language in DWD chapter 140 regarding hearing records, Department assistance for people with disabilities at hearings, and to correct minor and technical language in DWD chapter 140.

The policy alternative is to do nothing. If the department does not promulgate the proposed rule, the unemployment insurance appeals process may not be as clear and efficient as it could be.

#### **Detailed explanation of statutory authority for the rule, including the statutory citation and language.**

The Department of Workforce Development 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).

“Except as provided in s. 901.05, the manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general department rules, whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure, for determining the rights of the parties.” Wis. Stat. § 108.09(5)(a).

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

The estimated time is 80 hours.

**List with description of all entities that may be affected by the proposed rule.**

Currently, all employees and employers who appear at unemployment insurance appeal hearings appear by telephone due to the COVID-19 pandemic. Before the pandemic, nearly all unemployment insurance appeal hearings were held by telephone. The proposed rule will affect employees and employers who attend unemployment insurance appeal hearings. Employees and employers who previously appeared at unemployment insurance appeal hearings in person will save travel time and costs by appearing by telephone or videoconference.

**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 that state law 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 not expected to have an adverse economic impact on any business or small business.

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

**Approval of the agency head or authorized individual:**

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

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**Date Submitted**



**D21-15**  
**Exclusion for Certain Camp Counselors**

Date: April 15, 2021  
Proposed by: DWD  
Drafted by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Exclusion for Certain Camp Counselors**

**1. Description of Proposed Change**

Federal unemployment law excludes the services of camp counselors from the definition of “employment” if the following criteria are met:

1. The worker is a full-time student. This means that the worker is currently enrolled in an educational institution **or** is between academic years/terms, was enrolled in the preceding year/term, and will be enrolled in the succeeding year/term.
2. The worker worked for the camp for less than 13 calendar weeks in a year.
3. The camp operates in less than seven months in a year **or** had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 $\frac{1}{3}$  percent of its average gross receipts for the other 6 months in the preceding calendar year.<sup>1</sup>

This proposal would add a similar exclusion for the services of camp counselors to Wisconsin’s unemployment law. Employees whose services are excluded under this proposal would not qualify for unemployment benefits based on their wages from the camps but may qualify for benefits based on services performed for other employers. Employers would not be taxed on the wages paid to camp counselors whose services are excluded. The wages of camp employees whose services are **not excluded** under this proposal would continue to be taxable for state and federal unemployment tax purposes.

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<sup>1</sup> 26 USC § 3306(c)(20).

**D21-15**  
**Exclusion for Certain Camp Counselors**

**2. Proposed Statutory Changes**

**Section 108.02 (15) (k) 21. of the statutes is created to read:**

“Employment” as applied to work for a given employer other than a government unit or nonprofit organization, except as the employer elects otherwise with the department’s approval, does not include service:

Performed by a full-time student, as defined in 26 USC 3306(q), for less than 13 calendar weeks in a calendar year in the employ of an organized camp, if either of the following apply:

- a. The organized camp did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year.
- b. The organized camp had average gross receipts for any 6 months in the preceding calendar year which were not more than 33½ percent of its average gross receipts for the other 6 months in the preceding calendar year.

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will align state law with federal law to exclude the services of certain camp counselors for unemployment tax and benefits purposes.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective for services performed on and after January 1, 2022.

**D21-15**  
**Exclusion for Certain Camp Counselors**

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**Summary of Proposal:**

This proposal would amend Wisconsin law to include an exclusion that would mirror the federal exclusion for seasonal full-time student camp counselors.

**UI Trust Fund Impact:**

This proposal would reduce the Trust Fund by approximately \$76,000 or less annually due to decreased tax revenue. It would have a negligible impact on reducing UI benefit payments.

**IT and Administrative Impact:**

This proposal would have an approximate \$6408 one-time IT and \$2115 administrative impact.

**Trust Fund Methodology:**

Seasonal full-time student camp counselors could fall into several employer NAICS code categories, which also include employment types that would not qualify under this exclusion. For the purposes of a high-level fiscal, NAICS code 721214 or recreational and vacation camps (except campgrounds) was the employer category identified as most impacted by this exclusion. Reimbursable non-profit employers were removed from this impact analysis as their wages are not taxable and have no fiscal impact on the Trust Fund. For this exclusion to be applied the employee must work less than 13 calendar weeks in a year, and in general the camp must operate in less than 7 months of the year. Based on these criteria, employees that had wages with the employer outside third quarter (summer months) were removed. Estimated wages that met these criteria were then multiplied by those employer's tax rates. This resulted in approximately \$76,000 in tax revenue in 2019 for 3034 employees (an additional 304 employees were employed by non-profit reimbursable employers). However, an additional requirement is that the employee must be a full-time student (currently enrolled or is between academic years). It is unknown how much of this tax revenue would be based on excluded wages due to being earned by full-time students only.

It is difficult to determine the reduction in UI benefit payments based on this exclusion. However, since a requirement of this exclusion is that the employee is a full-time student, these employees may already be ineligible for UI benefits based on their school enrollment status. In 2019, there were 82 claimants that met the wage criteria above that used those wages to qualify for an unemployment claim. Based on the number of potentially affected employees, school enrollment status, and the need for additional wages from other employers, it is estimated that this proposal would have a negligible impact on reducing benefit payments.

**IT and Administrative Impact Methodology:**

This proposal would have an approximate \$6408 one-time IT and \$2115 administrative impact.

**D21-15**  
**Exclusion for Certain Camp Counselors**

**Relevant federal statutes:**

26 USC § 3306(c)(20):

(c) **Employment** For purposes of this chapter, the term “employment” means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp—

(A) if such camp—

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 $\frac{1}{3}$  percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year; or

26 USC § 3306(q):

(q) **Full time student** For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period—

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if—

(A) the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

**Seasonal Full-Time Student Camp Counselor Exclusion**

Date: 04/14/2021

Prepared by: Technical Services Section

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE****Summary of Proposal:**

This proposal would amend Wisconsin law to include an exclusion that would mirror the federal exclusion for seasonal full-time student camp counselors.

**UI Trust Fund Impact:**

This proposal would reduce the Trust Fund by approximately \$76,000 or less annually due to decreased tax revenue. It would have a negligible impact on reducing UI benefit payments.

**IT and Administrative Impact:**

This proposal would have an approximate \$6408 one-time IT and \$2115 administrative impact.

**Trust Fund Methodology:**

Seasonal full-time student camp counselors could fall into several employer NAICS code categories, which also include employment types that would not qualify under this exclusion. For the purposes of a high-level fiscal, NAICS code 721214 or recreational and vacation camps (except campgrounds) was the employer category identified as most impacted by this exclusion. Reimbursable non-profit employers were removed from this impact analysis as their wages are not taxable and have no fiscal impact on the Trust Fund. For this exclusion to be applied the employee must work less than 13 calendar weeks in a year, and in general the camp must operate in less than 7 months of the year. Based on these criteria, employees that had wages with the employer outside third quarter (summer months) were removed. Estimated wages that met these criteria were then multiplied by those employer's tax rates. This resulted in approximately \$76,000 in tax revenue in 2019 for 3034 employees (an additional 304 employees were employed by non-profit reimbursable employers). However, an additional requirement is that the employee must be a full-time student (currently enrolled or is between academic years). It is unknown how much of this tax revenue would be based on excluded wages due to being earned by full-time students only.

It is difficult to determine the reduction in UI benefit payments based on this exclusion. However, since a requirement of this exclusion is that the employee is a full-time student, these employees may already be ineligible for UI benefits based on their school enrollment status. In 2019, there were 82 claimants that met the wage criteria above that used those wages to qualify for an unemployment claim. Based on the number of potentially affected employees, school enrollment status, and the need for additional wages from other employers, it is estimated that this proposal would have a negligible impact on reducing benefit payments.

**IT and Administrative Impact Methodology:**

This proposal would have an approximate \$6408 one-time IT and \$2115 administrative impact.

## **D21-16**

### **Repeal Pre-employment & Occupational Drug Testing**

Date: April 15, 2021

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

### **ANALYSIS OF PROPOSED UI LAW CHANGE Repeal Pre-employment & Occupational Drug Testing**

#### **1. Description of Proposed Change**

##### *Pre-Employment Drug Testing and Drug Treatment*

The 2015 Budget, 2015 Wis. Act 55,<sup>1</sup> created Wis. Stat. §§ 108.04(8)(b) and 108.133, requiring the Department, by administrative rule, to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to DWD. If a reported person is receiving UI benefits, the person is presumed to have failed, without good cause, to accept suitable work and is ineligible for benefits.<sup>2</sup> If the person failed the drug test, they may maintain UI benefit eligibility if they enroll in and comply with a substance abuse treatment program, complete a job skills assessment and otherwise meet all program requirements. Under this law, DWD will pay the reasonable costs for drug treatment.

The emergency rule for the Pre-Employment Drug Testing Program became effective on May 6, 2016 and became effective as a permanent rule on May 1, 2017. As of March 31, 2021, DWD has received about 171 reports from employing units regarding individuals' failures of pre-employment drug tests or refusals to take pre-employment drug tests. No claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules and denied benefits because of the employers' reports of a failed or refused drug test as a condition of an offer of employment. Because no claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules, no claimants have maintained benefit eligibility by enrolling in and complying with a substance abuse treatment program and completing a job skills

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<sup>1</sup> The provisions in the Budget Bill for pre-employment and occupational drug testing were not presented to the UIAC for approval and were not included in the agreed bill.

<sup>2</sup> However, the provisions of Wis. Stat. § 108.04(9) still apply.

**D21-16**  
**Repeal Pre-employment & Occupational Drug Testing**

assessment.

2017 Wis. Act 157 (the UIAC agreed bill) amended the pre-employment drug testing law effective April 1, 2018 to limit employers' civil liability under state law for submission of pre-employment drug testing information to the Department. Even with the amendment, there has been very limited use of the Pre-Employment Drug Testing Program by employers.

*Occupational Drug Testing and Drug Treatment*

The Middle Class Tax Relief and Job Creation Act of 2012<sup>3</sup> permits states to test a UI applicant for unlawful use of controlled substances as an eligibility condition if the applicant is an individual for whom suitable work (as defined under state law) is only available in an occupation that regularly conducts drug testing (as determined under regulations issued by the Secretary of US-DOL). DWD is aware of only two other states, Texas and Mississippi, that have enacted statutes that permit drug testing of UI claimants. However, it appears that neither state has begun to test UI claimants for drugs as a condition for UI eligibility.

Under 2015 Wis. Act 55, the Department must, by administrative rule, create a program for drug testing certain UI applicants. The Department will determine whether an applicant's only suitable work is in an occupation that regularly conducts drug testing. If an applicant's only suitable work is in an occupation that regularly conducts drug testing, the Department will screen the applicant to determine whether there is a reasonable suspicion the applicant engaged in the unlawful use of controlled substances. An applicant with a positive screening result must submit to a drug test to remain eligible for UI benefits. An applicant who fails a drug test under Wis. Stat. § 108.133 without evidence of a valid prescription may remain eligible for UI benefits if the applicant enrolls in and complies with a drug treatment program, completes a job skills assessment, and otherwise meets all program requirements. The UIAC approved a scope statement for DWD to promulgate an

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<sup>3</sup> Section 303(l)(l)(A)(ii), SSA.

## D21-16

### Repeal Pre-employment & Occupational Drug Testing

administrative rule in early 2020, but DWD has not yet promulgated rules to implement occupational drug testing.

The Legislature appropriates \$250,000 of GPR annually (\$500,000 per biennium) to DWD to fund and administer UI drug testing and treatment programs for both pre-employment and occupational drug testing programs. No GPR funds have been expended for substance abuse treatment programs as a result of pre-employment drug testing reports filed by employers. Unused appropriated GPR funds are transferred to the Program Integrity Fund at the end of the biennium.<sup>4</sup>

The Governor's Budget Bill (AB 68 / SB 111) proposes to repeal the UI pre-employment and UI occupational drug testing statutes and to provide that the GPR funding for drug testing and treatment be used for DWD's administration of the UI program instead of drug testing and treatment.<sup>5</sup>

#### 2. Proposed Statutory Change

**Section 108.04(8)(b) of the statutes, as affected by 2017 Wisconsin Act 157, is repealed.**

**Section 108.133 of the statutes, as affected by 2017 Wisconsin Act 157, sections 26 to 37, is repealed.**

**Wis. Admin. Code Chapter DWD 131, "Pre-Employment Drug Testing, Substance Abuse Treatment Program and Job Skills Assessment," is repealed.**

(Additional cross-references may also need to be amended.)

#### 3. Effects of Proposed Change

**a. Policy:** This proposal would reduce the likelihood that a person would be denied UI benefits for failing a pre-employment drug test.

**b. Administrative:** This proposal would provide state funds for administration of the UI program.

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<sup>4</sup> 2017 Wis. Act 157, effective April 1, 2018.

<sup>5</sup> The Budget Bill also proposes to legalize recreational marijuana.



## **D21-16**

### **Repeal Pre-employment & Occupational Drug Testing**

- c. Fiscal:** A fiscal estimate is not yet available.

#### **4. State and Federal Issues**

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

#### **5. Proposed Effective/Applicability Date**

This proposal would be effective with other changes made as part of the agreed bill cycle.

## Drug Testing Program and Pre-Employment Drug Testing

Date: 05/05/21

Prepared by: Technical Services Section

### FISCAL ANALYSIS OF PROPOSED LAW CHANGE

#### **Summary of Proposal:**

Current state law requires DWD to establish a program to test certain claimants who apply for unemployment insurance (UI) benefits for the presence of controlled substances that is consistent with federal law. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. The proposal repeals the requirement to establish the drug testing program.

Also under current law, an employer may voluntarily submit to DWD the results of a preemployment test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an individual declined to submit to such a test. If DWD then verifies that submission, the employee may be ineligible for benefits until he or she requalifies. However, a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. The proposal repeals these preemployment drug testing provisions.

#### **UI Trust Fund Impact:**

UI drug testing of claimants has not been implemented. Therefore, this portion of the proposal will have no Trust Fund impact.

UI has received information from employers on individuals who have positive pre-employment drug tests results and refused pre-employment drug tests; however, no claimant has been denied benefits due to failing a test, nor has any claimant enrolled in a substance abuse treatment program. There is no expected impact to benefit payments as a result of this proposal

#### **IT and Administrative Impact:**

IT impact to the Unemployment Insurance program is estimated at \$7,120.

One-time administrative impact to the UI program is estimated at \$2,136.

There is no ongoing administrative impact to the UI program.

**D21-17**  
**Repeal Substantial Fault**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Repeal Substantial Fault**

**1. Description of Proposed Change**

Currently, an employee who is discharged is ineligible for unemployment insurance benefits if the discharge is for misconduct by the employee connected with their employment or if the discharge is for substantial fault by the employee connected with the employee's work. In either case, the employee is ineligible for unemployment benefits until seven weeks have elapsed since the end of the week in which the discharge occurs, and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate.

For misconduct discharges (but not for substantial fault), the wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages for purposes of benefit entitlement. This is known as cancellation of wage credits.

Previously, section 108.04(5g) was created as a provision of the 2005 agreed bill by the Unemployment Insurance Advisory Council. That statute provided a disqualification for certain violations of an attendance policy if certain requirements were met. The employee would be disqualified for unemployment insurance benefits until six weeks have elapsed since the end of the week in which the discharge occurs, and the employee earned wages after the week in which the discharge occurs equal to at least 6 times the employee's weekly benefit rate.

The 2013 Budget, 2013 Wis. Act 20, repealed section 108.04(5g) and replaced it with the disqualification for substantial fault. Wisconsin appears to be the only state that has a

**D21-17**  
**Repeal Substantial Fault**

disqualification for substantial fault. Act 20 also created several enumerated types of misconduct under section 108.04(5)(a)-(g).

The Governor's Budget Bill (AB 68 / SB 111) proposes to repeal the substantial fault disqualification. The substantial fault statute has been the subject of litigation to the courts, including the Supreme Court. Repealing that provision would result in more predictability for claimants and employers.

**2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.04(5g) of the statutes is repealed.**

**3. Effects of Proposed Change**

a. **Policy:** The proposed change would result in increased payment of unemployment insurance benefits to claimants who would currently be denied on substantial fault grounds.

The proposed change would result in more predictability for claimants and employers and could result in less litigation on discharge issues.

b. **Administrative:** This proposal will require training of Department staff.

c. **Fiscal:** A fiscal estimate is attached.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would apply to initial determinations issued on or after the effective date.

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<sup>1</sup> Subject to revision to ensure cross-references are corrected.

**D21-17**  
**Repeal Substantial Fault**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Prepared by: Technical Services Section

**Summary of Proposal:**

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for substantial fault by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant qualifies through subsequent employment. With certain exceptions, current law defines "substantial fault" to include those acts or omissions of a claimant over which the claimant exercised reasonable control and that violate reasonable requirements of the claimant's employer. The bill repeals this provision on substantial fault.

**UI Trust Fund Impact:**

This proposal is estimated to cost the UI Trust Fund approximately \$5.0 million annually based on increased benefit payments.

**IT and Administrative Impact:**

This proposal is expected to have a negligible one-time IT impact, and negligible one-time and ongoing administrative impact to the UI program.

**Trust Fund Methodology:**

Substantial fault is the last step when considering a denial when someone is discharged:

- (1) check for statutory misconduct (under a-g); if no denial then
- (2) check for general misconduct; if no denial then
- (3) check for substantial fault.

Under this change, if the case doesn't meet the first two denial reasons, the determination would be an allow. So, any determination that is currently substantial fault would be an allow under this change.

There were 1,953 substantial fault decisions that denied benefits in 2019. With the elimination of substantial fault decisions, these would now be situations where benefits were allowed. Using the Quarter 4 2019 average weekly benefit amount of \$328 per week and the Quarter 4 2019 duration of 12.1 weeks of UI this would be an additional \$7.7 million in UI benefits. Taking into consideration an increase in UI taxes of \$2.5 million annually, and a decrease of \$200,000 in benefits charges to reimbursable employers the total impact would be an annual reduction of the UI Trust Fund of \$5.0 million.

**\*\*Caveat:** In 2019 there were record low benefit claims. In a year with higher claim numbers, we would expect to see a greater UI Trust Fund impact.

**IT and Administrative Impact Methodology:**

Minor system and policy changes would need to be put in place.

Date: 04/14/2021  
Prepared by: Technical Services Section

## FISCAL ANALYSIS OF PROPOSED LAW CHANGE

### Summary of Proposal:

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for substantial fault by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant qualifies through subsequent employment. With certain exceptions, current law defines "substantial fault" to include those acts or omissions of a claimant over which the claimant exercised reasonable control and that violate reasonable requirements of the claimant's employer. The proposal repeals this provision on substantial fault.

### UI Trust Fund Impact:

This proposal is estimated to cost the UI Trust Fund approximately \$5.0 million annually based on increased benefit payments.

### IT and Administrative Impact:

This proposal is expected to have a negligible one-time IT impact, and negligible one-time and ongoing administrative impact to the UI program.

### Trust Fund Methodology:

Substantial fault is the last step when considering a denial when someone is discharged:

- (1) check for statutory misconduct (under a-g); if no denial then
- (2) check for general misconduct; if no denial then
- (3) check for substantial fault.

Under this change, if the case doesn't meet the first two denial reasons, the determination would be an allow. So, any determination that is currently substantial fault would be an allow under this change.

There were 1,953 substantial fault decisions that denied benefits in 2019. With the elimination of substantial fault decisions, these would now be situations where benefits were allowed. Using the Quarter 4 2019 average weekly benefit amount of \$328 per week and the Quarter 4 2019 duration of 12.1 weeks of UI this would be an additional \$7.7 million in UI benefits. Taking into consideration an increase in UI taxes of \$2.5 million annually, and a decrease of \$200,000 in benefits charges to reimbursable employers the total impact would be an annual reduction of the UI Trust Fund of \$5.0 million.

\*\*Caveat: In 2019 there were record low benefit claims. In a year with higher claim numbers, we would expect to see a greater UI Trust Fund impact.

### IT and Administrative Impact Methodology:

Minor system and policy changes would need to be put in place.

**D21-18**  
**Quit Exception for Relocating Spouse**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Quit Exception for Relocating Spouse**

**1. Description of Proposed Change**

Employees who quit a job are generally ineligible for unemployment insurance benefits unless an exception applies.

As a condition of Wisconsin receiving federal grant money (American Recovery and Reinvestment Act of 2009 Funds), 2009 Wis. Act 11 created a quit exception. The exception permitted claimants to be eligible for unemployment insurance benefits (assuming they were otherwise qualified) if they quit their job to move with a spouse who changed their place of employment, and it would have been impractical for the claimant to commute from the new location.

The 2013 Budget Act, 2013 Wis. Act 20, amended and repealed several quit exceptions, including amending the “quit to relocate” exception in Wis. Stat. § 108.04(7)(t). The amended quit exception, effective January 2014, was narrowed to cover only a claimant whose spouse is on active duty with the U.S. Armed Forces, is required to relocate by the U.S. Armed Forces and it is impractical for the claimant to commute to work.

The Governor’s Budget Bill (AB 68 / SB 111) modifies the changes to this quit exception made by 2013 Wis. Act 20 and provides that the quit exception covers all spouses who move with a relocating spouse, not just those serving in the U.S. Armed Forces. This proposal broadens this quit exception to apply to claimants whose spouses are required by any employer to relocate, not just the U.S. Armed Forces.

**D21-18**  
**Quit Exception for Relocating Spouse**

**2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.04 (7) (t) 1. of the statutes is repealed.**

**Section 108.04 (7) (t) 2. of the statutes is amended to read:**

The employee's spouse was required by ~~the U.S. armed forces~~ his or her employing unit to relocate to a place to which it is impractical for the employee to commute.

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change may encourage workers to relocate to take better jobs. This proposal would ensure that spouses of workers who relocate to take better jobs are able to receive unemployment insurance benefits after relocating if it is impractical for the spouse to commute.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would apply to determinations issued on or after the effective date.

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<sup>1</sup> Subject to revision to ensure cross-references are corrected.



Date: 05/13/2021  
Prepared by: Technical Services Section

## **FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

### **Summary of Proposal:**

Under current law, if an employee's spouse is a member of the U.S. Armed Forces on active duty and is relocated, and the employee quits his or her job in order to relocate with his or her spouse, the employee remains eligible to collect UI benefits. The proposal expands this exception so that it applies to an employee who quits employment in order to relocate with a spouse who is required by any employer, not just the U.S. Armed Forces, to relocate.

### **UI Trust Fund Impact:**

This proposal is estimated to cost the UI Trust Fund approximately \$462,000 annually based on increased benefit payments.

### **IT and Administrative Impact:**

IT impact to the Unemployment Insurance program is a one-time impact estimated at \$890.  
One-time administrative impact to the UI program is estimated at \$267.  
There is no ongoing administrative impact.

### **Trust Fund Methodology:**

Under prior law, there was a similar, but broader relocation exception. In 2011, there were 417 instances where benefits were allowed due to this quit exception. Averaging initial claims from the years between 2016 and 2019 and comparing that value to the initial claims in 2011, we expect there to now be 187 cases where benefits would be allowed under this exception. Initial claims for 2020 were not included because we do not expect 2020 to be representative of initial claims going forward. Using an average weekly benefit amount of \$300 and an average duration over the period of 2016 to 2019 of 12.8 weeks this would increase benefits by an expected \$718,000 annually. After deducting reimbursable benefits of \$29,000 and accounting for an expected increased UI taxes of \$227,000, the UI Trust Fund is expected to decrease by \$462,000 annually

**D21-19**  
**Repeal Waiting Week**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Repeal Waiting Week**

**1. Description of Proposed Change**

The first Wisconsin unemployment benefit claimant had a three-week waiting period before receiving the first unemployment check in 1936. In 1941, the waiting period was reduced to two weeks. In 1951, the waiting period was further reduced to one week. In 1969, the waiting period was still one week, but a claimant could receive benefits for that week if they obtained employment within 10 weeks of the start of their benefit year. The waiting week was repealed in 1977.

The 2011 Budget, 2011 Wis. Act 32, recreated a waiting week for unemployment insurance benefits, effective January 2012. For every new benefit year, no benefits are payable for the first week a claimant would otherwise be eligible for benefits. The waiting week may be a week in which full or partial benefits are payable. The waiting week does not reduce a claimant's maximum benefit amount. About 42 states have a waiting week during non-pandemic times.

The one-week delay in benefit payments does not reduce a claimant's total amount of benefits that they are eligible for.

During the 2020-2021 COVID-19 pandemic, Wisconsin suspended the waiting week for the period of March 15, 2020-March 13, 2021 because the federal government funded benefits for the first week of unemployment for states that did not have a waiting week.

The Governor's Budget Bill (AB 68 / SB 111) would permanently repeal the waiting week.

**D21-19**  
**Repeal Waiting Week**

**2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.02 (26m) of the statutes is repealed.**

**Section 108.04 (3) of the statutes is repealed.**

**108.04 (11) (bm) of the statutes is amended to read:**

The department shall apply any ineligibility under par. (be) against benefits and weeks of eligibility for which the claimant would otherwise be eligible after the week of concealment and within 6 years after the date of an initial determination issued under s. 108.09 finding that a concealment occurred. ~~The claimant shall not receive waiting period credit under s. 108.04 (3) for the period of ineligibility applied under par. (be).~~ If no benefit rate applies to the week for which the claim is made, the department shall use the claimant's benefit rate for the claimant's next benefit year beginning after the week of concealment to determine the amount of the benefit reduction.

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change would result in increased payment of unemployment insurance benefits to claimants who do not exhaust their benefit duration limit.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective with the other provisions of the agreed bill.

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<sup>1</sup> Subject to revision to ensure cross-references are corrected.

Date: 05/17/2021  
Prepared by: Technical Services Section

## **FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

### **Summary of Proposal:**

Currently, a claimant must wait one week after becoming eligible to receive UI benefits before the claimant may receive benefits for a week of unemployment, except for periods during which the waiting period is suspended. The waiting period does not affect the maximum number of weeks of a claimant's benefit eligibility. The proposal deletes the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with his or her first week of eligibility.

### **UI Trust Fund Impact:**

This proposal is estimated to cost the UI Trust Fund approximately \$26.1 million annually based on increased benefit payments.

### **IT and Administrative Impact:**

IT impact to the Unemployment Insurance program is expected to be nominal unless the change is made retroactive. A retroactive change would require \$1,157 of IT cost and a one-time administrative impact of \$381 for a total one-time cost of \$1,538. There should be no ongoing administrative impact to the UI program.

### **Trust Fund Methodology:**

Eliminating the waiting week will increase UI benefits by 5% annually. Using benefits charged to taxable employers for the period of 2009 to 2019, the average increase in UI benefits would be \$39 million annually. This would lead to an increase of UI taxes of \$12.9 million for a net expected average change of \$26.1 million annually.

Under federal law, states that do not have a waiting week are fully responsible for the first week of extended benefits instead of the typical fifty percent of cost under the Extended Benefits program. However, during the past two recessions this charge was waived.

**D21-20**

**Repeal Work Search and Work Registration Waivers from Statute**

Date: April 15, 2021

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**

**Repeal Work Search and Work Registration Waivers from Statute**

**1. Description of Proposed Change**

Unemployment benefit claimants must conduct at least four work searches each week and register for work, unless a waiver relieves them of these requirements. Federal law also requires claimants to be actively seeking work and to register for work. Before 2017 Wis. Act 370 (enacted during the 2018 extraordinary session), the unemployment work search waivers were set forth in Wis. Admin. Code DWD § 127.02. The unemployment work registration waivers were in Wis. Admin. Code DWD § 126.03.

Act 370 codified in statute the work search and work registration waivers that existed in Administrative Code chapters DWD 126 and 127. Act 370 also created statutory language to permit the Department to promulgate administrative rules that modify the statutory work search and work registration waivers or create additional work search or work registration waivers “to comply with a requirement under federal law or is specifically allowed under federal law.” The Department has not yet repealed the prior Administrative Code waivers. The Department promulgated an emergency rule during the COVID-19 pandemic to waive work search during the pandemic, consistent with federal law.

The Governor’s Budget Bill (AB 68 / SB 111) would repeal the work search waiver provisions in statute as created by Act 370, restore the applicable statutes to their pre-Act 370 language, and direct the Department to establish work search waivers by administrative rule.

**D21-20**

**Repeal Work Search and Work Registration Waivers from Statute**

**2. Proposed Statutory Changes<sup>1</sup>**

**Section 108.04 (2) (a) (intro.) of the statutes is amended to read:**

Except as provided in ~~pars.~~ par. (b) ~~to (bd)~~, sub. (16) (am) and (b), and s. 108.062 (10) and (10m) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week only if all of the following apply:

**Section 108.04 (2) (a) 3. of the statutes is repealed and recreated to read:**

The claimant conducts a reasonable search for suitable work during that week and provides verification of that search to the department. The search for suitable work must include at least 4 actions per week that constitute a reasonable search as prescribed by rule of the department. In addition, the department may, by rule, require a claimant to take more than 4 reasonable work search actions in any week. The department shall require a uniform number of reasonable work search actions for similar types of claimants. This subdivision does not apply to a claimant if the department determines that the claimant is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the claimant has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the claimant's employment status and shall consider all of the following:

- a. The history of layoffs and reemployments by the employer.
- b. Any information that the employer furnished to the claimant or the department concerning the claimant's anticipated reemployment date.
- c. Whether the claimant has recall rights with the employer under the terms of any applicable collective bargaining agreement.

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<sup>1</sup> Subject to revision to ensure cross-references are corrected.

## D21-20

### Repeal Work Search and Work Registration Waivers from Statute

#### Section 108.04 (2) (b) of the statutes is repealed and recreated to read:

The department may, by rule, establish waivers from the registration for work requirement under par. (a) 2. and the work search requirement under par. (a) 3.

#### Section 108.04 (2) (bb) of the statutes is repealed.

#### Section 108.04 (2) (bd) of the statutes is repealed.

#### Section 108.04 (2) (bm) of the statutes is amended to read:

A claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to comply with the registration for work and work search requirements under par. (a) 2. or 3. or failed to provide verification to the department that the claimant complied with those requirements, unless the department has waived those requirements under par. (b), ~~(bb)~~, or ~~(bd)~~ or s. 108.062 (10m). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22.

### 3. Effects of Proposed Change

- a. **Policy:** The proposed change would restore the law on work search and work registration waivers to the status quo before Act 370.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

### 4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**D21-20**

**Repeal Work Search and Work Registration Waivers from Statute**

**5. Proposed Effective/Applicability Date**

This proposal would be effective with the other provisions of the agreed bill.



**D21-20**  
**Repeal Work Search and Work Registration Waivers from Statute**  
**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

Date: 3/21/19

Prepared by: UI Technical Services Section

**Work Search Waiver Provisions by Rule in Lieu of Statute**

**Issue:** This proposal deletes work search waiver provisions in current law and instead allow DWD to establish such waivers by rule.

**Annual and Biennial Impacts:**

*Effective date is dependent on the promulgation of rules*

The proposal, as written, would not have any impact on benefit payments or UI tax revenue. It would not impact reimbursable employers, nor the UI Trust Fund. Any impacts would be determined based on DWD administrative rule.

**Repeal Work Search and Work Registration Waivers from Statute**

Date: 05/05/2021

Prepared by: Technical Services Section

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Summary of Proposal:**

This proposal removes the waiver requirements from statute and instead allows DWD to establish waivers for the registration for work and work search requirements by rule. The proposal also specifies that the work search requirement does not apply to a claimant who has been laid off but DWD determines that the claimant has a reasonable expectation to be recalled to work.

**UI Trust Fund Impact:**

This proposal is estimated to have no impact on the UI Trust.

**IT and Administrative Impact:**

There is no IT or administrative impact to the Unemployment Insurance program.

**Trust Fund Methodology:**

This proposal would revert statute to rule and policy matching the current statute, so there would be no impact.

**IT and Administrative Impact Methodology:**

This proposal would revert statute to rule and policy matching the current statute, so there would be no impact.

**D21-21**  
**Wage threshold for receipt of benefits**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Wage threshold for receipt of benefits**

**1. Description of Proposed Change**

The 2011 Unemployment Insurance Advisory Council agreed bill, 2011 Wis. Act 198, capped the amount of wages that a claimant may earn and still receive partial benefits at \$500. Before Act 198, there was no wage cap in the statute, but a claimant would not receive unemployment benefits if they earned enough wages to receive nothing under the partial UI benefit formula. Section 108.05(3)(dm) currently provides that a claimant is ineligible for benefits if they receive from one or more employers:

- Wages earned for work performed in that week of more than \$500, or
- Holiday, vacation, termination or sick pay which, alone or combined with wages earned for work performed in that week, equals more than \$500.

Claimants are also ineligible for partial benefits if they work 32 hours or more in a week.

The Governor's Budget Bill (AB 68 / SB 111) would repeal the \$500 weekly maximum earned income disqualification but would not amend the partial benefit formula. Under this proposal and the current partial UI benefit formula, a claimant with a \$370 weekly UI benefit rate could receive a partial UI benefit of \$5 if they earn \$574 per week or less in wages.<sup>1</sup> Claimants who earn \$575 per week or more in wages would continue to be ineligible for benefits based on the partial benefit formula and current maximum weekly benefit rate of \$370 weekly.

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<sup>1</sup> This is a preliminary estimated calculation, subject to revision.

## D21-21

### Wage threshold for receipt of benefits

#### 2. Proposed Statutory Changes<sup>2</sup>

**Section 108.05 (3) (dm) of the statutes is repealed.**

~~Except when otherwise authorized in an approved work share program under s. 108.062, a claimant is ineligible to receive any benefits for a week if the claimant receives or will receive from one or more employers wages earned for work performed in that week, amounts treated as wages under s. 108.04 (1) (bm) for that week, sick pay, holiday pay, vacation pay, termination pay, bonus pay, back pay, or payments treated as wages under s. 108.04 (12) (e), or any combination thereof, totalling more than \$500.~~

#### 3. Effects of Proposed Change

- a. **Policy:** The proposed change would result in claimants receiving a small partial UI benefit if they earn \$500 to \$574 in wages, sick, holiday, vacation, termination, bonus, or back pay in a week.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

#### 4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

#### 5. Proposed Effective/Applicability Date

This proposal would be effective for weeks of unemployment beginning in 2022.

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<sup>2</sup> Subject to revision to ensure cross-references are corrected.

Date: 05/17/2021

Prepared by: Technical Services Section

## FISCAL ANALYSIS OF PROPOSED LAW CHANGE

### Summary of Proposal:

Under current law, a claimant for UI benefits is generally ineligible to receive any benefits for a week if the claimant receives or is considered to have received wages or other amounts from employment totaling more than \$500. The proposal repeals this ineligibility provision. However, the proposal does not affect the partial benefits formula, which reduces a claimant's weekly UI benefit payment by a certain percentage of wages earned in a week by the claimant.

### UI Trust Fund Impact:

This is expected to have a nominal impact of the UI Trust Fund.

### IT and Administrative Impact:

This proposal would have an approximate \$13,350 IT and \$4,450 administrative impact for a total one-time cost of \$17,800. There are no ongoing administrative impacts to the UI program.

### Trust Fund Methodology:

Removing the \$500 limit still leaves two binding constraints on what a claimant may earn and still be allowed UI benefits in a week. The definition of full-time work of 32 hours or more eliminates most claimants who earn over \$500 per week. The partial benefit formula will also constrain the amount a person may earn in a week. At the current maximum weekly benefit amount of \$370, there would still be an additional earnings limit of \$573 per week. Given the two constraints the increase in UI benefits is expected to be minimal.

**D21-22**  
**Increase Maximum Weekly Benefit Rate**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Increase Maximum Weekly Benefit Rate**

**1. Description of Proposed Change**

2013 Wis. Act 36 increased the maximum weekly benefit rate for unemployment insurance benefits from \$363 to \$370 starting January 2014, which was the last time Wisconsin increased the maximum weekly benefit rate. Charts showing historical data and data from other states are attached.

The Governor's Budget Bill (AB 68 / SB 111) would increase the maximum weekly benefit rate from \$370 to \$409 per week to reflect increases in the average weekly wage since 2014. This change would be effective for payments made for weeks of unemployment beginning January 2, 2022. For weeks of unemployment beginning January 1, 2023, the maximum would be 50% of Wisconsin's average weekly wage. For weeks of unemployment beginning on December 31, 2023, the maximum would be the greater of the maximum for the prior year or 75% of Wisconsin's average weekly wage.

In 2019, the state's average weekly wage was \$951. Under this proposal **but using 2019 data for reference**, the maximum UI benefit rate for 2023 would be \$475.50 weekly; for 2024, it would be \$713.25 weekly.

**D21-22**  
**Increase Maximum Weekly Benefit Rate**

**2. Proposed Statutory Changes<sup>1</sup>**

Section 108.05 (1) (am) of the statutes is created to read:

108.05 (1) (am) On or before June 30 of each year, the department shall calculate, from quarterly wage reports under s. 108.205 for the prior calendar year, the state's annual average weekly wage in employment covered under this chapter.

**Section 108.05 (1) (cm) of the statutes is created to read:**

108.05 (1) (cm) The department shall set the maximum weekly benefit amount as follows:

1. For benefits paid for a week of total unemployment that commences on or after January 5, 2014, but before January 2, 2022, \$370.
2. For benefits paid for a week of total unemployment that commences on or after January 2, 2022, but before January 1, 2023, \$409.
3. For benefits paid for a week of total unemployment that commences on or after January 1, 2023, but before January 7, 2024, \$409 or 50 percent of the state's annual average weekly wage, rounded up to the nearest dollar, whichever is greater.
4. For benefits paid for a week of total unemployment that commences on or after January 7, 2024, the department shall set an annual maximum weekly benefit amount that takes effect on the 1st Sunday in January of each calendar year and that is equal to the greater of the following:
  - a. Seventy-five percent of the state's annual average weekly wage, rounded up to the nearest dollar.
  - b. The maximum benefit amount in effect in the previous calendar year.

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<sup>1</sup> Subject to revision to ensure cross-references are corrected.

**D21-22**  
**Increase Maximum Weekly Benefit Rate**

**Section 108.05 (1) (r) of the statutes is renumbered 108.05 (1) (r) (intro.) and amended to read:**

108.05 (1) (r) (intro.) Except as provided in s. 108.062 (6) (a), each eligible employee shall be paid benefits for each week of total unemployment ~~that commences on or after January 5, 2014, at the~~ a weekly benefit rate specified in this paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal to 4 percent of the employee's base period wages that were paid during that quarter of the employee's base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar, except that, if that amount as provided under sub. (1m), and unless one of the following applies:

1. If the employee's weekly benefit rate calculated under this paragraph is less than \$54, no benefits are payable to the employee and, if that amount.
2. If the employee's weekly benefit rate is more than \$370 the maximum weekly benefit amount under par. (cm), the employee's weekly benefit rate shall be \$370 and except that, if the maximum weekly benefit amount under par. (cm).
3. If the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the remaining amount of benefits payable to the employee under s. 108.06 (1).

(s) The department shall publish on its Internet site a weekly benefit rate schedule of quarterly wages and the corresponding weekly benefit rates as calculated in accordance with this paragraph subsection.



**D21-22**  
**Increase Maximum Weekly Benefit Rate**

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change would increase the maximum weekly benefit rate to reflect increases in the average weekly wage.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective for weeks of unemployment beginning January 2, 2022.

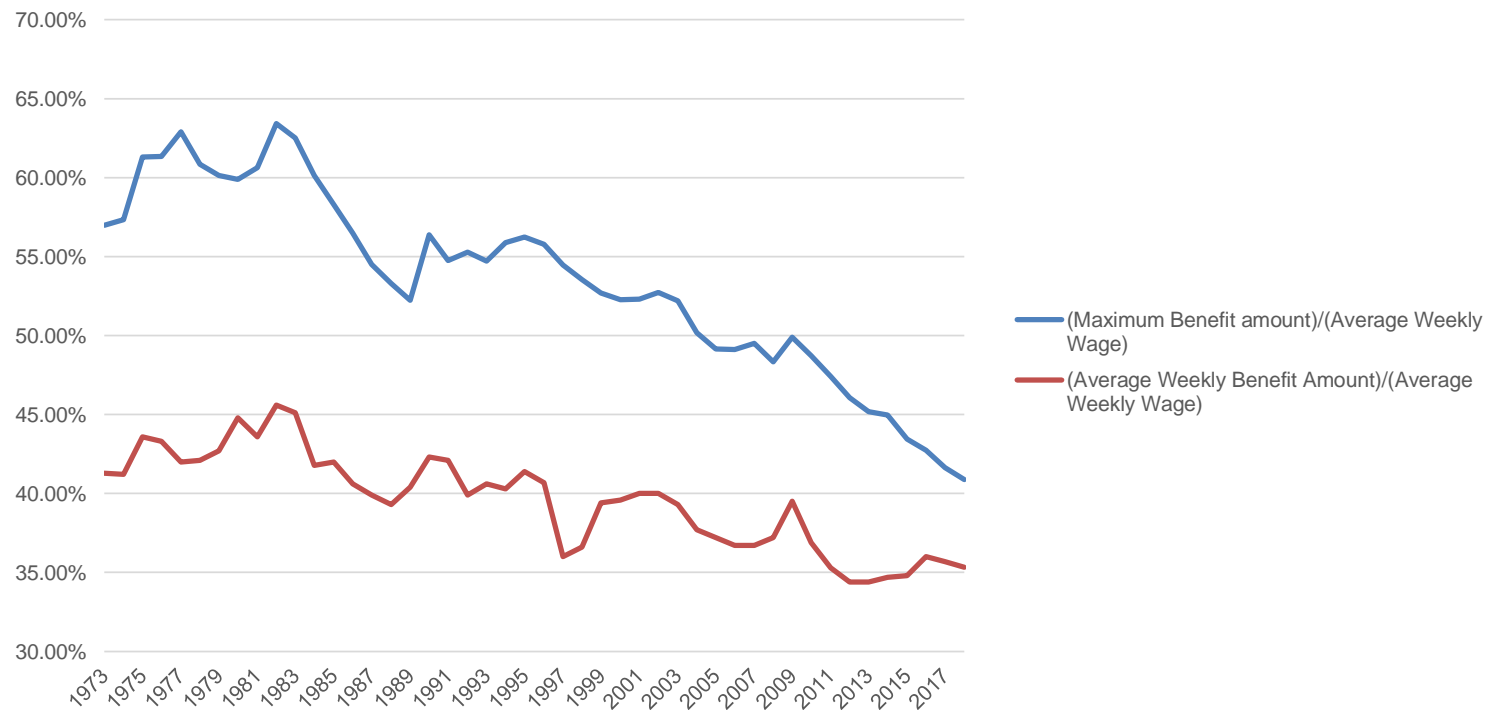
**D21-22**  
**Increase Maximum Weekly Benefit Rate**

<b>Effective Week/Year</b>	<b>Minimum</b>	<b>Maximum</b>
02/14	\$54	\$370
02/09	\$54	\$363
02/07	\$53	\$355
01/06	\$51	\$341
01/03	\$49	\$329
01/02	\$48	\$324
41/00	\$46	\$313
15/00	\$45	\$305
02/99	\$44	\$297
02/98	\$43	\$290
02/97	\$53	\$282
02/96	\$52	\$274
01/95	\$50	\$266
20/94	\$48	\$256
02/93	\$46	\$243
28/92	\$45	\$240
02/92	\$43	\$230
01/90	\$42	\$225
02/88	\$38	\$200
02/83	\$37	\$196
28/82	\$36	\$191
02/82	\$34	\$179
28/81	\$33	\$175
02/81	\$31	\$166
28/80	\$30	\$160
02/80	\$29	\$155
27/79	\$28	\$149
02/79	\$27	\$145
27/78	\$36	\$139
01/78	\$25	\$135
28/77	\$25	\$133
02/77	\$24	\$128
28/76	\$23	\$122
02/76	\$22	\$117
28/75	\$21	\$113
02/75	\$20	\$108

D21-22  
Increase Maximum Weekly Benefit Rate

# UI Benefits Have Fallen Relative to Covered Wages

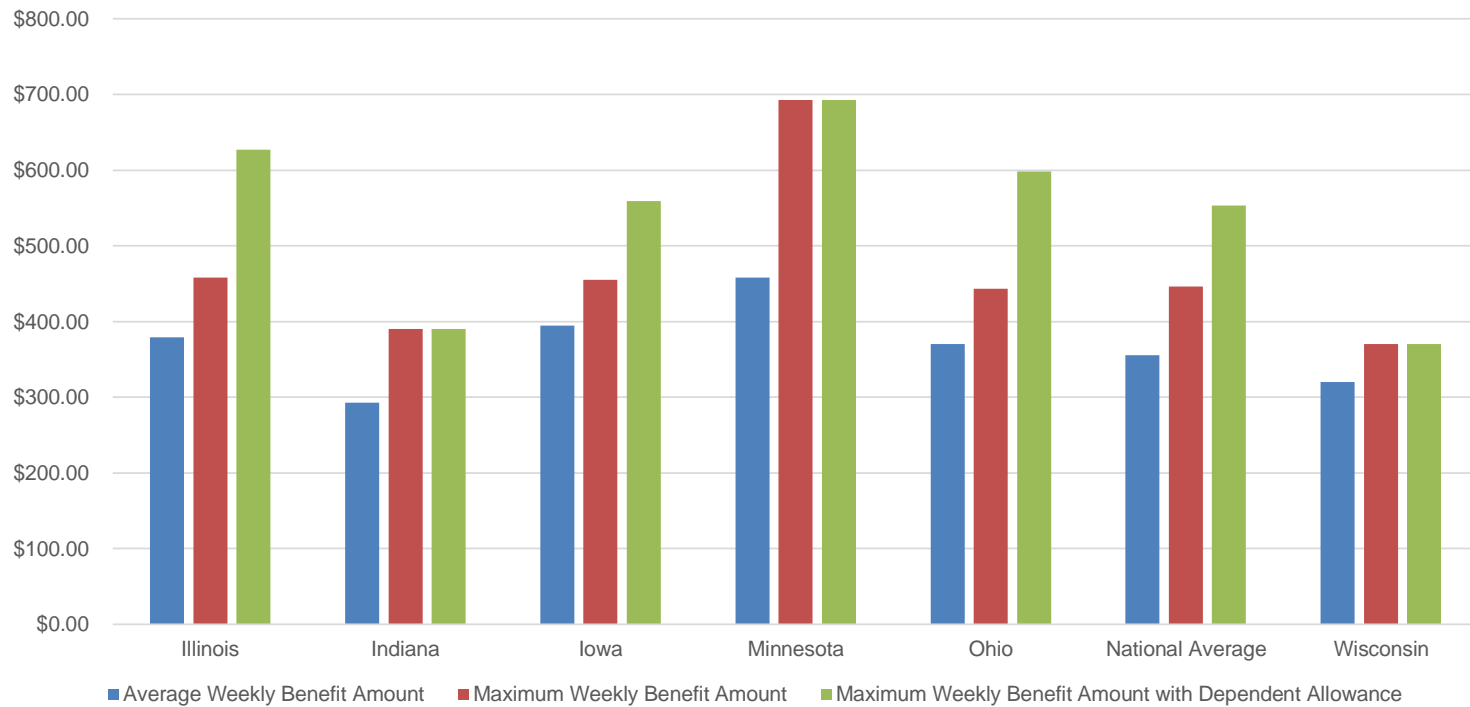
Wisconsin UI Weekly Benefits Relative to Average Weekly Wage in Covered Employment 1973-2018.Q2



D21-22  
Increase Maximum Weekly Benefit Rate

# WI UI Weekly Benefits Compared to Other Midwest States

Wisconsin Weekly UI Benefit Compared to Neighboring States and National Average Q2 2018



D21-22  
Increase Maximum Weekly Benefit Rate

## Wisconsin UI Weekly Benefits Compared to Neighboring States

State	Average Weekly Benefit Amount	Maximum Weekly Benefit Amount	Maximum Weekly Benefit Amount with Dependent Allowance
Illinois	\$379.30	\$458.00	\$627.00
Indiana	\$292.77	\$390.00	\$390.00
Iowa	\$394.26	\$455.00	\$559.00
Minnesota	\$458.15	\$693.00	\$693.00
Ohio	\$370.15	\$443.00	\$598.00
<b>National Average</b>	<b>\$355.42</b>	<b>\$445.96</b>	<b>\$553.02</b>
<b>Wisconsin</b>	<b>\$319.91</b>	<b>\$370.00</b>	<b>\$370.00</b>

Date: 05/19/2021

Prepared by: Technical Services Section

## FISCAL ANALYSIS OF PROPOSED LAW CHANGE

### Summary of Proposal:

Under current law, a person who qualifies for UI receives a weekly benefit equal to a percentage of that person's past earnings, but the weekly benefit is capped at \$370. The proposal changes the maximum weekly benefit in the following ways:

1. For benefits paid for weeks of unemployment beginning on or after January 2, 2022, but before January 1, 2023, the maximum weekly benefit is capped at \$409.
2. For benefits paid for weeks of unemployment beginning on or after January 1, 2023, but before December 31, 2023, the maximum weekly benefit is capped at 50 percent of the state's annual average weekly wages.
3. For benefits paid for weeks of unemployment beginning on or after December 31, 2023, the maximum weekly benefit is capped at 75 percent of the state's annual average weekly wages, or the maximum weekly benefit amount from the previous year, whichever is greater.

Under the proposal, DWD is required to calculate the state's annual average weekly wage for each year based on quarterly wage reports that are submitted to DWD. The state's annual average weekly wage is calculated by June 30 of each year and is used to calculate the following year's maximum weekly benefit amount.

### UI Trust Fund Impact:

This proposal is expected to cost the UI Trust fund \$23.9 million in 2022, \$94.5 million in 2023, and \$167.5 million in 2024. Every year after 2024, it is expected to cost an additional \$4.4 million annually.

### IT and Administrative Impact:

The annual IT impact to the program is estimated at \$22,250 and an annual administrative impact program is estimated at \$7,417, for a total annual cost of \$29,667.

### Trust Fund Methodology:

In order to account for differing economic situations, claimants with benefit years in the period of 2016 to 2019 were examined. To account for wage growth, each individual's wages were adjusted by the IHS projected annual wage growth of 3.4%. Using these wages, new benefit years were calculated at the higher weekly benefit rates. The benefit years were then verified to still qualify for UI benefits. The total changes were then summed and multiplied by the average duration over the period of 12.8 weeks. The amounts were then averaged across benefit years to arrive at the new benefit amounts.

For the \$409 weekly benefit rate, the expected increase in UI benefits is \$38.0 million. Reimbursable employers are expected to be charged with \$2.3 million in benefits. This is also expected to lead to an increase in UI taxes of \$11.8 million annually leading to a net UI Trust Fund decrease of \$23.9 million.

When the weekly benefit rate changes to 50% of the annual wage in 2023, the weekly benefit rate is estimated to be \$552 based on IHS Markit estimates (IHS Markit is a leading economic forecaster.) This is expected to increase UI benefits paid by \$150 million compared to a \$370 weekly benefit rate. Reimbursable employers are expected to be charged \$9 million in benefits. An expected increase of UI taxes by \$46.5 million results in a net change in the UI Trust Fund of \$94.5 million.

Starting in January 2024, 75% of the average weekly wage is expected to raise the weekly benefit rate to \$854 per week. This is expected to increase UI benefits paid by \$266 million compared to the current \$370 weekly

benefit rate. Reimbursable employers are expected to be charged \$16 million in benefits. An expected increase of UI taxes by \$82.5 million results in a net change in the UI Trust Fund of \$167.5 million.

To address the index moving forward, the estimated change for 2025 was calculated. Indexing the weekly benefit rate going forward is expected to increase UI benefits by \$7 million annually. \$0.4 million of benefits is expected to be charged to reimbursable employers and an expected \$2.2 million increase in UI taxes. This expected to decrease the UI Trust Fund by \$4.4 million annually.

The estimated cost to the Trust Fund in 2025 is the sum of \$167.5 million and \$4.4 million for a total cost of \$171.9 million, with an expected additional \$4.4 million each year following.

**D21-23**  
**Flexibility for Finding Suitable Work**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Flexibility for Finding Suitable Work**

**1. Description of Proposed Change**

The definition of “suitable work” in the Unemployment Insurance law provides a standard for determining whether an unemployment benefit claimant has good cause for refusing work when offered. The Unemployment Insurance administrative rules currently define “suitable work” as “work that is reasonable considering the claimant’s training, experience, and duration of unemployment as well as the availability of jobs in the labor market.”<sup>1</sup>

Before 2015, when a claimant refused an offer of work within the first six weeks of becoming unemployed, the Department compared the skill level and rate of pay of the job refused to one or more of the claimant’s recent jobs. Benefits were allowed if the skill level of the work being refused was lower than that of one or more recently-held jobs or if the rate of pay offered was less than 80% of the pay of one or more recent jobs. The 80% threshold was set by Department policy.

As part of the 2015 Unemployment Insurance Advisory Council agreed bill, 2015 Wis. Act 334, the Council agreed to the current statutory definition of suitable work found in sections 108.04(8)(d) and (dm). The suitable work provisions of 2015 Wis. Act 334 effectively codified Department policy but reduced the pay threshold from 80% to 75%.

Under the 2015 Wis. Act 334 suitable work changes, a two-tiered approach is used to determine whether work refused is suitable based on when the job is refused. For claimants who refuse a job within the first six weeks of unemployment (known as the “canvassing period”), the

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<sup>1</sup> Wis. Admin. Code DWD § 100.02(61).



**D21-23**  
**Flexibility for Finding Suitable Work**

Department will compare the skill level and rate of pay to the claimant's most recent jobs and determine whether the hourly wage is at least 75% of what the claimant earned in their highest paying most recent job.<sup>2</sup>

For jobs refused after the sixth week of becoming unemployed, suitable work is defined as “any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.”<sup>3</sup> The work must still meet labor standards.

The Governor's Budget Bill (AB 68 / SB 111) amends the suitable work statutes so that claimants are not required to accept less favorable work until the 11<sup>th</sup> week of unemployment.

Under current Wis. Stat. § 108.04(7)(e), an employee is eligible for UI if they quit a job within the first 30 days based on “the same grounds for voluntarily terminating work [within the first 30 days] if the employee could have failed to accept the work under [the statutory suitable work definition] when it was offered, regardless of the reason articulated by the employee for the termination.”

The Governor's Budget Bill (AB 68 / SB 111) amends the quit exception so that claimants may quit a job within 10 weeks of starting it if they could have refused the job as unsuitable. This change to the quit exception may make unemployment claimants more likely to try jobs that they might otherwise refuse; it may also encourage them to try the jobs for more time before quitting.

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<sup>2</sup> Wis. Stat. § 108.04(8)(d).

<sup>3</sup> Wis. Stat. § 108.04(8)(dm).

**D21-23**  
**Flexibility for Finding Suitable Work**

**2. Proposed Statutory Changes<sup>4</sup>**

**108.04 (7) (e) of the statutes is amended to read:**

Paragraph (a) does not apply if the department determines that the employee accepted work that the employee could have failed to accept under sub. (8) and terminated the work on the same grounds and within the first ~~30 calendar days~~ 10 weeks after starting the work, or that the employee accepted work that the employee could have refused under sub. (9) and terminated the work within the first ~~30 calendar days~~ 10 weeks after starting the work. For purposes of this paragraph, an employee has the same grounds for voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) to (em) when it was offered, regardless of the reason articulated by the employee for the termination.

**Section 108.04 (8) (d) (intro.) of the statutes is amended to read:**

With respect to the first ~~6~~ 10 weeks after the employee became unemployed, "suitable work," for purposes of par. (a), means work to which all of the following apply:

**Section 108.04 (8) (dm) of the statutes is amended to read:**

With respect to the ~~7<sup>th</sup>~~ 11<sup>th</sup> week after the employee became unemployed and any week thereafter, "suitable work," for purposes of par. (a), means any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.

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<sup>4</sup> Subject to revision to ensure cross-references are corrected.

**D21-23**  
**Flexibility for Finding Suitable Work**

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will give claimants more time to find suitable work after becoming unemployed. This proposal may incentivize claimants to take less favorable jobs, which may result in fewer benefits paid to claimants.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would apply to determinations issued after the effective date of the bill.

Date: 05/17/21  
Prepared by: Technical Services Section

## **FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

### **Summary of Proposal:**

This proposal changes how UI adjudicates suitable work issues in two ways. The first is to extend the period of time a claimant may refuse less than suitable work. The second is to extend the amount of time a claimant may quit a job that would have been deemed unsuitable work when the claimant accepted employment.

Under current law, if a claimant for UI benefits fails, without good cause, to accept suitable work when offered, the claimant is ineligible to receive benefits until he or she earns wages after the week in which the failure occurs equal to at least six times the claimant's weekly UI benefit rate in covered employment. Current law specifies what is considered "suitable work" for purposes of these provisions, with different standards applying depending on whether six weeks have elapsed since the claimant became unemployed. Once six weeks have elapsed since the claimant became unemployed, the claimant is required to accept work that pays lower and involves a lower grade of skill.

The proposal modifies these provisions, described above, so that the claimant is not required to accept less favorable work until 10 weeks have elapsed since the claimant became unemployed.

This proposal also would amend the quit exception so that claimants may quit a job within 10 weeks of starting the job if they could have refused the job as unsuitable. This change to the quit exception may make unemployment claimants more likely to try jobs that they might otherwise refuse; it may also encourage them to try the jobs for more time before quitting.

### **UI Trust Fund Impact:**

This proposal is estimated to cost the UI Trust Fund approximately \$2.78 million annually based on increased benefit payments.

### **IT and Administrative Impact:**

There are no expected measurable ongoing IT or administrative costs.

### **Trust Fund Methodology:**

Using past data analysis under prior law, when Wisconsin allowed quits for up to 10 weeks, it is estimated that approximately 31% of allowed decisions were past the 30-day threshold. Applying that increase to benefits allowed for this reason in 2019, there is an estimated 948 additional individuals who would have received benefits in 2019. This would lead to an increase in UI benefits of approximately \$3.8 million. After accounting for reimbursable employers and an increase of UI taxes of approximately \$1.2 million, the net decrease to the UI Trust Fund would be \$2.6 million annually.

Using data from 2019, 40 cases that had UI benefits denied due to refusal of suitable work were reviewed. Looking at the case data, it was investigated if making a change from 6 weeks to 10 weeks would have impacted the decision. It was only definite for one decision to be reversed but an additional 6 decisions may have been affected. This implies up to 17.5% of the 398 cases denied for suitable work in 2019 may have been allowed under this proposal. Using the 2019 average weekly benefit amount of \$320 and the average duration for the period 2016 to 2019 the expected amount of additional benefits is up to \$285,000 annually. Accounting for an estimated \$17,000 of reimbursable benefits and \$88,000 in additional tax revenue leads to a reduction in the UI Trust Fund by \$180,000 annually.

The total expected decrease in the UI Trust Fund is \$2.78 million annually.

**D21-24**

**Amend Social Security Disability Insurance Disqualification**

Date: April 15, 2021

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE  
Amend Social Security Disability Insurance Disqualification**

**1. Description of Proposed Change**

Currently, recipients of federal Social Security Disability Insurance (“SSDI”) payments are ineligible for unemployment insurance benefits. Recipients of pension payments are eligible for unemployment insurance benefits, but the unemployment benefit is reduced by the pension payment.

The Governor’s Budget Bill (AB 68 / SB 111) proposes to amend the prohibition on receipt of UI for SSDI recipients by reducing the amount of weekly UI benefits by the proportionate amount of the claimant’s SSDI payment.

Under this proposal, a claimant who receives \$1,000 monthly in SSDI and would otherwise be eligible for \$300 weekly in UI would receive a weekly UI payment of \$69.<sup>1</sup>

**2. Proposed Statutory Changes<sup>2</sup>**

**Section 108.04 (2) (h) of the statutes is amended to read:**

A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance payments, as defined in ~~sub. (12)~~ ~~(f)~~ 2m s. 108.05 (7m) (b). If the claimant is receiving social security disability insurance payments, the claimant shall, in the manner prescribed by the department, report to the department the amount of the social security disability insurance payments.

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<sup>1</sup> This calculation is preliminary and subject to revision.

<sup>2</sup> Subject to revision to ensure cross-references are corrected.

**D21-24**

**Amend Social Security Disability Insurance Disqualification**

**Section 108.04 (12) (f) 1m. and 2m. of the statutes are renumbered 108.05 (7m) (a) and (b) and amended to read:**

(a) The intent of the legislature in enacting this ~~paragraph~~ subsection is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

(b) In this ~~paragraph~~ subsection, "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

**Section 108.04 (12) (f) 3. of the statutes is repealed.**

**Section 1754. 108.04 (12) (f) 4. of the statutes is renumbered 108.05 (7m) (e).**

**Section 108.05 (7m) (title), (c) and (d) of the statutes are created to read:**

SOCIAL SECURITY DISABILITY INSURANCE PAYMENTS. (c) If a monthly social security disability insurance payment is issued to a claimant, the department shall reduce benefits otherwise payable to the claimant for a given week in accordance with par. (d). This subsection does not apply to a lump sum social security disability insurance payment in the nature of a retroactive payment or back pay.

(d) The department shall allocate a monthly social security disability insurance payment by allocating to each week the fraction of the payment attributable to that week.

**3. Effects of Proposed Change**

- a. **Policy:** Under this proposed change, recipients of SSDI may receive UI benefits.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

**D21-24**

**Amend Social Security Disability Insurance Disqualification**

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective for weeks of unemployment after the proposal is enacted.

Date: 05/17/21  
Prepared by: Technical Services Section

## **FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

### **Summary of Proposal:**

The proposal repeals the prohibition that allows an otherwise eligible claimant to receive both federal social security disability benefits (SSDI) and Unemployment Insurance (UI) benefits for the same period, and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. Under the proposal, DWD will reduce the amount of weekly UI benefits by the proportionate amount of the claimant's SSDI payment.

### **UI Trust Fund Impact:**

There is not expected to be any measurable impact to the UI Trust Fund.

### **IT and Administrative Impact:**

This proposal would have an estimated one-time IT impact of \$27,946 and a one-time administrative impact of \$8,384. There are no ongoing administrative impacts to the UI program.

### **Trust Fund Methodology:**

SSDI recipients in general have strict limits on the amount of income they may earn and continue to receive SSDI. This maximum amount ranges from \$1,260 per month for disabled individuals to \$2,110 per month for blind individuals. Assuming the individuals meet the other qualifying requirements, this would lead to a weekly benefit rate of either \$151 or \$253 per week. The average SSDI payment in Wisconsin was \$1,443 per month in 2020. Treating SSDI payments as employer contributed pension payments, each weekly benefit payment would be reduced on average by \$166 per week. For most SSDI claimants, this likely would completely offset any UI benefit available. While certain individuals would be eligible for UI, most SSDI recipients would not qualify for any UI payments. There is not expected to be a measurable impact on UI benefits or the UI Trust Fund.



**D21-25**  
**Electronic Communication and Filing**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Electronic Communication and Filing**

**1. Description of Proposed Change**

Employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically. Electronic filing ensures that reports are not lost in the mail and reduce administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer; any employer may do so. Current law also permits the Department to electronically communicate with employers and claimants who opt for that form of communication—though not all communication with the Department can currently be electronic.

The Governor’s Budget Bill (AB 68 / SB 111) proposes that the electronic filing, electronic communication, and electronic payment provisions be mandatory for employers and claimants unless the employer or claimant demonstrates good cause for being unable to use the electronic method. The Department would determine good cause by rule. The Bill also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it.

The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements while

## D21-25

### Electronic Communication and Filing

safeguarding the rights of those whose access to electronic means is severely limited or unavailable.

#### 2. Proposed Statutory Changes<sup>1</sup>

##### **Section 108.14 (2e) of the statutes is amended to read: 108.14 (2e)**

The department ~~may~~ shall provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, ~~upon request to and with prior approval by the department, may~~ shall be used for departmental transmission or receipt of any document specified by the department that is related to the administration of this chapter in lieu of any other means of submission or receipt specified in this chapter. The secure means of electronic interchange shall be used by employing units, claimants, and other persons unless a person demonstrates good cause for not being able to use the secure means of electronic interchange. The department shall determine by rule what constitutes good cause, for purposes of this subsection. Subject to s. 137.25 (2) and any rules promulgated thereunder, the department may permit the use of the use of electronic records and electronic signatures for any document specified by the department that is related to the administration of this chapter. If a due date is established by statute for the receipt of any document that is submitted electronically to the department under this subsection, then that submission is timely only if the document is submitted by midnight of the statutory due date.

##### **Section 108.17 (2) (b) of the statutes is amended to read:**

The department ~~may~~ shall electronically provide a means whereby an employer that files its employment and wage reports electronically may determine the amount of contributions due for payment by the employer under s. 108.18 for each quarter. If an employer that is subject to a contribution requirement files its employment and wage reports under s. 108.205 (1) electronically,

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<sup>1</sup> Subject to revision to ensure cross-references are corrected.

**D21-25**

**Electronic Communication and Filing**

in the manner prescribed by the department for purposes of this paragraph, the department may require the employer to determine electronically the amount of contributions due for payment by the employer under s. 108.18 for each quarter. In such case, the employer is excused from filing contribution reports under par. (a). The employer shall pay the amount due for each quarter by the due date specified in par. (a).

**Section 108.17 (2b) of the statutes is amended to read:**

The department shall prescribe a form and methodology for filing contribution reports under sub. (2) electronically. Each employer ~~of 25 or more employees, as determined under s. 108.22 (1) (ae),~~ that does not use an employer agent to file its contribution reports under this section shall file its contribution reports electronically in the manner and form prescribed by the department, unless the employer demonstrates good cause for not being able to file contribution reports electronically.

The department shall determine by rule what constitutes good cause, for purposes of this subsection. Each employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to a reporting requirement under this subsection, it shall continue to file its reports under this subsection unless that requirement is waived by the department.

**Section 108.17 (7) (a) of the statutes is amended to read:**

Each employer ~~whose net total contributions paid or payable under this section for any 12-month period ending on June 30 are at least \$10,000~~ shall pay all contributions under this section by means of electronic funds transfer beginning with the next calendar year, unless the employer demonstrates good cause for not being able to pay contributions by electronic funds transfer. The department shall determine by rule what constitutes good cause, for purposes of this subsection.

**D21-25**  
**Electronic Communication and Filing**

Once an employer becomes subject to an electronic payment requirement under this paragraph, the employer shall continue to make payment of all contributions by means of electronic funds transfer unless that requirement is waived by the department.

**108.205 (2) of the statutes is amended to read:**

Each employer ~~of 25 or more employees, as determined under s. 108.22 (1) (ae),~~ that does not use an employer agent to file its reports under this section shall file the quarterly report under sub. (1) electronically in the manner and form prescribed by the department, unless the employer demonstrates good cause for not being able to file reports electronically. The department shall determine by rule what constitutes good cause, for purposes of this subsection. An employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to the reporting requirement under this subsection, the employer shall continue to file its quarterly reports under this subsection unless that requirement is waived by the department.

**Non-statutory provision:**

(1) UNEMPLOYMENT INSURANCE; ELECTRONIC INTERCHANGE. The department of workforce development shall submit a notice to the legislative reference bureau for publication in the Wisconsin Administrative Register indicating the date upon which the department is able to implement the treatment of s. 108.14 (2e).

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will result in increased efficiencies and improved experiences for claimants and employers.
- b. **Administrative:** This proposal will require training of Department staff.

**D21-25**  
**Electronic Communication and Filing**

c. **Fiscal:** A fiscal estimate is not yet available.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective with the other provisions of the agreed bill. The treatment of section 108.14 (2e) will take effect on the date specified in the notice published in the register. The provisions related to good cause would be effective after the Department promulgates a rule defining “good cause.”

Date: 05/12/2021

Prepared by: Technical Services Section

## FISCAL ANALYSIS OF PROPOSED LAW CHANGE

### Summary of Proposal:

Employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically. Electronic filing ensures that reports are not lost in the mail and reduce administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer, although any employer may do so. Current law also permits the Department to electronically communicate with employers and claimants who opt for that form of communication—though not all communication with the Department can currently be electronic.

This proposal makes the electronic filing, electronic communication, and electronic payment provisions be mandatory for employers and claimants unless the employer or claimant demonstrates good cause for being unable to use the electronic method. The Department would determine good cause by rule. The proposal also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it.

The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements.

The implementation of this proposal is delayed until the Department promulgates rules when the Department has the technological capability to fully implement.

### UI Trust Fund Impact:

This proposal is not expected to have a Trust Fund impact.

### IT and Administrative Impact:

If this proposal is implemented as a part of a new system then the IT costs and administrative impacts will be attributed to that modernization effort.

If this proposal is implemented before the modernization effort then the cost would be \$49,840 for IT and \$16,447 for administration for a total of \$66,287.

### Trust Fund Methodology:

Any Trust Fund impacts resulting from modern technology and ease of reporting will be attributed to the technology proposal.

### IT and Administrative Impact Methodology:

Implementation is expected to be a part of a modernization effort. If implemented separately, the majority of the cost is changing hard-coded correspondence.

**D21-26**  
**Worker Misclassification Penalties**

Date: April 15, 2021  
Proposed by: DWD  
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
**Worker Misclassification Penalties**

**1. Description of Proposed Change**

Civil and criminal penalties were created, as part of the 2015-2016 UIAC Agreed Bill, for employers who intentionally misclassify their workers as independent contractors. The current penalties only apply to construction employers and are:

1. \$500 civil penalty for each employee who is misclassified, but not to exceed \$7,500 per incident.
2. \$1,000 criminal fine for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation, but only if the employer has previously been assessed a civil penalty for misclassified workers.
3. \$1,000 civil penalty for each individual coerced to adopt independent contractor status, up to \$10,000 per calendar year.

The civil penalties are deposited into the Department's program integrity fund, which is used, in part, to fund the costs of staff who investigate employee classification.

The Joint Task Force on Payroll Fraud and Worker Misclassification recommended that the penalties for intentional worker misclassification be structured to deter repeat violations.<sup>1</sup> The Governor's Budget Bill (AB 68 / SB 111) proposes to amend the civil penalties statutes by having the penalties potentially apply to all employers. The Bill also eliminates the \$7,500 and \$10,000 caps on the civil penalties and doubles the penalties for subsequent violations. The Bill makes no changes to the criminal penalties.

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<sup>1</sup> [Joint Task Force on Payroll Fraud and Worker Misclassification 2020 Report](#), p. 10.

**D21-26**  
**Worker Misclassification Penalties**

**2. Proposed Statutory Changes<sup>2</sup>**

**108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.) and amended to read:**

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall, for each incident, be assessed a penalty by the department as follows:

1. For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$500 for each employee who is misclassified, ~~but not to exceed \$7,500 per incident.~~

**Section 108.221 (1) (a) 2. of the statutes is created to read:**

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$1,000 for each employee who is misclassified.

**108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and amended to read:**

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who, through coercion, requires an individual to adopt the status of a nonemployee shall be assessed a penalty by the department as follows:

- (a) For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$1,000 for each individual so coerced, ~~but not to exceed \$10,000 per calendar year.~~

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<sup>2</sup> Subject to revision to ensure cross-references are corrected.



**D21-26**  
**Worker Misclassification Penalties**

**Section 108.221 (2) (b) of the statutes is created to read:**

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$2,000 for each individual so coerced.

**3. Effects of Proposed Change**

- a. **Policy:** The proposed change will permit the Department to assess civil penalties against any employer that intentionally misclassifies workers as independent contractors and will increase the amount of the penalties for subsequent violations.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is not yet available.

**4. State and Federal Issues**

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

**5. Proposed Effective/Applicability Date**

This proposal would be effective for employees misclassified after the law change is enacted.

**Worker Misclassification Penalties**

Date: 05/052021

Prepared by: Technical Services Section

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE****Summary of Proposal:**

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is \$500 for each employee who is misclassified, not to exceed \$7,500 per incident. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year. Penalties are deposited in the unemployment program integrity fund.

The proposal removes the \$7,500 and \$10,000 limitations on these penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation. The proposal also removes the limitations on the types of employers to which the penalties apply, allowing them to be assessed against any type of employer that violates the above prohibitions.

**UI Trust Fund Impact:**

This proposal is expected to have a positive but indeterminate impact on the Trust Fund because of the incentive for employers to correctly register as an employer and correctly list employees to avoid penalties.

**IT and Administrative Impact:**

Ongoing administrative impact to the UI program is indeterminate.

## 2021 UIAC Proposals

<b>No.</b>	<b>Title</b>	<b>Presented</b>	<b>Action</b>
D21-01	Creation of Unemployment Administration Fund	3/18/21	
D21-02	Minor and Technical Corrections	3/18/21	
D21-03	Reimbursable Employer Debt Assessment	3/18/21	
D21-04	DWD Reports to Legislature	3/18/21	
D21-05	Prohibit DOR Collection	3/18/21	
D21-06	Department Error	3/18/21	
D21-07	Effect of Criminal Conviction	3/18/21	
D21-08	Fiscal Agent Election	3/18/21	
D21-09	Employee Status Clarification	4/15/21	
D21-10	SUTA Dumping Penalties	4/15/21	
D21-11	Work Share Revisions	4/15/21	
D21-12	Department Flexibility for Federal Funding	4/15/21	
D21-13	Construction Employer Initial Contribution Rates	4/15/21	
D21-14	DWD 140 - Permanent Rule Scope	4/15/21	
D21-15	Camp Counselor Exclusion	4/15/21	
D21-16	Repeal Pre-employment & Occupational Drug Testing	4/15/21	
D21-17	Repeal Substantial Fault	4/15/21	
D21-18	Amend Quit Exception for Relocating Spouses	4/15/21	
D21-19	Repeal the Waiting Week	4/15/21	
D21-20	Repeal Statutory Work Search & Registration Waivers	4/15/21	
D21-21	Repeal Wage Threshold for Receipt of Benefits	4/15/21	
D21-22	Increase Maximum Weekly Benefit Rate	4/15/21	
D21-23	Flexibility for Finding Suitable Work	4/15/21	
D21-24	Amend SSDI Disqualification	4/15/21	
D21-25	Electronic Communications and Filing	4/15/21	
D21-26	Amend Worker Classification Penalties	4/15/21	



**Unemployment Insurance  
Advisory Council**

## 2021 Unemployment Insurance Advisory Council Schedule

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January 21, 2021	Scheduled Meeting of UIAC Discuss Public Hearing November 2020 Comments
March 18, 2021	Scheduled Meeting of UIAC Department Proposals Introduced
April 15, 2021	Scheduled Meeting of UIAC Additional Department Proposals Introduced
May 20, 2021	Scheduled Meeting of UIAC Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
May/June 2021	Tentative Meeting of UIAC Discuss Department Proposals and Labor & Management Proposals
June 17, 2021	Scheduled Meeting of UIAC Discuss Department Proposals and Labor & Management Proposals
July 15, 2021	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
August 19, 2021	<b>Scheduled Meeting of UIAC</b> <b>Review and Approval of Department Draft of Agreed Upon Bill</b>
September 16, 2021	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
<b>October 21, 2021</b>	<b>Scheduled Meeting of UIAC</b> <b>Final Review and Approval of LRB Draft of Agreed Upon Bill</b>
November 18, 2021	Scheduled Meeting of UIAC <b>Agreed Upon Bill Sent to the Legislature for Introduction</b>
<b>December 2021</b>	<b>Tentative Meeting of UIAC</b>
<b>January 2022</b>	<b>Tentative Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2022 Legislative Session</b>