STATE OF WISCONSIN DWD
Department of Workforce Development

Unemployment Insurance Advisory Council

Meeting Agenda

October 21, 2021, 10:00 a.m.

The public may attend by teleconference:

Phone: 415-655-0003 or 855-282-6330 (toll free) or WebEx
Meeting Number (Access Code): 1451 45 6422 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 September 16, 2021 Council Meeting
3. Department Update
4. Trust Fund Update
5. Rulemaking Update
   - Emergency Rule 2118, DWD Ch. 102 (Eff. 6/29/21 – 11/25/21)
     - Employer contribution rates for 2022.
   - Emergency Rule 2125, DWD Ch. 102, 113 & 123 (Eff. 10/3/21 – 3/2/22)
     - Protecting Wisconsin employers from the adverse financial effects of COVID-19
6. Preliminary draft of UIAC agreed-upon bill
7. Department proposals for the Wisconsin Unemployment Insurance Law
   - D21-09: Employee Status Clarification
   - D21-10: SUTA Dumping Penalties
   - D21-12: Department Flexibility for Federal Funding
   - D21-13: Construction Employer Initial Contribution Rates
   - D21-14: DWD 140 - Permanent Rule Scope
   - 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

8. Labor Proposals for the Unemployment Insurance Law

- L21-01: Gradually Transition to AHCM Tax Schedule Triggers
- L21-02: Gradually Increase the Maximum WBR to $450/week
- L21-03: Eliminate the 1-week Waiting Period
- L21-04: Expand Worker Misclassification Penalties
- L21-05: DWD Trust Fund Study

9. Management Proposals for the Unemployment Insurance Law

- M21-01: UI Computer Upgrade
- M21-02: Union Referral Service Work Search Criteria
- M21-03: Definition of Employee vs. Independent Contractor
- M21-04: Quit Good Cause Revision
- M21-05: Link Benefit Eligibility Weeks to Unemployment Rate
- M21-06: Clarify Definitions/Grounds for Misconduct and Sub. Fault

10. Research Requests

11. Future Meeting Dates: November 18, 2021; December 16, 2021

12. 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 listed 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 people with disabilities. If you need an accommodation, including an interpreter or information in an alternate format, please contact the UI Division Bureau of Legal Affairs at 608-266-0399 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

September 16, 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, David Bohl, Mike Gotzler, Di Ann Fechter, Susan Quam, Shane Griesbach, Terry Hayden, Dennis Delie, and Theresa Hillis.

Department Staff: Mark Reihl, Andrew Rubsam, Jim Moe, Jennifer Wakerhauser (Chief Legal Counsel), Tom McHugh, Pam James, Michael Myszewski, Mary Jan Rosenak, Jason Schunk, Linda Hendrickson, Samantha Ahrendt, Janet Sausen, Maegan Evans, and Joe Brockman.

Members of the Public: Ryan Horton (Legislative Fiscal Bureau), Michael Duchek (Legislative Reference Bureau), John Mielke, and Victor Forberger (Attorney, Wisconsin UI Clinic).

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:05 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

Mr. Reihl welcomed David Bohl as a member of the Council.

Ms. Knutson thanked John Mielke for his six years of service on the Council.

2. Approval of Minutes

Motion by Ms. Fechter, second by Mr. Manley, to approve the minutes of the August 17, 2021, meeting without correction. The vote was taken by roll call and passed unanimously.

3. Department Update

Mr. Reihl stated that, as of September 11, 2021, the Trust Fund declined by $576 million, or 50.6%, as compared to the same time in 2020. The year-to-date tax receipts declined $39 million, due primarily to lower employer tax rates.

Mr. Reihl stated that Initial Claims for Week 37 for the three most years are as follows:

2021: 5,954

2020: 11,575

2019: 3,593

Mr. Reihl stated that continuing claims for Week 37 for the three most recent years are as follows:

2021: 41,125

2020: 129,533

2019: 20,410

Mr. Reihl stated that the Federal benefit programs ended on September 4, 2021.

Mr. Reihl stated that a briefing for Council members on UI modernization will be scheduled for a future meeting.

4. Trust Fund Update

Ms. Knutson stated that Tom McHugh will not give his usual report this month. A Trust Fund summary is included in members' packets. The current Trust Fund balance is $947.4 million.

5. Program Integrity Assessment

A letter from Secretary-designee Amy Pechacek recommends that the Council support a 0.01% assessment of payroll for Program Integrity that will amount to $3.3 million. This amount is equivalent to 5.7 % of UI's federal administrative grant. Ms. Knutson asked Council members to support the .01% assessment.

Mr. Hayden moved that the Council support the .01% assessment. The motion was seconded by Mr. Manley. The vote was taken by roll call and passed unanimously.

6. Legislative Update

<u>Legalizing recreational marijuana (SB545)</u>

Mr. Rubsam stated that this bill was introduced, and no action has been taken. Mr. Rubsam stated that the bill provides that marijuana use off the employer's premises does not constitute misconduct or substantial fault. Mr. Rubsam stated that the bill excluded THC from the UI drug testing requirement.

<u>Eligibility for unemployment insurance benefits in the case of an unwillingness to receive the COVID-19 vaccine (AB452 / SB547)</u>

Mr. Rubsam stated that this bill creates a quit exception for an employee who terminates their work due to the employee's unwillingness, as a condition of continued employment, to receive a vaccine against COVID-19 or furnish proof of having done so. Mr. Rubsam stated that under this bill, refusing to take the vaccine or report vaccine status does not constitute misconduct or substantial fault. Mr. Rubsam stated that no action has been taken on this bill, and there is no fiscal estimate available yet. The bill would not retroactively create the exceptions.

7. Rulemaking Update

Ms. Knutson stated that there are three emergency rules currently in effect and one proposed emergency rule. The proposed emergency rule is time sensitive and must be effective by October 3, 2021.

Proposed Emergency Rule, DWD Ch. 102, 113, and 123

Mr. Rubsam stated that there are three provisions to the proposed emergency rule:

1. Waive interest for reimbursable employers thru March of 2022.

2. Ensure that the contribution rates for 2022 are consistent with the Legislative intent in Act 184.

3. Ensure that all employers in a claimant's base period are relieved of benefit charges.

Mr. Rubsam stated that the fiscal estimate for this proposed emergency rule is included in the members' packets.

8. Preliminary Draft of the UIAC Agreed-Upon Bill

Mr. Rubsam stated that the chart shows the sections of the bill that correspond to the UIAC proposals.

Mr. Rubsam directed members' attention to the following sections:

21-15 Camp Counselor Exclusion

The exclusion will take effect in January of 2022 if passed and signed prior to January 1, 2022. If the bill is passed and signed after January 1, 2022, the effective date will be January 1, 2023

21-05 Prohibit DOR Collections

Mr. Rubsam stated that this proposal would prohibit the Department of Revenue from collecting debts owed to the Department. The effect of this proposal will be to keep the Trust Fund balance higher. Mr. Rubsam stated the proposal language was modified to better reflect the intent of the proposal.

9. Department Proposals for the Wisconsin Unemployment Insurance Law

Ms. Knutson stated the Department proposals that have not yet acted upon are listed in the agenda.

10. Labor Proposals for the Wisconsin Unemployment Insurance Law

Ms. Knutson stated that the Labor proposals that have not been acted upon are listed in the agenda.

11. Management Proposals for the Wisconsin Unemployment Insurance Law

Ms. Knutson stated that the Management proposals that have not been acted upon are listed in the agenda.

12. Research Requests

Ms. Knutson stated Rob Usarek's response to Management's research request is found in the members' packets.

Mr. Manley stated that he will review the response and determine if that answers his questions.

13. Future Meeting Dates

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

October 21, 2021

November 18, 2021

December 16, 2021

Mr. Gotzler moved, second by Mr. Griesbach, that the Council convene in closed caucus to deliberate the items on the agenda and report back. The vote was taken by roll call and passed unanimously.

The Council convened in closed caucus session at 10:45 am.

The Council reconvened in open session at 1:35 pm.

Ms. Hillis left the meeting during closed caucus and will not return.

Mr. Manley stated that both Management and Labor are supportive of the substance of the proposed emergency rule. Mr. Manley stated that Management has an ongoing interest in robust notifications to employers who have to fill out the form in order to have their charges abated.

Mr. Hayden moved, second by Mr. Manley, to approve the Council's support of the emergency rule. The vote was taken by roll call and passed unanimously.

Mr. Manley stated that discussion continued of Management and Labor proposals to find a way to reach a consensus. Mr. Manley stated that at this time both sides will lock the agreed upon bill into the Department's proposals that were already agreed to. Mr. Manley stated that

Management is willing to keep talking to see if there is room for agreement. Mr. Manley stated that there is a limited legislative session with a likely February 2022 adjournment.

Mr. Hayden stated that he agreed with Mr. Manley's statement. Mr. Hayden thanked all of the Council members for their willingness to seek compromise. Mr. Hayden stated that Labor will continue to work for a higher maximum weekly benefit rate in future discussions.

Both Mr. Hayden and Mr. Manley stated that their respective Caucuses did not review the draft bill.

Ms. Knutson stated that the agreed bill draft will be on the October meeting agenda.

Both Mr. Manley and Mr. Hayden requested that Department, Labor and Management proposals be placed on the agenda for October's meeting.

14. Adjourn

Motion by Mr. Manley, second by Mr. Hayden, to adjourn the meeting. The vote was taken by voice vote and passed unanimously.

The meeting was adjourned at 1:47 pm.

UI Reserve Fund Highlights

October 21, 2021

1. Calendar year benefit payments through October 9, 2021 declined by $645.9 million or 52.5% when compared to benefits paid through the same period in 2020.

Benefits Paid	**2021 YTD** *(in millions)*	**2020 YTD** *(in millions)*	**Change** *(in millions)*	**Change** *(percent)*
Total Regular UI Paid	$584.0	$1,229.9	($645.9)	(52.5%)

2. Calendar year tax receipts through October 9, 2021 declined by $39.3 million or 9.1% when compared to tax receipts through the same period in 2020.

Tax Receipts	**2021 YTD** *(in millions)*	**2020 YTD** *(in millions)*	**Change** *(in millions)*	**Change** *(percent)*
Total Tax Receipts	$393.0	$432.3	($39.3)	(9.1%)

3. The Trust Fund balance on October 9, 2021, was $936 million.

4. Interest earned on the Trust Fund is received quarterly. Interest for the first three quarters of 2021 was $16.1 million compared to $30.7 million for the same period last year. The U.S. Treasury annualized interest rate for 3rd quarter 2021 is 1.6%.

UI Trust Fund Interest	**2021 YTD** *(in millions)*	**2020 YTD** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Interest Earned	$16.1	$30.7	($14.6)	(47.7%)

FINANCIAL STATEMENTS

For the Month Ended August 31, 2021

Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED August 31, 2021

	CURRENT YEAR	PRIOR YEAR
ASSETS		
CASH:		
U.I. CONTRIBUTION ACCOUNT	(3,309.16)	1,577,351.00
U.I. BENEFIT ACCOUNTS	(4,363,413.08)	(15,702,577.18)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	1,068,814,949.36	1,401,457,439.93
TOTAL CASH	1,064,448,227.12	1,387,332,213.75
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	168,155,563.44	76,611,801.92
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	(43,800,467.85)	(30,473,543.60)
NET BENEFIT OVERPAYMENT RECEIVABLES	124,355,095.59	46,138,258.32
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	32,898,904.85	31,088,890.93
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	(15,138,329.71)	(16,201,015.81)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	17,760,575.14	14,887,875.12
OTHER EMPLOYER RECEIVABLES	59,351,167.52	65,678,514.16
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(9,009,976.91)	(9,295,572.07)
NET OTHER EMPLOYER RECEIVABLES	50,341,190.61	56,382,942.09
TOTAL ACCOUNTS RECEIVABLE	192,456,861.34	117,409,075.53
TOTAL ASSETS	1,256,905,088.46	1,504,741,289.28
LIABILITIES AND EQUITY		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	97,323,888.58	37,723,237.11
OTHER LIABILITIES	17,817,193.25	15,139,004.31
FEDERAL BENEFIT PROGRAMS	(3,773,502.55)	(8,200,570.41)
CHILD SUPPORT HOLDING ACCOUNT	118,452.00	280,072.00
FEDERAL WITHHOLDING TAXES DUE	880,610.00	2,052,075.74
STATE WITHHOLDING TAXES DUE	10,292,736.00	35,335,279.46
DUE TO OTHER GOVERNMENTS (8)	432,056.54	507,337.64
TOTAL LIABILITIES	123,091,433.82	82,836,435.85
EQUITY:		
RESERVE FUND BALANCE	1,501,663,921.52	1,834,495,072.73
BALANCING ACCOUNT	(367,850,266.88)	(412,590,219.30)
TOTAL EQUITY	1,133,813,654.64	1,421,904,853.43
TOTAL LIABILITIES AND EQUITY	1,256,905,088.46	1,504,741,289.28

1. $20,685,427 of this balance is for administration purposes and is not available to pay benefits.

2. $1,656,846 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

3. $94,970,990 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 34.0%. The allowance for uncollectible delinquent employer taxes is 44.0%. 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 $833,969. Deferrals for the prior year were $1,262,430.

6. $15,841,102, or 48.2%, of this balance is estimated.

7. $80,918,728 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. $16,405,161 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 $2,746. The 08/31/2021 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is $46,684. 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 August 31, 2021

	CURRENT ACTIVITY	YTD ACTIVITY	PRIOR YTD
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	1,978,829,554.37	2,067,917,022.31	2,909,863,506.12
BALANCING ACCOUNT	(816,127,064.98)	(896,424,588.78)	(916,159,078.07)
TOTAL BALANCE	1,162,702,489.39	1,171,492,433.53	1,993,704,428.05
INCREASES:			
TAX RECEIPTS/RFB PAID	1,410,740.18	273,331,070.61	306,337,114.30
ACCRUED REVENUES	3,957,634.06	6,552,787.74	3,765,865.69
SOLVENCY PAID	405,433.00	116,658,061.96	122,970,590.64
FORFEITURES	472.00	9,856.00	92,257.72
BENEFIT CONCEALMENT INCOME	35,470.58	397,158.66	406,289.81
INTEREST EARNED ON TRUST FUND	0.00	11,806,827.19	22,425,381.53
FUTA TAX CREDITS	577.26	7,983.08	4,510.60
OTHER CHANGES	3,130,906.66	31,437,840.43	57,777,534.15
TOTAL INCREASES	8,941,233.74	440,201,585.67	513,779,544.44
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	30,559,947.93	368,777,693.50	917,981,395.51
QUIT NONCHARGE BENEFITS	4,251,560.31	71,225,318.07	142,307,966.62
OTHER DECREASES	26,328.76	5,145,783.08	405,047.25
OTHER NONCHARGE BENEFITS	2,992,231.49	32,731,569.91	24,884,709.68
TOTAL DECREASES	37,830,068.49	477,880,364.56	1,085,579,119.06
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	1,501,663,921.52	1,501,663,921.52	1,834,495,072.73
BALANCING ACCOUNT	(367,850,266.88)	(367,850,266.88)	(412,590,219.30)
TOTAL BALANCE (9) (10) (11) (12)	1,133,813,654.64	1,133,813,654.64	1,421,904,853.43

9. This balance differs from the cash balance related to taxable employers of $1,078,584,686 because of non-cash accrual items.

10. $20,685,427 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. $1,656,846 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. $94,970,990 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 08/31/21

RECEIPTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	$1,410,740.18	$273,331,070.61	$306,337,114.30
SOLVENCY	405,433.00	116,658,061.96	122,970,590.64
ADMINISTRATIVE FEE	31.55	451.32	367.38
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	9,778.74	2,899,911.08	2,821,950.72
UNUSED CREDITS	(402,742.31)	3,436,063.48	2,130,331.80
GOVERNMENTAL UNITS	1,234,630.59	20,170,421.88	40,036,935.95
NONPROFITS	1,276,373.88	17,742,239.38	49,199,643.43
REDA PAID	0.00	0.00	0.00
INTERSTATE CLAIMS (CWC)	916,328.64	8,357,334.31	2,110,204.04
ERROR SUSPENSE	(107,544.21)	8,372.84	37,924.47
FEDERAL PROGRAMS RECEIPTS	167,614,715.15	1,704,612,104.54	2,476,922,303.55
OVERPAYMENT COLLECTIONS	3,485,970.84	30,653,191.79	17,723,854.72
FORFEITURES	472.00	9,856.00	92,257.72
BENEFIT CONCEALMENT INCOME	35,470.58	397,158.66	406,289.81
EMPLOYER REFUNDS	(356,274.44)	(4,003,944.13)	(2,804,556.35)
COURT COSTS	17,200.13	243,012.47	243,338.02
INTEREST & PENALTY	324,118.82	2,457,330.66	2,417,521.99
CARD PAYMENT SERVICE FEE	1,749.78	19,854.66	10,917.36
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	48,625.23	591,291.08	642,664.50
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	5,625.45	18,445.29	4,653.43
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	1,044.92	26,985.49	10,061.50
SPECIAL ASSESSMENT FOR INTEREST	1,013.43	11,151.38	13,133.67
LOST WAGES ASSISTANCE (LWA) ADMIN	0.00	365,897.89	0.00
EMERGENCY ADMIN GRANT-EUISAA 2020	0.00	0.00	18,914,772.00
EMERGENCY UC RELIEF (EUR)	2,706,062.00	26,261,058.00	38,513,400.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	11,806,827.19	22,425,381.53
MISCELLANEOUS	4,924.16	47,308.99	123,178.31
TOTAL RECEIPTS	$178,633,748.11	$2,216,121,456.82	$3,101,304,234.49

DISBURSEMENTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
CHARGES TO TAXABLE EMPLOYERS	$34,459,038.69	$413,666,880.89	$933,975,762.50
NONPROFIT CLAIMANTS	1,940,497.97	17,137,452.69	66,790,111.61
GOVERNMENTAL CLAIMANTS	1,570,677.83	15,936,775.81	53,897,131.20
INTERSTATE CLAIMS (CWC)	349,208.84	5,198,024.30	9,662,523.62
QUITS	4,251,560.31	71,225,318.07	142,307,966.62
OTHER NON-CHARGE BENEFITS	2,865,776.40	32,469,197.73	23,713,677.37
CLOSED EMPLOYERS	(83.77)	(2,019.99)	(212,417.05)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	300,142.68	3,055,425.77	1,640,785.21
EX-MILITARY (UCX)	75,882.30	1,012,700.27	1,044,899.72
TRADE ALLOWANCE (TRA/TRA-NAFTA)	(9,179.00)	(251,891.76)	609,611.09
WORK-SHARE (STC)	(95.21)	954,548.10	0.00
FEDERAL PANDEMIC UC (FPUC)	116,757,204.04	1,178,556,885.01	2,352,471,701.38
LOST WAGES ASSISTANCE $300 ADD-ON (LWA)	410,379.81	11,827,874.60	0.00
MIXED EARNERS UC (MEUC)	196,900.00	406,500.00	0.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	16,336,346.75	138,969,692.67	97,019,828.00
PANDEMIC EMERGENCY UC (PEUC)	35,130,833.71	350,647,449.14	34,174,649.00
PANDEMIC FIRST WEEK (PFW)	0.00	20,000,000.00	0.00
EMER UC RELIEF REIMB EMPL (EUR)	3,666.99	66,587.09	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(11.71)	(5,826.71)	(15,966.20)
FEDERAL ADD'L COMPENSATION $25 ADD-ON (FAC)	(12,335.28)	(134,304.05)	(147,632.49)
FEDERAL EMERGENCY UI (EUC)	(84,946.82)	(1,096,525.04)	(1,430,304.27)
FEDERAL EXTENDED BENEFITS (EB)	203,359.12	4,624,262.60	(145,180.12)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	1,095.92	22,699.58	0.00
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(77.28)	1,551.83	(2,111.09)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	4,660.02	71,014.66	(3,807.27)
INTEREST & PENALTY	272,798.90	2,352,420.33	2,332,195.13
CARD PAYMENT SERVICE FEE TRANSFER	3,146.40	20,257.84	10,599.87
PROGRAM INTEGRITY	777,741.91	3,515,122.89	3,511,636.76
SPECIAL ASSESSMENT FOR INTEREST	0.00	13,626.85	17,151.12
COURT COSTS	24,848.82	249,427.19	266,569.66
ADMINISTRATIVE FEE TRANSFER	42.50	464.29	515.38
LOST WAGES ASSISTANCE (LWA) ADMIN TRANSFER	0.00	365,897.89	0.00
FEDERAL WITHHOLDING	(497,772.00)	(522,464.00)	(1,895,277.80)
STATE WITHHOLDING	(5,280,194.00)	13,473,706.48	(33,593,896.21)
REED ACT & ARRA SPECIAL ADMIN EXPENDITURES	0.00	121,258.73	0.00
FEDERAL LOAN REPAYMENTS	(577.26)	(7,983.08)	(4,510.60)
TOTAL DISBURSEMENTS	$210,050,537.58	$2,283,942,008.67	$3,685,996,212.14
NET INCREASE(DECREASE)	(31,416,789.47)	(67,820,551.85)	(584,691,977.65)
BALANCE AT BEGINNING OF MONTH/YEAR	$1,095,865,016.59	$1,132,268,778.97	$1,972,024,191.40
BALANCE AT END OF MONTH/YEAR	$1,064,448,227.12	$1,064,448,227.12	$1,387,332,213.75

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED August 31, 2021

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BEGINNING U.I. CASH BALANCE	$1,112,183,806.40	$1,137,108,896.48	$1,960,524,402.01
INCREASES:			
TAX RECEIPTS/RFB PAID	1,410,740.18	273,331,070.61	306,337,114.30
U.I. PAYMENTS CREDITED TO SURPLUS	2,819,630.40	129,572,250.09	184,554,732.93
INTEREST EARNED ON TRUST FUND	0.00	11,806,827.19	22,425,381.53
FUTA TAX CREDITS	577.26	7,983.08	4,510.60
TOTAL INCREASE IN CASH	4,230,947.84	414,718,130.97	513,321,739.36
TOTAL CASH AVAILABLE	1,116,414,754.24	1,551,827,027.45	2,473,846,141.37
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	30,559,947.93	368,777,693.50	917,981,395.51
BENEFITS CHARGED TO SURPLUS	7,266,453.57	104,276,802.38	167,607,675.01
TOTAL BENEFITS PAID DURING PERIOD	37,826,401.50	473,054,495.88	1,085,589,070.52
REED ACT EXPENDITURES	0.00	121,258.73	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	3,666.99	66,587.09	0.00
ENDING U.I. CASH BALANCE (13) (14) (15) (16) (17)	1,078,584,685.75	1,078,584,685.75	1,388,257,070.85

13. $1,486,070 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. $1,656,846 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

17. $94,970,990 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 August 31, 2021

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	($418,673,425.57)	($484,263,072.65)	($503,517,440.13)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	405,433.00	116,658,061.96	122,970,590.64
FORFEITURES	472.00	9,856.00	92,257.72
OTHER INCREASES	2,413,725.40	12,904,332.13	61,491,884.57
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	2,819,630.40	129,572,250.09	184,554,732.93
TRANSFERS BETWEEN SURPLUS ACCTS	44,102.70	24,261,424.72	17,902,488.20
INTEREST EARNED ON TRUST FUND	0.00	11,806,827.19	22,425,381.53
FUTA TAX CREDITS	577.26	7,983.08	4,510.60
TOTAL INCREASES	2,864,310.36	165,648,485.08	224,887,113.26
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	4,251,560.31	71,225,318.07	142,307,966.62
OTHER NON-CHARGE BENEFITS	3,014,893.26	33,051,484.31	25,299,708.39
BENEFITS CHARGED TO SURPLUS SUBTOTAL	7,266,453.57	104,276,802.38	167,607,675.01
REED ACT EXPENDITURES	0.00	121,258.73	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	3,666.99	66,587.09	0.00
BALANCE AT THE END OF THE MONTH/YEAR	(423,079,235.77)	(423,079,235.77)	(446,238,001.88)

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 102.01 and 123.01 and ***to create*** DWD 102.04, 113.027, and 123.04, relating to protecting Wisconsin employers from the adverse financial effects of COVID-19.

The Governor approved the scope statement for this rule, SS 075-21, on August 26, 2021. The scope statement was published in register No. 788B, on August 30, 2021. The notice of preliminary hearing and comment period on the scope statement was published on August 30, 2021, in register No. 788B. The preliminary hearing on the scope statement was held on September 8, 2021. The Department approved the scope statement on September 9, 2021. This rule was approved by the Governor on September 17, 2021.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

On March 12, 2020, 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. On April 4, 2020, the President declared a major disaster under the federal Stafford Act in Wisconsin due to 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 ("Acts 185 and 4"), the Department of Workforce Development must charge unemployment benefits for initial claims that relate to the public health emergency first declared on March 12, 2020, by Executive Order 72 (the "public health emergency") to the balancing account of the Trust Fund for contribution employers. For reimbursable employers, the Department must charge such benefits to the interest and penalty appropriation unless federal funding is available to relieve employers of benefit charges. This treatment of claims charging applies to weeks of benefits payable for the period of March 15, 2020 through March 13, 2021.

2019 Wisconsin 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." 2021 Wisconsin Act 4 provides that only some employers must provide this information to the Department.

The federal Coronavirus Aid, Relief, and Economic Security ("CARES") Act and Continued Assistance for Unemployed Workers Act provide for 50% federal payment of unemployment insurance benefits chargeable to reimbursable employers for weeks of unemployment for March 15, 2020 through April 3, 2021. The federal American Rescue Plan Act provides for 75% federal payment of unemployment benefits chargeable to reimbursable employers for weeks of unemployment for April 4 through September 4, 2021. Federal law also provides for 100% federal funding for the first week of unemployment and for work share benefits for certain periods.

The Department's antiquated computer systems are ill-equipped to automatically transfer the charges from the employers' accounts to the balancing account, interest and penalty appropriation, or the federal funding sources. Each weekly claim to be recharged under section 108.08 (5) (bm), Stats., which was created and amended by Acts 185 and 4, requires the Department to change the benefit charges from the employer's account, after any federal funds have been appropriately applied, to the balancing account or interest and penalty appropriation. While the Department is working to automate as much of this process as possible, some manual processing of claims by Department personnel will be necessary due to the complexity of the claims charging system. Due to the high volume of claims filed during the pandemic, the Department anticipates that this project may not be completed until early 2022.

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.

The Department set up several new federal benefit programs during the pandemic, which delayed the programming for relieving employers of benefit charges. Because the Department was unable to complete the benefit charging changes required by Acts 185 and 4 by June 30, 2021, and Emergency Rule 2118 will expire before some employers' contribution rates for 2022 are assigned, some employers' rates will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for some employers subject to contribution financing, in contribution rates for 2022 that are higher than they should be unless the Department promulgates this emergency rule.

If the recharging of benefits from employer accounts to the balancing account is not completed by June 30, 2022 for contribution employers, those employers' contribution rates for 2023 could be set higher than they should be under the charging relief enacted by Acts 185 and 4. Contribution rates that are incorrect could adversely affect employers' abilities to recover financially from the economic downturn caused by the pandemic.

If the recharging of benefits from reimbursable employer accounts to the interest and penalty appropriation is not completed before the expiration of a blanket interest waiver for those employers, they will receive incorrect monthly bills for reimbursements with assessed interest charges that they should not be required to pay under Acts 185 and 4.

Because of the pandemic-related economic devastation, employers subject to reimbursement financing may be unable to pay their reimbursements for unemployment claims in full. The requirement to immediately pay their reimbursements could further jeopardize the viability of employers subject to reimbursement financing. Relieving reimbursable employers of interest charges is therefore necessary.

Statutes Interpreted

Sections 108.02 (8), 108.02 (22), 108.04 (2) (d), 108.07 (5) (bm), 108.18(4), and 108.22 (1) (cm), Stats.

Statutory Authority

Sections 108.14 (2) and 108.22 (1) (cm), 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.

Interest is assessed monthly on delinquent employer contributions and reimbursements in lieu of contributions. Section 108.22 (1) (a), Stats. The Department may promulgate rules to, in limited circumstances, "waive or decrease the interest charged." Section 108.22 (1) (cm), Stats.

Related Statutes or Rules

To implement the charging relief required under Acts 185 and 4, the Department promulgated EmR2044, which expired, and EmR2112, which expires October 2, 2021.

Current s. DWD 113.025 permits the Department to waive or decrease interest in limited circumstances. Emergency rule EmR2011, which expired, and EmR2108, which expires September 26, 2021, waive interest for reimbursable employers in certain circumstances due to the COVID-19 pandemic.

The Department previously promulgated emergency rule EmR2018, relating to employer contribution rates for 2021, which expired, and emergency rule EmR2118, which expires November 25, 2021, relating to employer contribution rates for 2022.

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 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. 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.

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 thirtieth day after the Department sends 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 by the time the Department completes the work to relieve employers of charges.

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. The Department will apply the employer charging provisions of Acts 185 and 4 to all base period employers for the claim.

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.

This rule also provides that the Department, in calculating an employer's net reserve as of the June 30, 2021 computation date, shall disregard all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021.

The Department will, in effect, assume that all benefit charges and adjustments were related to the public health emergency. This assumption applies only for the purposes of setting the contribution rates for 2022. This rule will ensure that employers' contribution rates for 2022 are calculated based on reserve fund balances as of June 30, 2021 without taking charges related to the public health emergency into account so that the policy goals of Acts 185 and 4 are met. This rule will only affect calculation of contribution rates for 2022. Contribution rates for 2023 will be calculated in 2022 after all charging relief is complete.

Finally, this rule provides a waiver of interest for employers subject to unemployment reimbursement financing for each month during which this rule is in effect. Under this rule, interest is waived starting October 1, 2021 for reimbursable employers. This will give reimbursable employers an opportunity to pay their reimbursements over time if any amounts are still due after the Department completes the work to relieve employer accounts of benefit charges.

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-charg[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.

The federal CARES Act provides that states have "flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest…." CARES Act s. 2103(a). US-DOL encourages states to "interpret or amend their state unemployment compensation laws in a manner that provides maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest." UIPL 18-20, p. 2.

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 charged benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

Iowa did not charge unemployment benefits related to COVID-19 to employer accounts until June 12, 2021.

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."

Michigan, Illinois, and Iowa do not appear to waive interest for employers subject to reimbursement financing. Minnesota law permits the compromise of reimbursements due by employers under Minnesota Statutes 2019, s. 268.067(b).

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 options available to ensure that employer contribution rates are appropriately determined for 2022, and the options available to provide maximum flexibility to employers subject to reimbursement financing regarding assessment of interest. The recharging of claims under s. 108.07 (5) (bm), Stats., may not be complete until early 2022. Because the Department had to set up several new federal benefit programs, the Department was unable to complete the recharging of claims by June 30, 2021 so that employer contribution rates would have been correctly set for 2022. The Department determined that 30 days after the Department sent a notification to the employer of an initial claim for benefit years is an appropriate deadline for employers not subject to the presumption to submit the documentation in order to give employers sufficient time to request relief and to ensure that all requests for relief are received before the Department completes the recharging work.

In particular, the Department reviewed 2021 Wisconsin Act 4 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. The Department interpreted the new legislation to apply the employer non-charging provisions Acts 185 and 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

Acts 185 and 4 provide 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 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 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. 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.

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, June 30 of each year. Ultimately, however, the employer's reserve fund balance takes into account all charges and credits on a rolling basis so that the employer's unemployment experience determines the contribution rate.

Because the Department had to implement a variety of new federal benefit programs, it was unable to complete the charging changes required by Acts 185 and 4 by June 30, 2021. Without an emergency rule, most employers' contribution rates for 2022 would have been based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would have resulted, for most employers subject to contribution financing, in contribution rates for 2022 that were higher than they should be.

This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021 relate to the public health emergency. This will have the effect of aligning employer contribution rates for 2022 with the policy goals of Acts 185 and 4.

Finally, reimbursable employer businesses that do not receive full charging relief under state and federal law (because, for example, the claims were for weeks of unemployment after the state law relief period ended) may find it difficult to pay their reimbursements timely during the COVID-19 pandemic due to a reduction in business income. Under this rule, businesses subject to reimbursement financing will not be assessed interest for tardy reimbursements and would therefore be given extra time to pay their bills.

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 subject to the Wisconsin unemployment insurance law, 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. The emergency rule is expected to have a positive economic impact on employers subject to unemployment insurance contribution financing by providing those employers with contribution rates that align with the policy goals of Acts 185 and 4. Businesses subject to unemployment insurance reimbursement financing would receive the benefit of a waiver of interest and potentially additional time to pay their reimbursements under this emergency rule.

Summary of comments on the statement of scope and description of how the comments were taken into account in drafting the rule

A preliminary public hearing on the statement of scope was held on September 8, 2021; comments were received at the hearing and by email. Commenters generally supported promulgating a rule creating policies like those established by the Department in prior unemployment insurance emergency rules related to COVID-19. One commenter indicated support for the charging relief and emergency rules the Department had promulgated in the past and indicated that the Department should continue to not require employers to submit a form to request charging relief for claims related to laid off workers. Another commenter supported the waiver of interest for reimbursable employers and asked to have the interest waived until after Department has relieved all employers of benefit charges related to the public health emergency as well as for some time afterward so that employers may review the revised bill and set up a payment plan.

> ***Agency Response:*** The Department considered all relevant comments received. The Department agrees that the intent of the new rule will be to continue to not require employers to submit a form to request charging relief for claims related to laid off workers but that there would continue to be some circumstances that require the form to be submitted to request benefit charging relief, such as for quits that would otherwise remain charged to employers. The Department has drafted the emergency rule to provide for an interest waiver for each month during which the rule is in effect for any part of the month. This is expected to provide an interest waiver for reimbursable employers after the Department completes the charging relief for reimbursable employer accounts, assuming that the emergency rule is in effect for at least 150 days.

Agency contact person

Questions related to this rule may be directed to:

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

Place where comments are to be submitted and deadline for submission

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

Comments will be accepted until a date to be determined.

SECTION 1. DWD 102.01 is amended to read:

DWD 102.01 Purpose. This chapter specifies the initial contribution rates for certain categories of employers. <u>This chapter also provides the treatment of benefit claims and adjustments for determining employer contribution rates for 2022.</u>

SECTION 2. DWD 102.04 is created to read:

DWD 102.04 2022 Employer Contribution Rates. When calculating 2022 employer contribution rates, all benefit charges for weeks of unemployment for the period of March 15, 2020 through March 13, 2021 and all benefit adjustments processed during the period of March 15, 2020 through March 13, 2021 shall be disregarded.

SECTION 3. DWD 113.027 is created to read:

DWD 113.027 Waiver of Interest for Employers Subject to Reimbursement Financing. The department shall waive interest for amounts owed by reimbursable employers, as defined in s. 108.155 (1) (b), Stats., to ensure correct employer billing and to provide reimbursable employers the opportunity to pay their reimbursements over time. This waiver shall apply to each month during which this rule is in effect for any part of the month.

SECTION 4. DWD 123.01 is amended to read:

DWD 123.01 Purpose. Pursuant to ss. 108.04 (13), 108.09 (1), and 108.14 (2), Stats., in order to determine benefit claims, the department requires employers to provide information about claimants' employment separations, dates of work, wages and other payments, and other issues that may be disqualifying. This chapter specifies the benefit reports that must be filed by employers and the filing requirements for those reports. <u>This chapter also determines the information that employers must submit</u>

under ss. 108.04 (2) (d) and 108.07 (5) (bm), Stats., if any, to request relief of unemployment benefit charges for initial claims filed for benefit years beginning on or after March 15, 2020 through March 13, 2021, the deadline by which employers must submit the information, if any, to the department, and the treatment of payors of base period wages.

SECTION 5. DWD 123.04 is created to read:

DWD 123.04 Requests for Charging Relief. (1) Under s. 108.07 (5) (bm) 1m., Stats., for separations from employment that are not due to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for substantial fault, an employer does not need to submit information to the department to receive relief of benefit charges under s. 108.07 (5) (bm), Stats.

(2) An employer that paid base period wages to a claimant whose most recent separation from employment is due to a voluntary termination of work for which s. 108.04 (7) (h), Stats., does not apply and whose initial claim is for benefit years beginning on or after March 15, 2020 through March 13, 2021 may receive relief of benefit charges under s. 108.07 (5) (bm), Stats., by submitting a request for relief under this section.

(3) An employer may be relieved of unemployment benefit charges under s. 108.07 (5) (bm), Stats., for benefits for initial claims described in sub. (2) if it provides the information specified by the department in the form required by the department.

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

(4) An employer described in sub. (2) may receive benefit charging relief if it certifies that any of the following circumstances apply to the initial claim:

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

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

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

(d) 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.

(5) An employer that must submit a request for relief under this section to receive relief under s. 108.07 (5) (bm), Stats., must submit the request to the department by the thirtieth day 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.

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

(7) The department shall apply s. 108.07 (5) (bm), Stats., to additional initial claims filed on or after March 15, 2020 through March 13, 2021 for any benefit years that began before March 15, 2020.

Section 6. EFFECTIVE DATES. This rule shall take effect on October 3, 2021, or upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats., whichever is later, except that Sections 1 and 2 of this rule shall take effect on November 26, 2021.

Dated this 20th day of September, 2021.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: ____

Amy Pechacek, Secretary-designee

To: Unemployment Insurance Advisory Council

From: UI Bureau of Legal Affairs

Date: September 16, 2021

Re: LRB Draft of UIAC Agreed-Upon Bill

Proposal	**Title**	**LRB Bill Sections**
21-01	Creation of Unemployment Administration Fund	10-14, 19-21, 24, 39, 66, 68, 73, 74, 80, 96, 97, 98, 118, 122, 123, 124, 125, 126, 127, 129, 134, 136, 137, 138, 139, 140, 141, 149
21-02	Minor and Technical Corrections	15-18, 25, 26, 28, 30, 31, 32, 34, 35, 36, 37, 38, 40, 41, 42, 43, 65, 67, 69, 70, 72, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 94, 99, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 121, 128, 130, 131, 132, 133, 135, 142, 143, 145, 146, 147, 148
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State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4438/P2
MED&EAW:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 16.48 (1) (b), 16.48 (2), 20.445 (1) (gg), 20.445 (1) (gm), 108.02 (1), 108.02 (26) (c) 9., 108.02 (26) (c) 14., 108.062 (1) (c), 108.062 (2) (b), 108.062 (2) (e), 108.062 (4) (a) 2., 108.062 (19) (a), 108.062 (19) (b), 108.062 (20), 108.14 (7) (c), 108.14 (23) (d) and 108.19 (3); ***to renumber*** 108.04 (7) (h); ***to renumber and amend*** 16.48 (1) (a) (intro.), 16.48 (1) (a) 1., 2., 3., 4., 5. and 6., 20.445 (1) (gc), 20.445 (1) (gd), 20.445 (1) (gh), 108.062 (4) (a) 1., 108.062 (19) (intro.), 108.14 (12) (e), 108.14 (18), 108.19 (1), 108.19 (1m), 108.19 (1n), 108.19 (1p), 108.19 (1q), 108.19 (1s), 108.19 (2), 108.19 (2m) and 108.19 (4); ***to consolidate, renumber and amend*** 108.14 (12) (a) to (d), 108.161 (1) and (1m) and 108.161 (5) and (6); ***to amend*** 16.48 (3), 20.445 (1) (n), 20.445 (1) (nb), 20.445 (1) (nd), 20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 59.40 (4), 71.93 (8) (b) 1., 103.05 (5) (d), 108.02 (2) (c), 108.02 (13) (c) 2. a., 108.02 (13) (k), 108.02 (14), 108.02 (15) (j) 5., 108.02 (15) (k) 5., 108.02 (17m), 108.02 (19), 108.04 (11) (f), 108.04 (12) (b), 108.04 (16) (d) 1., 108.04 (18) (a), 108.04 (18) (b), 108.062 (2) (a), 108.062 (2) (c), 108.062 (2) (d), 108.062 (2) (h), 108.062 (2) (m), 108.062 (3), 108.062 (3r), 108.062 (4) (b), 108.062 (6) (b), 108.062 (15), 108.065 (1e) (intro.), 108.07 (5) (am) (intro.), 108.07 (5) (am) 1., 108.07 (5) (am) 3., 108.07 (6), 108.09 (5) (b), 108.10 (intro.), 108.13 (4) (a) 2., 108.14 (2m), 108.14 (3m), 108.14 (8n) (a), 108.14 (8n) (e), 108.14 (16), 108.14 (26), 108.141 (1) (h), 108.141 (3g) (a) 3. b., 108.141 (7) (a), 108.141 (7) (b), 108.145, 108.15 (3) (d), 108.151 (2) (d), 108.151 (7) (c), 108.151 (7) (f), 108.152 (1) (d), 108.155 (2) (a) and (d), 108.16 (5) (c), 108.16 (6) (k), 108.16 (6) (m), 108.16 (6m) (a), 108.16 (6w), 108.16 (6x), 108.16 (8) (f), 108.16 (9) (a), 108.161 (title), 108.161 (2), 108.161 (3), 108.161 (3e), 108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9), 108.162 (7), 108.17 (2m), 108.17 (3), 108.17 (3m), 108.18 (3) (c), 108.18 (7) (a) 1., 108.18 (7) (h), 108.19 (1e) (a), 108.19 (1e) (d), 108.19 (1f) (a), 108.19 (1f) (c), 108.22 (1) (am), 108.22 (1m), 108.22 (8e), 108.22 (10), 108.223 (2) (b), 108.23, 108.24 (3) (a) 3. a. and 108.24 (3) (a) 4.; ***to repeal and recreate*** 108.19 (title) and 108.20; and ***to create*** 16.48 (4), 20.427 (1) (g), 71.93 (8) (b) 1. d., 108.02 (10e) (c), 108.02 (15) (k) 21., 108.065 (3m), 108.101 (5), 108.151 (7) (i), 108.16 (6m) (j), 108.19 (1) (d), 108.19 (1e) (cm) and 108.19 (1m) (e) of the statutes; **relating to:** various changes to the unemployment insurance law and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance (UI) law, which is administered by the Department of Workforce Development. Significant changes include all of the following:

Unemployment insurance financial outlook statement; council report; special committee

Under current law, DWD must submit a statement regarding the unemployment insurance financial outlook to the governor and legislative leadership by April 15 of every odd-numbered year. The report must contain all of the following: 1) financial projections of unemployment insurance operations, including benefit payments, tax collections, borrowing or debt repayments, and any amounts of interest charges and the economic and public policy assumptions upon which the projections are based, and the impact upon the projections of variations from those assumptions; 2) proposed changes to the laws relating to unemployment insurance financing, benefits, and administration and financial projections under the proposed changes; 3) if there are significant cash reserves in the unemployment fund, the justifications for maintaining them; and 4) if program debt is projected at the end of the forecast period, the reasons DWD is not proposing to liquidate the debt.

This bill changes the submittal deadline of the statement to May 31 of every even–numbered year. The bill also requires the statement to contain proposed methods for liquidating any debt, instead of the reasons DWD is not proposing to liquidate any debt.

Under current law, DWD must submit a report of the activities of the Council on Unemployment Insurance to the governor and legislative leadership by May 15 of each odd–numbered year. Current law also requires DWD to submit to each member of the legislature by June 15 of each odd–numbered year an updated statement of unemployment insurance financial outlook.

The bill replaces the two aforementioned requirements with a single requirement for DWD to submit, by January 31 of each even–numbered year, a report of the activities of the Council on Unemployment Insurance and the most recent statement regarding the unemployment insurance financial outlook to the governor and legislative leadership, rather than to every member of the legislature. The bill also requires DWD to post the most recent version of the report and statement on its Internet site.

Finally, under current law, after the report and statement are submitted to the governor and leadership by May 15 of each odd–numbered year, the governor may convene a special committee to review the financial outlook statement and the activities report. This bill repeals that provision. However, the bill does not affect the governor's authority under current law to convene advisory committees by executive order.

Effect of criminal convictions

Current law provides that no finding of fact or law, determination, decision, or judgment in any action or administrative or judicial proceeding in law or equity not arising under the UI law made with respect to the rights or liabilities of a party to an action or proceeding under the UI law is binding in an action or proceeding under the UI law.

The bill provides that notwithstanding this provision, 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 the UI law that relates to the criminal conviction, and that 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 the UI law.

Reimbursable employer debt assessment

Under current law, DWD must annually determine the total amount due and uncollectible from nonprofit employers that have elected what is known as reimbursement financing (reimbursable employers), and DWD must then charge that amount to an uncollectible reimbursable benefits account in the unemployment reserve fund. Whenever, as of a given year, that account has a negative balance of $5,000 or more, DWD must assess all such nonprofit reimbursable employers to reimburse for the uncollectible amount, except that employers that would otherwise be assessed less than $10 are not assessed, and their portion is instead applied to the amount owed by other employers on a pro rata basis.

Also under current law, pursuant to 2015 Wisconsin Act 334, $2,000,000 was set aside in the unemployment reserve fund to repay reimbursable employers for erroneous payments charged to them that resulted from a false statement or representation (e.g., identity theft).

The bill does the following:

1. Raises the threshold for charging a reimbursable nonprofit employer the assessment to $20 instead of $10.

2. Allows DWD, in lieu of or in addition to assessing nonprofit reimbursable employers as described above, to apply moneys from the $2,000,000 set aside to the uncollectible reimbursable benefits account described above, subject to certain limitations.

Waiver of overpayments

Current law requires the recovery of benefits that were erroneously paid to an individual to be waived if certain conditions apply, including that the erroneous payment was the result of a departmental error. Current law specifies what does and does not constitute a "departmental error" and also provides that if a determination or decision is amended, modified, or reversed by an appeal tribunal (administrative law judge), the Labor and Industry Review Commission, or any court, that action is not to be treated as establishing a departmental error.

This bill specifically provides that, for the purposes of the waiver of recovery of benefits, a "departmental error" does not include an error made by an administrative law judge.

Excluded employment

This bill excludes from coverage under the UI law seasonal work performed by a full-time student at an organized camp, other than an organized camp operated by a governmental or nonprofit entity, that operates for not more than seven months per calendar year, consistent with federal law. Under the bill, "full-time student" includes a person who is currently enrolled in school full time or who was enrolled in school full time during the previous academic year if there is a reasonable assurance that the person will be so enrolled for the immediately succeeding academic year. An individual who performs such services is not eligible to claim UI benefits based on the performance of the services, and a person who employs an individual to perform such services is not subject to a state UI contribution requirement (a requirement to pay taxes) based on the performance of the services.

Work-share programs

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 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 reduced by the same percentage as the percentage reduction in the claimant's normal working hours that the claimant incurs under the program. Former law provided also for the temporary modification of certain requirements that apply to work–share programs with respect to work–share programs submitted on or after April 17, 2020, and before July 4, 2021.

This bill makes a number of the former–law modifications permanent. Among other things, it eliminates a requirement that work–share programs be limited to particular work units, reduces the minimum number of employees who must be covered under a work–share program from 20 to two, and eliminates a requirement that working hours be reduced equitably among employees. In addition, the bill allows a work–share program to remain in effect for 12 months in any five–year period instead of six months in any five–year period.

Collection of debt by Department of Revenue

Subject to certain exceptions, current law requires a state agency and the Department of Revenue to enter into a written agreement to have DOR collect certain amounts owed to the state agency. This bill provides that this requirement does not apply to amounts owed to DWD under the UI law or other federal unemployment programs administered by DWD.

Fiscal agent election of employer status

Generally, under current law, an individual who receives long–term support services in his or her home through certain government–funded care programs is considered to be an employer under the UI law of a person who provides those services to the individual. Such individuals may use fiscal agents, whose responsibilities include remitting any federal UI taxes or state UI contributions owed by the individual as a result of that employment.

The bill allows a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent to such an individual receiving long–term support services to elect to instead be the employer of one or more employees providing those services, subject to certain requirements.

Segregated fund

This bill creates a segregated fund to receive various program revenue moneys received by DWD under the UI law that are not otherwise credited to other segregated funds, including various moneys collected by DWD as interest and penalties under the UI law and all other nonfederal moneys received for the administration of the UI law that are not otherwise appropriated. Current law provides for depositing these revenues in appropriations in the general fund.

Other changes

The bill makes various changes to a) reorganize, clarify, and update provisions relating to the financing of the UI law; and b) address numerous out–of–date or erroneous cross–references in the UI law, including all of the following:

1. Repealing and consolidating certain appropriations and making other changes to clarify the funding sources and receiving appropriations for various revenues and expenses under the UI law.

2. Creating a program revenue appropriation for the Labor and Industry Review Commission to collect moneys received for the copying and generation of documents and for other services provided in carrying out its functions.

3. Changing certain out-of-date cross-references to federal law to reflect current federal law and the current numbering under the U.S. Code.

4. Repealing certain provisions that reference federal laws that have been repealed and deleting other obsolete references to state laws.

5. Correcting various cross-references that are otherwise incomplete or erroneous.

6. Replacing certain references to provisions in federal acts or to the Internal Revenue Code with references to the U.S. Code in order to facilitate accessibility to federal law.

7. Making other nonsubstantive changes to the UI law to improve organization, modernize language, and provide further clarity, specificity, and consistency in the law.

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

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

SECTION 1. 16.48 (1) (a) (intro.) of the statutes is renumbered 16.48 (1) (intro.) and amended to read:

16.48 **(1)** (intro.) 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 2. 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. 1.~~ 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 3. 16.48 (1) (b) of the statutes is repealed.

SECTION 4. 16.48 (2) of the statutes is repealed.

SECTION 5. 16.48 (3) of the statutes is amended to read:

16.48 **(3)** ~~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 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 6. 16.48 (4) of the statutes is created to read:

16.48 **(4)** 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.

SECTION 7. 20.427 (1) (g) of the statutes is created to read:

20.427 **(1)** (g) *Agency collections.* All moneys received from fees or other charges for copying of documents, generation of copies of documents from optical disc or electronic storage, publication of books, and other services provided in carrying out the functions of the commission.

SECTION 8. 20.445 (1) (gc) of the statutes is renumbered 20.445 (1) (wc) and amended to read:

20.445 **(1)** (wc) *Unemployment administration.* ~~All~~ From the unemployment administration fund, all moneys received by the department under s. 108.19 ~~not otherwise appropriated under this subsection~~ (1) for the administration of ch. 108.

SECTION 9. 20.445 (1) (gd) of the statutes is renumbered 20.445 (1) (wd) and amended to read:

20.445 **(1)** (wd) *Unemployment interest and penalty payments.* ~~All~~ From the unemployment administration fund, all moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) ~~and (13) (c)~~ and 108.22 except interest and penalties deposited under s. ~~108.19 (1q), and forfeitures under s. 103.05 (5), all moneys not appropriated under par. (gg) and~~ 108.20 (3), all moneys received as forfeitures under s. 103.05 (5), all moneys received under s. 108.09 (5) (c), all moneys received under s. 108.14 (16), all moneys received under s. 108.18 (1) (c), all moneys transferred to this appropriation account from the appropriation account under par. ~~(gh)~~ (wh), and all other nonfederal moneys received for the employment service or for the administration of ch. 108 that are not otherwise appropriated under this subsection, for the payment of benefits specified in s. 108.07 (5) ~~and 1987 Wisconsin Act 38, section 132 (1) (c)~~, for the payment of interest to employers under s. 108.17 (3m), for research relating to the condition of the unemployment reserve fund under s. 108.14 (6), for administration of the unemployment insurance program and federal or state unemployment insurance programs authorized by the governor under s. 16.54, for satisfaction of any federal audit exception concerning a payment from the unemployment reserve fund or any federal aid disallowance concerning the unemployment insurance program, for assistance to the department of justice in the enforcement of ch. 108, for the payment of interest due on advances from the federal unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324 to the unemployment reserve fund, and for payments made to the unemployment reserve fund to obtain a lower interest rate or deferral of interest payments on these advances~~, except as otherwise provided in s. 108.20~~.

SECTION 10. 20.445 (1) (gg) of the statutes is repealed.

SECTION 11. 20.445 (1) (gh) of the statutes is renumbered 20.445 (1) (wh) and amended to read:

20.445 **(1)** (wh) *Unemployment information technology systems; assessments.* ~~All~~ From the unemployment administration fund, all moneys received from assessments levied under s. 108.19 (1e) (a) ~~and 1997 Wisconsin Act 39, section 164 (2)~~, for the purpose specified in s. 108.19 (1e) (d). The treasurer of the unemployment reserve fund may transfer moneys from this appropriation account to the appropriation account under par. ~~(gd)~~ (wd).

SECTION 12. 20.445 (1) (gm) of the statutes is repealed.

SECTION 13. 20.445 (1) (n) of the statutes is amended to read:

20.445 **(1)** (n) *Employment assistance and unemployment insurance administration; federal moneys.* All federal moneys received, as authorized by the governor under s. 16.54, for the administration of employment assistance and unemployment insurance programs of the department, for the performance of the department's other functions under subch. I of ch. 106 and ch. 108, and to pay the compensation and expenses of appeal tribunals and of employment councils appointed under s. 108.14, to be used for such purposes, except as provided in s. 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC 1103 (d) ~~of the federal Social Security Act, as amended~~, to transfer to the appropriation account under par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the appropriation account under par. (nd) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the appropriation account under par. (ne) an amount not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under par. (ne) and the amount determined by the treasurer of the unemployment reserve fund that is required to pay for the cost of banking services incurred by the unemployment reserve fund, and to transfer to the appropriation account under s. 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve fund.

SECTION 14. 20.445 (1) (nb) of the statutes is amended to read:

20.445 **(1)** (nb) *Unemployment administration; information technology systems.* From the moneys received from the federal government under ~~section 903~~

42 USC 1103 (d) ~~of the federal Social Security Act, as amended~~, as a continuing appropriation, the amounts in the schedule, as authorized by the governor under s. 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in s. 108.19 (1e) (d).

SECTION 15. 20.445 (1) (nd) of the statutes is amended to read:

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

SECTION 16. 20.445 (1) (ne) of the statutes is amended to read:

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

SECTION 17. 20.445 (1) (u) of the statutes is amended to read:

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

SECTION 18. 20.445 (1) (v) of the statutes is amended to read:

20.445 **(1)** (v) *Unemployment program integrity.* From the unemployment program integrity fund, all moneys received from sources identified under s. ~~108.19 (1s)~~ 108.20 (2) (a) for the purpose of making the payments authorized under s. ~~108.19 (1s)~~ 108.20 (2) (b).

SECTION 19. 25.17 (1) (xe) of the statutes is amended to read:

25.17 **(1)** (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.20 (3));

SECTION 20. 25.17 (1) (xf) of the statutes is amended to read:

25.17 **(1)** (xf) Unemployment program integrity fund (s. ~~108.19 (1s)~~ 108.20 (2));

SECTION 21. 59.40 (4) of the statutes is amended to read:

59.40 **(4)** CLERK OF CIRCUIT COURT; DEBT COLLECTOR CONTRACT. If authorized by the board under s. 59.52 (28), the clerk of circuit court may contract with a debt collector, as defined in s. 427.103 (3), or enter into an agreement with the department of revenue under s. 71.93 (8) for the collection of debt. Any contract entered into with a debt collector shall provide that the debt collector shall be paid from the proceeds recovered by the debt collector. Any contract entered into with the department shall provide that the department shall charge a collection fee, as provided under s. 71.93 (8) (b) ~~1~~ 1m. The net proceeds received by the clerk of circuit court after the payment to the debt collector shall be considered the amount of debt collected for purposes of distribution to the state and county under sub. (2) (m).

SECTION 22. 71.93 (8) (b) 1. of the statutes is amended to read:

71.93 **(8)** (b) 1. Except as provided in subd. 2., a state agency and the department of revenue shall enter into a written agreement to have the department collect any amount owed to the state agency that is more than 90 days past due, unless ~~negotiations~~ any of the following applies:

a. Negotiations between the agency and debtor are actively ongoing~~, the~~.

b. The debt is the subject of legal action or administrative proceedings~~, or the~~.

c. The agency determines that the debtor is adhering to an acceptable payment arrangement.

1m. At least 30 days before the department pursues the collection of any debt referred by a state agency, either the department or the agency shall provide the debtor with a written notice that the debt will be referred to the department for collection. The department may collect amounts owed, pursuant to the written agreement, from the debtor in addition to offsetting the amounts as provided under sub. (3). The department shall charge each debtor whose debt is subject to collection under this paragraph a collection fee and that amount shall be credited to the appropriation under s. 20.566 (1) (h).

SECTION 23. 71.93 (8) (b) 1. d. of the statutes is created to read:

71.93 **(8)** (b) 1. d. The debt is an amount owed under ch. 108 or under a federal unemployment benefit program administered by the department of workforce development.

SECTION 24. 103.05 (5) (d) of the statutes is amended to read:

103.05 **(5)** (d) The department shall deposit all moneys received under this subsection in the appropriation account under s. 20.445 (1) ~~(gd)~~ (wd).

SECTION 25. 108.02 (1) of the statutes is repealed.

SECTION 26. 108.02 (2) (c) of the statutes is amended to read:

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

SECTION 27. 108.02 (10e) (c) of the statutes is created to read:

108.02 **(10e)** (c) "Departmental error" does not include an error made by an appeal tribunal appointed under s. 108.09 (3).

SECTION 28. 108.02 (13) (c) 2. a. of the statutes is amended to read:

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

SECTION 29. 108.02 (13) (k) of the statutes is amended to read:

108.02 **(13)** (k) ~~"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 30. 108.02 (14) of the statutes is amended to read:

108.02 **(14)** EMPLOYER'S ACCOUNT. "Employer's account" means ~~a~~ an employer's separate account in the fund~~, reflecting the employer's experience with respect to contribution credits and benefit charges under this chapter~~ maintained as required under s. 108.16 (2) (a).

SECTION 31. 108.02 (15) (j) 5. of the statutes is amended to read:

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

SECTION 32. 108.02 (15) (k) 5. of the statutes is amended to read:

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

SECTION 33. 108.02 (15) (k) 21. of the statutes is created to read:

108.02 **(15)** (k) 21. 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 one of the following applies:

a. The camp does 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 camp had average gross receipts for any 6 months in the preceding calendar year that were not more than 33 1/3 percent of its average gross receipts for the other 6 months in the preceding calendar year.

SECTION 34. 108.02 (17m) of the statutes is amended to read:

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

SECTION 35. 108.02 (19) of the statutes is amended to read:

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

SECTION 36. 108.02 (26) (c) 9. of the statutes is repealed.

SECTION 37. 108.02 (26) (c) 14. of the statutes is repealed.

SECTION 38. 108.04 (7) (h) of the statutes is renumbered 108.04 (7) (u).

SECTION 39. 108.04 (11) (f) of the statutes is amended to read:

108.04 **(11)** (f) All amounts forfeited under par. (c) and all collections from administrative assessments under par. (cm) shall be credited to the ~~administrative account~~ appropriation under s. 20.445 (1) (wd).

SECTION 40. 108.04 (12) (b) of the statutes is amended to read:

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

SECTION 41. 108.04 (16) (d) 1. of the statutes is amended to read:

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

SECTION 42. 108.04 (18) (a) of the statutes is amended to read:

108.04 **(18)** (a) The wages paid to an employee who performed services while the employee was an alien shall, if based on such services, be excluded from the employee's base period wages for purposes of sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) unless the employee is an alien who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of ~~section 212 (d) (5) of the federal immigration and nationality act (~~8 USC 1182 (d) (5)~~)~~. All claimants shall be uniformly required to provide information as to whether they are citizens and, if they are not, any determination denying benefits under this subsection shall not be made except upon a preponderance of the evidence.

SECTION 43. 108.04 (18) (b) of the statutes is amended to read:

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

SECTION 44. 108.062 (1) (c) of the statutes is repealed.

SECTION 45. 108.062 (2) (a) of the statutes is amended to read:

108.062 **(2)** (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.

SECTION 46. 108.062 (2) (b) of the statutes is repealed.

SECTION 47. 108.062 (2) (c) of the statutes is amended to read:

108.062 **(2)** (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.

SECTION 48. 108.062 (2) (d) of the statutes is amended to read:

108.062 **(2)** (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~~.

SECTION 49. 108.062 (2) (e) of the statutes is repealed.

SECTION 50. 108.062 (2) (h) of the statutes is amended to read:

108.062 **(2)** (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.

SECTION 51. 108.062 (2) (m) of the statutes is amended to read:

108.062 **(2)** (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 another federal law that enhances job skills without affecting availability for work, subject to department approval.

SECTION 52. 108.062 (3) of the statutes is amended to read:

108.062 **(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 53. 108.062 (3r) of the statutes is amended to read:

108.062 **(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)~~ 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 54. 108.062 (4) (a) 1. of the statutes is renumbered 108.062 (4) (a) and amended to read:

108.062 **(4)** (a) ~~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.

SECTION 55. 108.062 (4) (a) 2. of the statutes is repealed.

SECTION 56. 108.062 (4) (b) of the statutes is amended to read:

108.062 **(4)** (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 57. 108.062 (6) (b) of the statutes is amended to read:

108.062 **(6)** (b) No employee who is included ~~in a work unit~~ under a 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~~ that, when combined with work performed by the employee for any other employer for the same week, ~~exceed~~ exceeds 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 58. 108.062 (15) of the statutes is amended to read:

108.062 **(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 59. 108.062 (19) (intro.) of the statutes is renumbered 108.062 (19) and amended to read:

108.062 **(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~~.~~,

SECTION 60. 108.062 (19) (a) of the statutes is repealed.

SECTION 61. 108.062 (19) (b) of the statutes is repealed.

SECTION 62. 108.062 (20) of the statutes, as affected by 2021 Wisconsin Act 4, is repealed.

SECTION 63. 108.065 (1e) (intro.) of the statutes is amended to read:

108.065 **(1e)** (intro.) Except as provided in subs. (2) ~~and (3)~~ <u>to (3m)</u>, 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:

SECTION 64. 108.065 (3m) of the statutes is created to read:

108.065 **(3m)** 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 65. 108.07 (5) (am) (intro.) of the statutes is amended to read:

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

SECTION 66. 108.07 (5) (am) 1. of the statutes is amended to read:

108.07 **(5)** (am) 1. If no employer from which the claimant has base period wages is subject to the contribution requirements of ss. 108.17 and 108.18, the benefits shall be ~~charged to the administrative account and~~ paid from the appropriation under s. 20.445 (1) ~~(gd)~~ (wd).

SECTION 67. 108.07 (5) (am) 3. of the statutes is amended to read:

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

SECTION 68. 108.07 (6) of the statutes is amended to read:

108.07 **(6)** The department may initially charge benefits otherwise ~~chargeable to the administrative account~~ payable from the appropriation under s. 20.445 (1) (wd) as provided under this section to the fund's balancing account, and periodically reimburse the charges to the balancing account from the ~~administrative account~~ appropriation under s. 20.445 (1) (wd).

SECTION 69. 108.09 (5) (b) of the statutes is amended to read:

108.09 **(5)** (b) All testimony at any hearing under this section shall be recorded by electronic means, but need not be transcribed unless either of the parties requests a transcript before expiration of that party's right to further appeal under this section and pays a fee to the commission in advance, the amount of which shall be established by rule of the commission. When the commission provides a transcript to one of the parties upon request, the commission shall also provide a copy of the transcript to all other parties free of charge. The transcript fee collected shall be ~~paid to the administrative account~~ credited to the appropriation account under s. 20.427 (1) (g).

SECTION 70. 108.10 (intro.) of the statutes is amended to read:

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

SECTION 71. 108.101 (5) of the statutes is created to read:

108.101 **(5)** 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.

SECTION 72. 108.13 (4) (a) 2. of the statutes is amended to read:

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

SECTION 73. 108.14 (2m) of the statutes is amended to read:

108.14 **(2m)** In the discharge of their duties under this chapter an appeal tribunal, commissioner, or other authorized representative of the department or commission may administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas, served in the manner in which circuit court subpoenas are served, compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any investigation, hearing, or other proceeding under this chapter. A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. However, in any investigation, hearing, or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and travel expenses involved in proceedings under this chapter may be allowed by the appeal tribunal or representative of the department at rates specified by department rules, and shall be paid from the ~~administrative account~~ appropriation under s. 20.445 (1) (n).

SECTION 74. 108.14 (3m) of the statutes is amended to read:

108.14 **(3m)** In any court action to enforce this chapter the department, the commission, and the state may be represented by any licensed attorney who is an employee of the department or the commission and is designated by either of them for this purpose or at the request of either of them by the department of justice. If the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101 to 1111, the expenses and compensation of the special counsel and of any experts employed by the department in connection with that proceeding may be charged to the ~~administrative account~~ appropriation under s. 20.445 (1) (wd). If the compensation is being determined on a contingent fee basis, the contract is subject to s. 20.9305.

SECTION 75. 108.14 (7) (c) of the statutes is repealed.

SECTION 76. 108.14 (8n) (a) of the statutes is amended to read:

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

SECTION 77. 108.14 (8n) (e) of the statutes is amended to read:

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

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

SECTION 78. 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered 108.14 (12) (am) and amended to read:

108.14 **(12)** (am) Consistently with the provisions of ~~pars. (8) and (9) of section 303 (a) of Title III of the federal social security act,~~ 42 USC 503 (a) (8) and (9), the department shall expend all moneys received in the federal administrative financing account from any federal agency under ~~said Title III shall be expended~~ 42 USC ch. 7 subch. III solely for the purposes and in the amounts found necessary by ~~said~~ that agency for the ~~proper and efficient~~ administration of this chapter. ~~(b) Consistently with said provisions of said Title III, any~~ The department shall replace, within a reasonable time, any such moneys~~,~~ that were received ~~prior to~~ before July 1, 1941, and ~~remaining~~ remained unencumbered on ~~said~~ that date~~,~~ or that were received on or after ~~said~~ that date, ~~which, because of any action or contingency, have been~~ if the moneys are lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by ~~said~~ the federal agency for the ~~proper~~ administration of this chapter~~, shall be replaced within a reasonable time. This paragraph is the declared policy of this state, as enunciated by the 1941 legislature,~~

~~and shall be implemented as further provided in this subsection. (c)~~. If ~~it is believed that~~ any amount of money thus received ~~has been thus~~ is lost or improperly expended, the department~~,~~ on its own motion or on notice from ~~said~~ the federal agency~~,~~ shall promptly investigate and determine the matter and shall, depending on the nature of its determination, take such steps as it ~~may deem~~ considers necessary to protect the interests of the state. ~~(d)~~ If it is finally determined that moneys ~~thus received~~ have been ~~thus~~ lost or improperly expended, ~~then~~ the department shall either make the necessary replacement from ~~those moneys in the administrative account specified in s. 108.20 (2m)~~ the appropriation under s. 20.445 (1) (wd) or shall submit, at the next budget hearings conducted by the governor and at the budget hearings conducted by the next legislature convened in regular session, a request that the necessary replacement be made by an appropriation from the general fund.

SECTION 79. 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and amended to read:

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

SECTION 80. 108.14 (16) of the statutes is amended to read:

108.14 **(16)** The department shall have duplicated or printed~~, and shall distribute without charge, such employment security~~ any reports, studies ~~and,~~ forms, records, decisions, regulations, rules, or other materials, including the text of this chapter ~~and~~, the handbook under sub. (23), and other instructional or explanatory pamphlets for employers or workers, ~~as~~ that it deems necessary for public information or for the proper administration of this chapter~~; but the~~<u>. The</u> department may collect a reasonable charge, which shall be credited to the ~~administrative~~ <u>appropriation</u> account <u>under s. 20.445 (1) (wd)</u>, for any such item the cost of which is not fully covered by federal administrative grants.

SECTION 81. 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and amended to read:

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

SECTION 82. 108.14 (23) (d) of the statutes is repealed.

SECTION 83. 108.14 (26) of the statutes is amended to read:

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

SECTION 84. 108.141 (1) (h) of the statutes is amended to read:

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

SECTION 85. 108.141 (3g) (a) 3. b. of the statutes is amended to read:

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

SECTION 86. 108.141 (7) (a) of the statutes is amended to read:

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

SECTION 87. 108.141 (7) (b) of the statutes is amended to read:

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

SECTION 88. 108.145 of the statutes is amended to read:

108.145 Disaster unemployment assistance. The department shall administer under s. 108.14 (9m) the distribution of disaster unemployment assistance to workers in this state who are not eligible for benefits whenever such assistance is made available by the president of the United States under ~~26~~ 42 USC 5177 (a). In determining eligibility for assistance and the amount of assistance payable to any worker who was totally self-employed during the first 4 of the last 5 most recently completed quarters preceding the date on which the worker claims assistance, the department shall not reduce the assistance otherwise payable to the worker because the worker receives one or more payments under the social security act ~~(~~,42 USC ~~301 et seq.)~~ ch. 7, for the same week that the worker qualifies for such assistance.

SECTION 89. 108.15 (3) (d) of the statutes is amended to read:

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

SECTION 90. 108.151 (2) (d) of the statutes is amended to read:

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

SECTION 91. 108.151 (7) (c) of the statutes is amended to read:

108.151 **(7)** (c) 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 92. 108.151 (7) (f) of the statutes is amended to read:

108.151 **(7)** (f) 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 93. 108.151 (7) (i) of the statutes is created to read:

108.151 **(7)** (i) In lieu of or in addition to assessing employers as provided in par. (b), 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 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 94. 108.152 (1) (d) of the statutes is amended to read:

108.152 **(1)** (d) If the Indian tribe or tribal unit is an employer ~~prior to~~ before the effective date of an election, ss. 108.17 and 108.18 shall apply to all employment

~~prior to~~ before the effective date of the election, but after all benefits based on prior employment have been charged to any account that it has had under s. 108.16 (2), the department shall transfer any positive balance or charge any negative balance remaining therein to the fund's balancing account as if s. 108.16 (6) (c) and (6m) (d) applied.

SECTION 95. 108.155 (2) (a) and (d) of the statutes are amended to read:

108.155 **(2)** (a) On October 2, 2016, the fund's treasurer shall set aside $2,000,000 in the fund's 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. 108.16 (6w) as provided in s. 108.151 (7) (i) and shall deduct those amounts from the amount set aside plus any interest calculated thereon.

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

SECTION 96. 108.16 (5) (c) of the statutes is amended to read:

108.16 **(5)** (c) While the state has an account in the "Unemployment Trust Fund~~"~~," public deposit insurance charges on the fund's balances held in banks, savings banks, savings and loan associations~~,~~ and credit unions in this state, the premiums on surety bonds required of the fund's treasurer under this section, and any other expense of administration otherwise payable from the fund's interest earnings, shall be paid from the ~~administrative account~~ <u>appropriation under s. 20.445 (1) (n) or (ne)</u>.

SECTION 97. 108.16 (6) (k) of the statutes is amended to read:

108.16 **(6)** (k) All payments to the fund from the ~~administrative account as authorized under s. 108.20 (2m)~~ <u>appropriation under s. 20.445 (1) (wd)</u>.

SECTION 98. 108.16 (6) (m) of the statutes is amended to read:

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

SECTION 99. 108.16 (6m) (a) of the statutes is amended to read:

108.16 **(6m)** (a) The benefits thus chargeable under <u>sub. (7) (a) or (b) or</u> s. 108.04 (1) (f), (5), (5g), (7) ~~(h)~~ <u>(u), (7m)</u>, (8) (a) ~~or (b)~~ <u>to (c)</u>, (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (am) 2. and (bm) 3. a., (5m), and (6), 108.133 (3) (f), 108.14 (8n) (e), 108.141, <u>108.15,</u> 108.151, or 108.152 ~~or sub. (6) (e) or (7) (a) and (b)~~.

SECTION 100. 108.16 (6m) (j) of the statutes is created to read:

108.16 **(6m)** (j) Any amount transferred to the account under sub. (6w) as provided in s. 108.151 (7) (i).

SECTION 101. 108.16 (6w) of the statutes is amended to read:

108.16 **(6w)** 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) <u>and all amounts transferred from the fund's balancing account as provided in s. 108.151 (7) (i)</u>.

SECTION 102. 108.16 (6x) of the statutes is amended to read:

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

SECTION 103. 108.16 (8) (f) of the statutes is amended to read:

108.16 **(8)** (f) The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its experience under this chapter in proportion to the payroll assignable to the transferred business and the liability of the successor shall be proportioned to the extent of the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor ~~to the fund and to the administrative account~~ under this chapter at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.

SECTION 104. 108.16 (9) (a) of the statutes is amended to read:

108.16 **(9)** (a) Consistently with ~~section~~ 26 USC 3305 ~~of the internal revenue code~~, relating to federal instrumentalities ~~which~~ that are neither wholly nor partially owned by the United States nor otherwise specifically exempt from the tax imposed ~~by section~~ under 26 USC 3301 ~~of the internal revenue code~~:

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

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

SECTION 105. 108.161 (title) of the statutes is amended to read:

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

SECTION 106. 108.161 (1) and (1m) of the statutes are consolidated, renumbered 108.161 (1) and amended to read:

108.161 **(1)** The fund's treasurer shall maintain within the fund an employment security “federal administrative financing account~~”,~~,” and shall credit ~~thereto~~ to that account all amounts credited to the fund ~~pursuant to the federal employment security administrative financing act (of 1954) and section 903 of the federal social security act, as amended.~~ ~~**(1m)** The treasurer of the fund shall also credit to said account~~ under 42 USC 1101 to 1103 and all federal moneys credited to the fund ~~pursuant to~~ under sub. (8).

SECTION 107. 108.161 (2) of the statutes is amended to read:

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

SECTION 108. 108.161 (3) of the statutes is amended to read:

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

SECTION 109. 108.161 (3e) of the statutes is amended to read:

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

SECTION 110. 108.161 (4) of the statutes is amended to read:

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

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

(b) ~~Directing~~ Directs the fund's treasurer to transfer the appropriated amounts to ~~the administrative account~~ the appropriation account under s. 20.445 (1) (n) only as and to the extent that they are currently needed for such expenditures, and ~~directing~~ directs that there shall be restored to the federal administrative financing account ~~created by sub. (1)~~ any amount thus transferred ~~which~~ that has ceased to be needed or available for such expenditures.

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

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

SECTION 111. 108.161 (5) and (6) of the statutes are consolidated, renumbered 108.161 (5m) and amended to read:

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

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

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

(c) Certify the relevant facts whenever necessary ~~hereunder~~.

SECTION 112. 108.161 (7) of the statutes is amended to read:

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

SECTION 113. 108.161 (8) of the statutes is amended to read:

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

SECTION 114. 108.161 (9) of the statutes is amended to read:

108.161 **(9)** Any land and building or office quarters acquired under this section shall continue to be used for employment security purposes. Realty or quarters may not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am) or 16.848 (1) and may not be sold or transferred without the governor's approval. The proceeds from the sale, or the value of realty or quarters upon transfer, shall be credited to the federal administrative financing account ~~established in sub. (1)~~ or credited to the ~~fund established in s. 108.20~~ appropriate appropriation account under s. 20.445, or both as determined by the department in accordance with federal requirements. Equivalent substitute rent-free quarters may be provided, as federally approved. Amounts credited under this subsection shall be used solely to finance employment security quarters according to federal requirements.

SECTION 115. 108.162 (7) of the statutes is amended to read:

108.162 **(7)** Any amount appropriated under s. 20.445 (1) (na) ~~which~~ that has not been obligated shall be available for employment security local office building projects, consistent with this section and ~~ss.~~ s. 108.161 ~~and 108.20~~.

SECTION 116. 108.17 (2m) of the statutes is amended to read:

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

SECTION 117. 108.17 (3) of the statutes is amended to read:

108.17 **(3)** If an employing unit ~~makes application~~ applies to the department to adjust an alleged overpayment by the employer of contributions or interest under this chapter, and files such an application within 3 years after the close of the calendar year in which such payment was made, the department shall ~~make a determination~~ determine under s. 108.10 ~~as to the existence and~~ whether and to what extent ~~of any such~~ an overpayment~~, and said section shall apply to such determination~~ exists. Except as provided in sub. (3m), the department shall allow an employer a credit for any amount determined under s. 108.10 to have been erroneously paid by the employer, without interest, against its future contribution payments; or, if the department finds it impracticable to allow the employer such a credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from the fund or the ~~administrative account, as the case may be~~ appropriate appropriation under s. 20.445.

SECTION 118. 108.17 (3m) of the statutes is amended to read:

108.17 **(3m)** If an appeal tribunal or the commission issues a decision under s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is determined that an amount has been erroneously paid by an employer, the department shall, from the ~~administrative account~~ appropriation under s. 20.445 (1) (wd), credit the employer with interest at the rate of 0.75 percent per month or fraction thereof on the amount of the erroneous payment. Interest shall accrue from the month which the erroneous payment was made until the month in which it is either used as a credit against future contributions or refunded to the employer.

SECTION 119. 108.18 (3) (c) of the statutes is amended to read:

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

SECTION 120. 108.18 (7) (a) 1. of the statutes is amended to read:

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

SECTION 121. 108.18 (7) (h) of the statutes is amended to read:

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

SECTION 122. 108.19 (title) of the statutes is repealed and recreated to read:

108.19 (title) **Special assessments.**

SECTION 123. 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and amended to read:

108.19 **(1)** (a) Each employer subject to this chapter shall regularly ~~contribute to the administrative account at the rate of two-tenths of one~~ <u>pay an assessment equal to 0.2</u> percent per year on its payroll, except that the department may prescribe at the close of any fiscal year such lower rates ~~of contribution~~ under this ~~section~~ <u>subsection</u>, to apply to classes of employers throughout the ensuing fiscal year, as will in the department's judgment adequately finance the administration of this chapter, and as will in the department's judgment fairly represent the relative cost of the services rendered by the department to each such class.

SECTION 124. 108.19 (1) (d) of the statutes is created to read:

108.19 **(1)** (d) Assessments under this subsection shall be credited to the appropriation account under s. 20.445 (1) (wc).

SECTION 125. 108.19 (1e) (a) of the statutes is amended to read:

108.19 **(1e)** (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ <u>amounts</u> payable under s. 108.18 and this section, pay an assessment ~~to the administrative account~~ for each year ~~prior to~~ <u>before</u> the year 2010 equal to the lesser of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

SECTION 126. 108.19 (1e) (cm) of the statutes is created to read:

108.19 **(1e)** (cm) Assessments under this subsection shall be credited to the appropriation under s. 20.445 (1) (wh).

SECTION 127. 108.19 (1e) (d) of the statutes is amended to read:

108.19 **(1e)** (d) The department may expend the moneys received from assessments levied under this subsection in the amounts authorized under s. 20.445 (1) ~~(gh)~~ (wh) for the renovation and modernization of unemployment insurance information technology systems, specifically including development and implementation of a new system and reengineering of automated processes and manual business functions.

SECTION 128. 108.19 (1f) (a) of the statutes is amended to read:

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

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

SECTION 129. 108.19 (1f) (c) of the statutes is amended to read:

108.19 **(1f)** (c) Notwithstanding par. (a), the department may, if it finds that the full amount of the levy is not required to effect the purposes specified in ~~sub. (1s)~~ s. 108.20 (2) (b) for any year, prescribe a reduced levy for that year and in such case shall publish in the notice under par. (b) the rate of the reduced levy.

SECTION 130. 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and amended to read:

108.19 **(1m)** (a) Each employer subject to this chapter as of the date a rate is established under this subsection shall pay an assessment ~~to the unemployment~~

~~interest payment fund~~ at a rate established by the department sufficient to pay interest due on advances from the federal unemployment account under ~~Title XII of the federal social security act,~~ 42 USC 1321 to 1324. The rate established by the department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75 percent of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly employment and wage reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of such reports, estimates made by the department.

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

(f) The department shall use amounts collected from employers under this subsection ~~exceed the amounts needed~~ to pay interest due on advances from the federal unemployment account under 42 USC 1321 to 1324. If the amounts collected exceed the amounts needed to pay that interest for a given year, the department shall use ~~any~~ the excess to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the fund's balancing account ~~of the fund~~, the unemployment program integrity fund, or both in amounts determined by the department.

SECTION 131. 108.19 (1m) (e) of the statutes is created to read:

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

SECTION 132. 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and amended to read:

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

SECTION 133. 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and amended to read:

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

SECTION 134. 108.19 (1q) of the statutes is renumbered 108.20 (3) and amended to read:

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

SECTION 135. 108.19 (1s) of the statutes is renumbered 108.20 (2), and 108.20 (2) (a) 2. and 3., as renumbered, are amended to read:

108.20 **(2)** (a) 2. Assessments levied and deposited into the unemployment program integrity fund under ~~sub. (1f)~~ s. 108.19 (1f).

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

SECTION 136. 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and amended to read:

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

SECTION 137. 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and amended to read:

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

SECTION 138. 108.19 (3) of the statutes is repealed.

SECTION 139. 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and amended to read:

108.18 **(1)** (c) ~~If section 303~~ Notwithstanding par. (b), if 42 USC 503 (a) (5) ~~of title III of the social security act~~ and ~~section~~ 26 USC 3304 (a) (4) ~~of the internal revenue code~~ are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, ~~some~~ any part of ~~the moneys collected or to be collected under the state unemployment insurance law,~~ an employer's contributions in partial or complete substitution for grants under ~~title III~~ 42 USC 501 to 506, then ~~this chapter shall, by rule of the department, be modified in the manner and to the extent and within the limits necessary to permit such use by the department under this chapter; and the modifications shall become effective on the same date as such use becomes~~

~~permissible under the federal amendments~~ the department may credit any portion of that part of an employer's contributions to the appropriation under s. 20.445 (1) (wd).

SECTION 140. 108.20 of the statutes is repealed and recreated to read:

108.20 Segregated funds. (1) UNEMPLOYMENT ADMINISTRATION FUND. There is created a separate, nonlapsible trust fund designated as the unemployment administration fund consisting of moneys credited to the appropriation accounts under s. 20.445 (1) (wc), (wd), and (wh).

(2) UNEMPLOYMENT PROGRAM INTEGRITY FUND.

SECTION 141. 108.22 (1) (am) of the statutes is amended to read:

108.22 **(1)** (am) The interest, penalties, and tardy filing fees levied under pars. (a), (ac), (ad), and (af) shall be paid to the department and credited to the ~~administrative account~~ appropriation under s. 20.445 (1) (wd).

SECTION 142. 108.22 (1m) of the statutes is amended to read:

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

SECTION 143. 108.22 (8e) of the statutes is amended to read:

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

SECTION 144. 108.22 (10) of the statutes is amended to read:

108.22 **(10)** 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).

SECTION 145. 108.223 (2) (b) of the statutes is amended to read:

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

SECTION 146. 108.23 of the statutes is amended to read:

108.23 Preference of required payments. In the event of an employer's dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in circuit courts, the payments required of the employer under this chapter shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages. If the employer is indebted to the federal government for taxes due under the federal unemployment tax act and a claim for the taxes has been duly filed, the amount of contributions which should be paid to allow the employer the maximum offset against the taxes shall have preference over preferred claims for wages and shall be on a par with debts due the United States, if by establishing the preference the offset against the federal tax can be secured under ~~s.~~ 26 USC 3302 (a) (3) ~~of the federal unemployment tax act~~.

SECTION 147. 108.24 (3) (a) 3. a. of the statutes is amended to read:

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

SECTION 148. 108.24 (3) (a) 4. of the statutes is amended to read:

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

SECTION 149. Fiscal changes.

(1) The unencumbered balance in the appropriation account under s. 20.445 (1) (gg), 2019 stats., immediately before the effective date of the repeal of s. 20.445 (1) (gg), 2019 stats., and the unencumbered balance in the appropriation account under s. 20.445 (1) (gm), 2019 stats., immediately before the effective date of the repeal of s. 20.445 (1) (gm), 2019 stats., are transferred to the appropriation account under s. 20.445 (1) (wd), as affected by this act.

(2) (a) The unencumbered balance in the appropriation account under s. 20.445 (1) (gc) is transferred to the appropriation account under s. 20.445 (1) (wc).

(b) The unencumbered balance in the appropriation account under s. 20.445 (1) (gd) is transferred to the appropriation account under s. 20.445 (1) (wd).

(c) The unencumbered balance in the appropriation account under s. 20.445 (1) (gh) is transferred to the appropriation account under s. 20.445 (1) (wh).

SECTION 150. Initial applicability.

(1) The treatment of s. 108.02 (15) (k) 21. first applies to services performed on the effective date of this subsection.

(2) The treatment of s. 108.02 (10e) (c) first applies to determinations issued under s. 108.09 on the effective date of this subsection.

SECTION 151. Effective dates. This act takes effect on the first Sunday after publication, except as follows:

(1) The treatment of s. 16.48 (1) (a) (intro.), 1., 2., 3., 4., 5., and 6. and (b), (2), (3), and (4) takes effect on February 1, 2022.

(2) The treatment of ss. 108.02 (13) (k) and 108.065 (1e) (intro.) and (3m) takes effect on January 1, 2023.

(3) The creation of s. 108.02 (15) (k) 21. and SECTION 150 (1) of this act take effect on the first Sunday of the first year beginning after the date of publication.

(END)

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.[1] 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.[2]

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.[3] This provision was included in

[1] Wis. Stat. § 108.02(12)(a).
[2] Wis. Stat. §§ 108.02(12)(bm) and (c).
[3] 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.")

the unemployment law in 1995, when the Worker's Compensation employee status test was adopted.[4]

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 (c) 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~~.

[4] 1995 WI Act 118.

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.[1] 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.[2]

The federal SUTA Dumping Prevention Act[3] 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.[4] If the person making the false

[1] Wis. Stat. § 108.16(8)(e).
[2] Wis. Stat. §§ 108.16(8)(em) and (im).
[3] 42 U.S.C. § 503(k).
[4] Wis. Stat. § 108.16(8)(m).

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.

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)<u>, and (mm)</u> 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~~ <u>under</u> this section.

Section 108.19 (1s) (a) 7. of the statutes is created to read:

<u>Assessments under ss. 108.16 (8) (m) 2. and (mm).</u>

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 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.

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.

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 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.~~

(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~~:~~.

~~(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.

D21-11
Work Share Revisions

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."[1] 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."[2] The Department's Secretary may also waive compliance with the occupational drug testing statutes to ensure federal conformity.[3]

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

[1] Wis. Stat. § 108.14(13).
[2] Wis. Stat. § 108.062(19).
[3] Wis. Stat. § 108.133(5)(d).

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.[4]

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

[4] This amount is subject to revision as the Department completes the benefit recharging under section 108.07(5)(bm).

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.

D21-12
Department Flexibility for Federal Funding

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.[1] 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.[2] All employers are also assigned a solvency rate, which, when combined with the contribution rate, provides for a total tax rate.[3]

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:

	Non-construction	Construction
Payroll<$500,000	3.05%	2.90%
Payroll>$500,000	3.25%	3.10%

[1] Wis. Stat. § 108.18(2)(a).
[2] Wis. Stat. § 108.18(2)(c).
[3] Wis. Stat. § 108.18(9).

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 <u>either</u> the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate<u>, or the rate specified in par. (a), whichever is greater</u>. 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.

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.

D21-13
Construction Employer Initial Contribution Rates

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: June 17, 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:

State	Percent of UI hearings by phone (2019)
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 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 ch. DWD 140, Wis. Admin. Code, 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. The rule will also permit postponement of a hearing if the Department does not send the proposed hearing exhibits in advance of a benefit hearing. The rule will also clarify what unemployment insurance records may be released to a person who is not a party or a party's representative.

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

Currently, ch. DWD 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 the requirements for the Department to provide assistance to people with disabilities at hearings. Chapter DWD 140 also provides for postponement of hearings in certain circumstances. Furthermore, ch. DWD 140 outlines when parties, parties' representatives, and other persons may access and inspect enumerated types of hearing records.

The Department proposes to amend ch. DWD 140 to require that the hearing notice provide the method of the hearing (in person, telephone, or videoconference). Also, the Department proposes to amend ch. DWD140 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 the hearing office shall make such determinations, such as technological constraints and the need to accommodate individuals with disabilities. Further, the rule will allow parties to request an in-person hearing, subject to the guidelines. Chapter DWD 140 will also be amended to ensure that individuals with disabilities are able to timely and efficiently request an accommodation and to describe the process by which the Department will respond to such requests.

The Department also proposes to amend ch. DWD 140 to permit for postponement of benefit hearings when the Department does not timely send the proposed exhibits to a party.

Finally, the rule will update ch. DWD 140 to provide that certain hearing records are confidential unemployment information and not subject to release to individuals who are not parties or representatives of the parties. The rule will also provide those records that may be released to non-parties, subject to redaction, for which disclosure is in the interest of the unemployment insurance program to comply with federal law.

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 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. The proposed rule will also standardize the process for requesting an accommodation for hearings for individuals with disabilities who are parties or witnesses for the hearing. The rule changes will better allow parties to prepare for hearing. Finally, the proposed rule will clarify which hearing records, subject to redaction, may be released to non-parties.

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.

Approval of the agency head or authorized individual:

________________________________	______________________
Pamela R. McGillivray, Chief Legal Counsel	**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 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year.[1]

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.

[1] 26 USC § 3306(c)(20).

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 33⅓ 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 33⅓ 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).

D21-15
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,[1] 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.[2] 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

[1] 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.
[2] However, the provisions of Wis. Stat. § 108.04(9) still apply.

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[3] 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

[3] Section 303(l)(l)(A)(ii), SSA.

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.[4]

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.[5]

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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[4] 2017 Wis. Act 157, effective April 1, 2018.
[5] The Budget Bill also proposes to legalize recreational marijuana.

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 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[1]

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.

[1] 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.

2. Proposed Statutory Changes[1]

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.

[1] Subject to revision to ensure cross-references are corrected.

D21-18
Quit Exception for Relocating Spouse

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**[1]

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.

[1] Subject to revision to ensure cross-references are corrected.

D21-19
Repeal Waiting Week

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.

2. Proposed Statutory Changes[1]

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.

[1] 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.

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.

D21-20
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.[1] 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.

[1] This is a preliminary estimated calculation, subject to revision.

2. Proposed Statutory Changes[2]

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.

[2] Subject to revision to ensure cross-references are corrected.

D21-21
Wage Threshold for Receipt of Benefits

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.

2. Proposed Statutory Changes[1]

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.

[1] 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.

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.

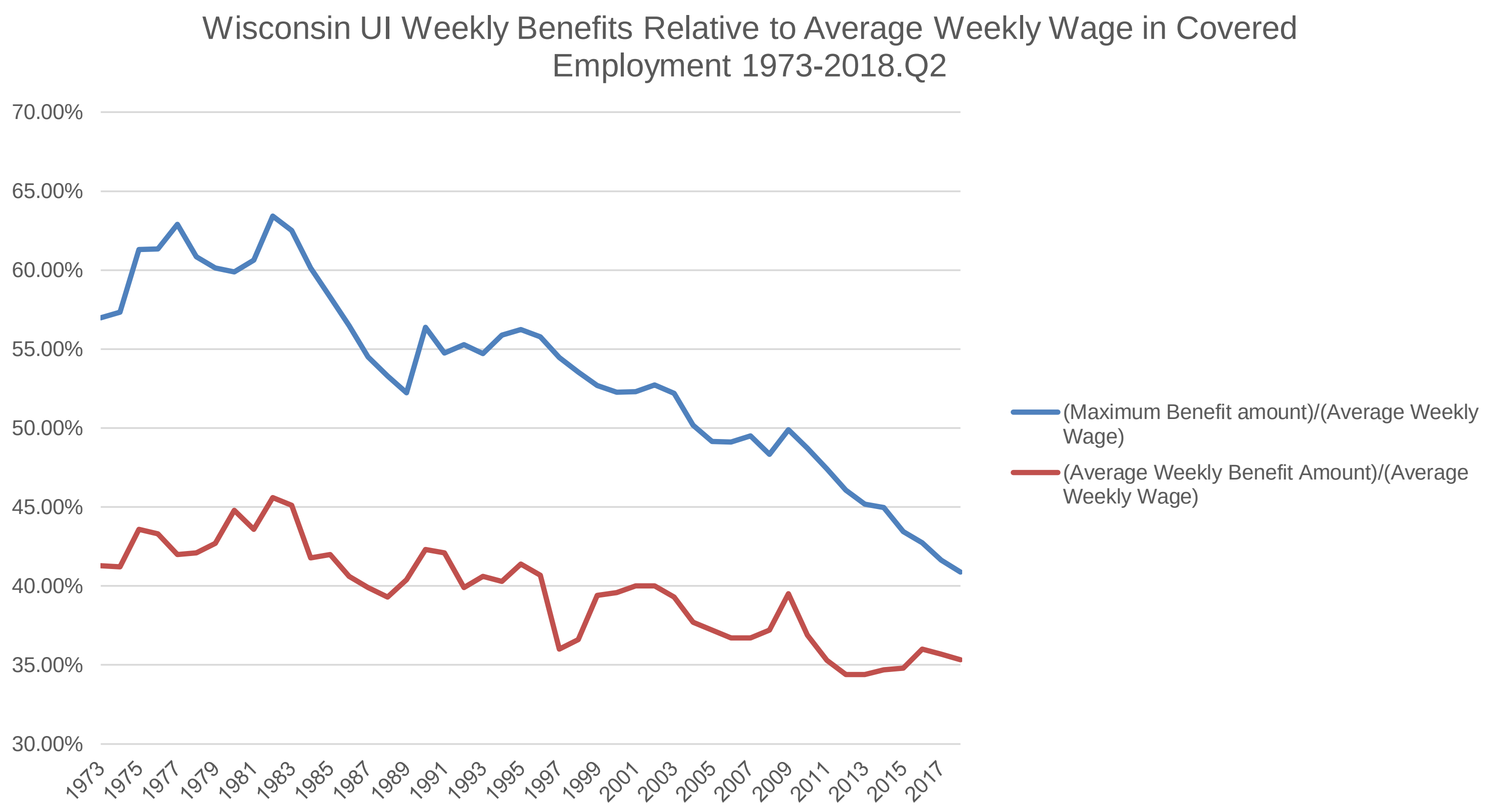
5. Proposed Effective/Applicability Date

This proposal would be effective for weeks of unemployment beginning January 2, 2022.

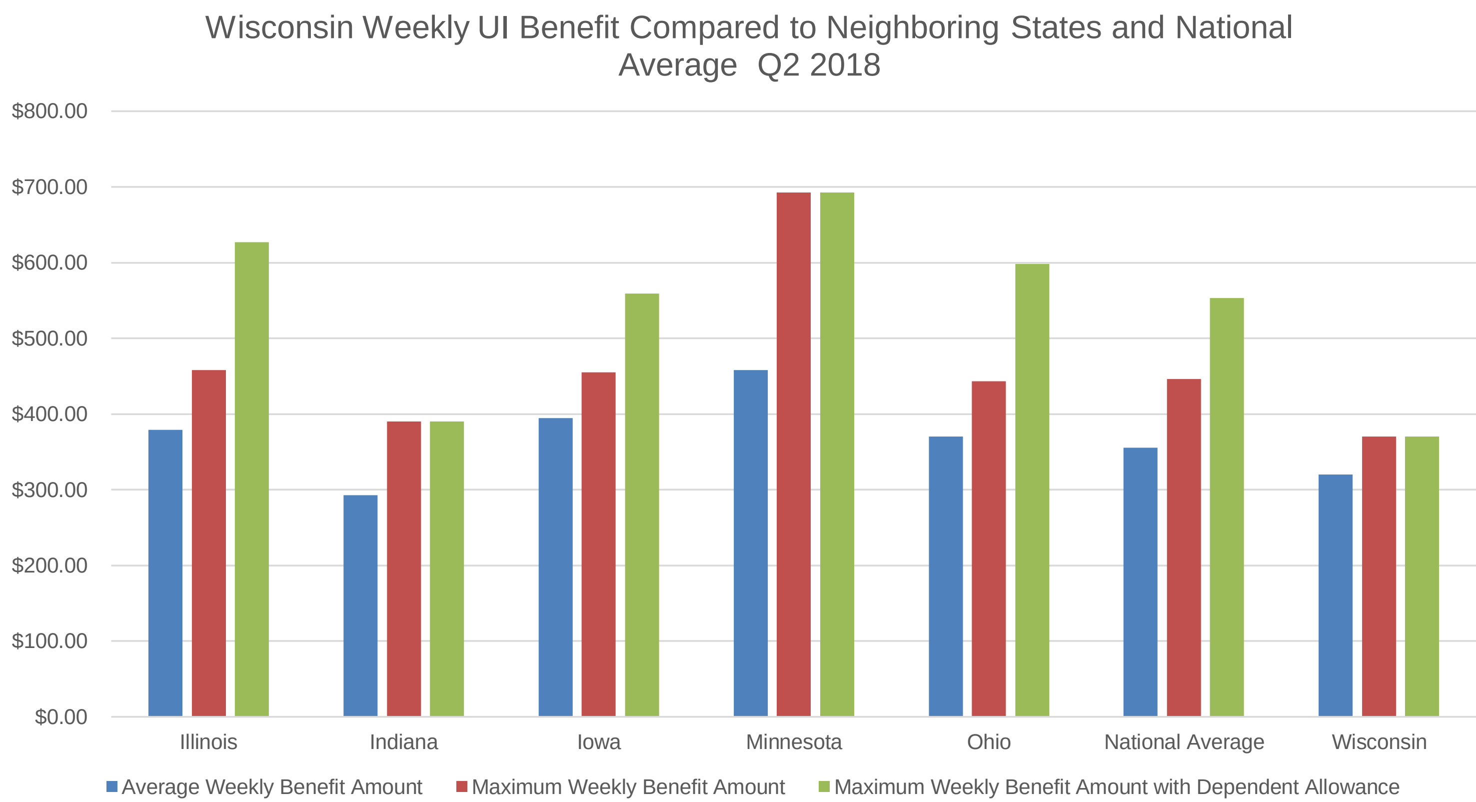
D21-22
Increase Maximum Weekly Benefit Rate

Effective Week/Year	Minimum	Maximum
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

UI Benefits Have Fallen Relative to Covered Wages



WI UI Weekly Benefits Compared to Other Midwest States



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
National Average	**$355.42**	**$445.96**	**$553.02**
Wisconsin	**$319.91**	**$370.00**	**$370.00**

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 individuals' 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."[1]

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

[1] Wis. Admin. Code DWD § 100.02(61).

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.[2]

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."[3] 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 [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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[2] Wis. Stat. § 108.04(8)(d).
[3] Wis. Stat. § 108.04(8)(dm).

2. Proposed Statutory Changes[4]

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 ~~7th~~ 11th 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.

[4] Subject to revision to ensure cross-references are corrected.

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.

D21-23
Flexibility for Finding Suitable Work

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. The 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.[1]

2. Proposed Statutory Changes[2]

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.

[1] This calculation is preliminary and subject to revision.
[2] 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.

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 safeguarding the rights of those whose access to electronic means is severely limited or unavailable.

2. **Proposed Statutory Changes**[1]

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,

[1] Subject to revision to ensure cross-references are corrected.

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.

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.

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.[1] 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.

[1] Joint Task Force on Payroll Fraud and Worker Misclassification 2020 Report, p. 10.

2. Proposed Statutory Changes[2]

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 <u>as follows</u>:

1. <u>For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty</u> 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 <u>as follows</u>:

<u>(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</u> in the amount of $1,000 for each individual so coerced~~, but not to exceed $10,000 per calendar year~~.

[2] Subject to revision to ensure cross-references are corrected.

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.

UIAC Agreed Upon Bill
Labor Caucus Proposals

July 6, 2021

In drafting our proposals for the 2021 Agreed Upon Bill, the Labor Caucus took a thoughtful approach, in an attempt to address issues within Wisconsin's Unemployment Insurance System which have simply been ignored for too long. Over the past decade, UI in Wisconsin has undergone numerous changes that has reduced the amount of UI Benefits paid out, but outside of the recent Federal Pandemic Response, little has been done to address the desperate needs of unemployed claimants in WI or to address the adequacy of Wisconsin's UI Trust Fund.

Our proposals achieve what we believe is a balanced approach to addressing the needs of both employers and UI claimants in Wisconsin.

1. **Gradually Transition UI Trust Fund Tax Schedules from being based on UI-TF Balance in Dollars ($) to being based on Average High Cost Multiple (AHCM)**

   Average High Cost Multiple (AHCM) is the measure used by US-DOL to determine the adequacy of a state's UI Trust Fund. Maintaining the minimum recommended AHCM of 1.0, estimates that a state's UI Trust Fund will have reserves to pay UI Benefits for 1 year (12 months) at it's historic high payout rate (based on that state's experience over the previous 20 years or a period covering 3 recessions, whichever is longer).

   This proposed gradual transition assures that there will be no sharp increases in the UI Tax Rate for Wisconsin's employers, at the same time transitioning Wisconsin's UI Trust Fund to a sustainable model for the long term.

   Not withstanding any legislative action, the provisions of this proposal are as follows:

   a. Restructure UI Tax Schedules to AHCM as follows:

      Schedule A = When UI Trust Fund is below .5 AHCM
      Schedule B = When UI Trust Fund is between .5 – 1.0 AHCM
      Schedule C = When UI Trust Fund is between 1.0 – 1.25 AHCM
      Schedule D = When UI Trust Fund is above 1.25 AHCM

   b. Remain in UI Tax Schedule D for benefit years 2022 and 2023
   c. Restrict potential tax schedule increases for benefit years 2024 and 2025 to be no more than one (1) "Schedule" higher than the previous year.

2. **Gradually Increase the Maximum Weekly UI Benefit Rate to $450/week**

   An increase in the maximum weekly benefit rate is long overdue for UI Claimants in Wisconsin. The $370.00 Maximum Weekly Benefit Rate in Wisconsin ranks at the bottom for midwestern states and is nearly $76.00/week below the national average.

   In balancing the UI Trust Funds need to recover post-pandemic, this proposal provides modest increases yearly throughout a 4-year period. The proposed maximum weekly benefit increase schedule is as follows:

Current weekly maximum UI Benefit in WI		$370/week
2023 Benefit Year	$20 increase	$390/week
2024 Benefit Year	$20 increase	$410/week
2025 Benefit Year	$20 increase	$430/week
2026 Benefit Year	$20 increase	$450/week

3. **Eliminate 1-Week Waiting Period**

   When a person loses their job, their entire life is upended. They are at a crisis point. Questions of how to feed my family, make my house/car payment, and pay for adequate health insurance need to be addressed immediately, let alone managing personal feelings of self worth and other mental health concerns.

   Not providing UI Benefits the first week a person is unemployed is cruel and only exasperates their already desperate situation. This proposal is to eliminate the 1-week waiting period to receive UI Benefits.

4. **Expand Worker Miss-Classification to all Industries and Amend Penalties to be equivalent to those of Claimant fraud**

   Worker Misclassification is estimated to cost Wisconsin $200 Million each year in unpaid taxes. Worker Mis-Classification is an criminal act, that undercuts and negatively impacts all honest & legitimate employers in Wisconsin. Intentional Worker Misclassification is Tax Fraud and Insurance Fraud, which needs to be eliminated in WI.

   This proposal recommends the adoption of Department Proposal D21-26 and implement future recommendations that are made by the Joint Taskforce on Payroll Fraud and Worker Misclassification.

5. **Request DWD-UI Division to complete a thorough funding review of Wisconsin's UI Trust Fund to ensure equity across all tax schedules, while at the same time ensuring UI Trust Fund sustainability**

UIAC 2021 Management Proposals

- **UI Computer Upgrade**– As part of the planned IT upgrade for the state UI system, require the new computer system/software to include a functionality that notifies employers of a benefit applicant who claims the applicant searched for work with that employer, and that allows the employer to provide online verification of the accuracy of that work search information. In addition, include a functionality that allows employers to simply and easily report online to the Department a job applicant's refusal of work, a refusal of an offer to attend a job interview, or a no-show for a scheduled job interview with an applicant.

- **Union Referral Service Work Search Criteria –** Require union hiring halls/referral services to conduct at least four work searches per week for each employee exempt from work search requirements per s. 108.04(2)(b)3., and require the union referral service to submit work search documentation to DWD for each exempt employee for each week of benefits claimed. Require DWD staff to conduct the same level of work search verification for employees utilizing the union referral exemption under s. 108.04(2)(b)3. as the department does for claimants who conduct work searches on their own.

- **Definition of Employee vs. Independent Contractor –** Establish a clear, consistent and objective standard to define the difference between an employee and an independent contractor. The definition should apply universally across all chapters of the statutes (e.g. UI, Workers Compensation, Wage & Hour, Equal Rights, DOR tax administration, etc.), and should account for new "gig economy" economic opportunities. Specific language attached.

- **Quit Good Cause Revision –** Repeal the quit good cause exception under s. 108.04(7)(e).

  Under current law if you quit a job within the first 30 days of hire and you could have refused the offer of work under the "suitable work" provisions you can collect benefits. This proposal would eliminate that quit exception.

- **Link Benefit Eligibility Weeks to Unemployment Rate –** Reduce weeks of unemployment eligibility as follows.

  Under current law individuals that are eligible for unemployment are generally entitled to 26 weeks of benefits. Reduce the maximum benefit duration to 14 weeks when the unemployment rate drops below 5%. Increase the number of weeks of benefit eligibility by 1 week for every 0.5% increase in the unemployment rate, up to a maximum of 20 weeks of eligibility up to 10% unemployment. Benefit eligibility would be 22 weeks of unemployment when the unemployment rate is greater than 10%

State Unemployment Rate	Weeks of Benefit Eligibility
Less than or equal to 5.4%	14
5.5% to 5.9%	15
6.0% to 6.4%	16
6.5% to 6.9%	17
7.0% to 7.4%	18
7.5% to 7.9%	19
8.0% to 10%	20
Greater than 10%	22

  Determine the applicable unemployment rate and corresponding benefit eligibility, by using the seasonally adjusted statewide unemployment rate published by the US Department of Labor for April and October. The benefit eligibility for January through June would be based on the prior October unemployment rate, while the benefit eligibility for July through December would be based on the April unemployment rate.

- **Clarify Definitions/Grounds for Misconduct and Substantial Fault –** Based upon a number of appellate court decisions and case-specific experiences of employers, make changes to these definitions to more accurately capture the intent and spirit of the 2013-2014 session reforms. Draft language attached.

Misconduct & Substantial Fault Clarification – Draft Language

(5) DISCHARGE FOR MISCONDUCT. An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 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 under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. 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 under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, “misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer. In addition, “misconduct" includes:

(a) A violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee:
   1. Had knowledge of the alcohol beverage or controlled substance policy; and
   2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.

(b) Theft or unauthorized possession of an employer's property or services ~~with intent to deprive the employer of the property or services permanently~~, theft or unauthorized distribution of an employer’s confidential or proprietary information, use of an employer’s credit card or other financial instrument for an unauthorized or non-business purpose without prior approval from the employer, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes the destruction of an employer’s records or substantial damage to his or her employer's property.

(c) Conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for his or her employer.

(d) One or more threats or acts of harassment, assault, or other physical violence instigated by an employee at the workplace of his or her employer.

(e) Absenteeism or tardiness by an employee that constitutes any of the following, unless the employee provides his or her employer with both advance notice and one or more valid reasons for each instance of absenteeism or tardiness:

1. More than 2 ~~occasions~~ absences within the ~~120~~ 180-day period before the date of the employee's termination; or
2. One or more ~~occasions~~ absences if prohibited by ~~unless otherwise specified by~~ his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature~~,~~; or
3. More than 3 instances of ~~excessive~~ tardiness by an employee in violation of the employer's normal business hours or a policy of the employer that has been communicated to the employee.~~, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.~~

(f) Unless directed by an employee's employer, falsifying business records of the employer.

(g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

(h) A violation by an employee of an employer's written policy concerning the use of social media, if the employee had knowledge of the social media policy.

(5g) DISCHARGE FOR SUBSTANTIAL FAULT.

(a) An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.

2. One or more inadvertent errors made by the employee, unless the error violates a written policy of the employer, endangers the safety of the employee or another person, causes bodily harm to the employee or another person, or the error is repeated after the employer warns the employee about the error.

3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

(b) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by the employer and paragraph (a) applies.

Worker Classification Proposed Language

s. 111.xx Worker Classification (1) It is in the best interests of workers, business, and government to have clear, objective, and uniform standards for determining who is an employee and who is an independent contractor. Clarity in a worker's classification allows businesses to comply with applicable laws, provides workers with certainty as to their benefits, legal rights, and obligations, and minimizes unnecessary mistakes, litigation, risk, legal exposure, and noncompliance.

(2) Except as provided in sub. (3), a person shall be classified as an independent contractor for all purposes under the laws of this state, including but not limited to laws governing unemployment insurance, workers compensation, wage and hour, fair employment, and tax administration, if all of the following apply:

(a) The person signs a written contract with the employer, in substantial compliance with the terms of this subsection, that states the employer's intent to retain the services of the person as an independent contractor and contains acknowledgements that the person understands that he or she is:

1. Providing services for the employer as an independent contractor;
2. Not going to be treated as an employee of the employer;
3. Not going to be provided by the employer with either worker's compensation or unemployment compensation benefits;
4. Obligated to pay all applicable federal and state income taxes, if any, on any monies earned pursuant to the contractual relationship, and that the employer will not make any tax withholdings from any payments from the employer;
5. Responsible for the majority of supplies and other variable expenses that he or she incurs in connection with performing the contracted services unless the expenses are for travel that is not local; the expenses are reimbursed under an express provision of the contract; or the supplies and/or expenses reimbursed are commonly reimbursed under industry practice.

(b) Except as provided in par. (c), the person provides his or her services through a business entity, including but not limited to, a partnership, limited liability company or corporation, or through a sole proprietorship, registered as required under state law.

(c) The requirement in par. (b) does not apply if the person has either filed, intends to file, or is contractually required to file, in regard to the fees from the work, an income tax return with the Internal Revenue Service for a business or for earnings from self-employment.

(d) The person satisfies four or more of the following criteria:

1. With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, contractual or other similar obligations, or to protect persons and/or property, or to protect a franchise brand, the person has the right to control the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work. This provision is satisfied even though the employer may provide orientation, information, guidance, or suggestions about the employer's products, business, services, customers and operating systems, and training otherwise required by law.

2. Except for an agreement with the employer relating to final completion or final delivery time or schedule, range of work hours, or the time entertainment is to be presented if the work contracted for is entertainment, the person has control over the amount of time personally spent providing services.

3. Except for services that can only be performed at specific locations, the person has control over where the services are performed.

4. The person is not required to work exclusively for one employer unless:

    i. A law, regulation or ordinance prohibits the person from providing services to more than one employer; or

    ii. A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one employer at a time or requires identification of the employer.

5. The person is free to exercise independent initiative in soliciting others to purchase his or her services.

6. The person is free to hire employees or to contract with assistants, helpers, and/or substitutes to perform all or some of the work.

7. The person cannot be required to perform additional services without a new or modified contract.

8. The person obtains a license or other permission from the employer to utilize any workspace of the employer in order to perform the work for which the person was engaged.

9. The employer has been subject to an employment audit by the Internal Revenue Service or the department and the IRS or the department has not reclassified the person to be an employee or has not reclassified the category of workers to be employees.

10. The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications or permits required to perform the services.

(3) All workers who do not satisfy the criteria set forth in sub. (2) shall be classified as employees. In addition, nothing in sub. (2) shall require an employer to classify a worker who meets the criteria contained therein as an independent contractor; the employer is free to hire the worker as an employee.

(4) The legislature finds that worker classification criteria used to determine independent contractor status that are uniform throughout the state is a matter of statewide concern and that the enactment of an ordinance by a city, village, town, or county regulating the worker classification criteria used to determine independent contractor status would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of the worker classification criteria used to determine independent contractor status set forth in this section. Therefore, the worker classification criteria used to determine independent contractor status in this section shall be construed as an enactment of statewide concern for the purpose of providing worker classification criteria used to determine independent contractor status that are uniform throughout the state.

(a) No city, village, town, or county may enact or enforce an ordinance regulating worker classification or the criteria used to determine independent contractor status.

2021 UIAC Proposals

No.	Title	Presented	Action
D21-01	Creation of Unemployment Administration Fund	3/18/21	Appr. 8/17/21
D21-02	Minor and Technical Corrections	3/18/21	Appr. 8/17/21
D21-03	Reimbursable Employer Debt Assessment	3/18/21	Appr. 8/17/21
D21-04	DWD Reports to Legislature	3/18/21	Appr. 8/17/21
D21-05	Prohibit DOR Collection	3/18/21	Appr. 8/17/21
D21-06	Department Error	3/18/21	Appr. 8/17/21
D21-07	Effect of Criminal Conviction	3/18/21	Appr. 8/17/21
D21-08	Fiscal Agent Election	3/18/21	Appr. 8/17/21
D21-09	Employee Status Clarification	4/15/21	
D21-10	SUTA Dumping Penalties	4/15/21	
D21-11	Work Share Revisions	4/15/21	Appr. 8/17/21
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	Appr. 8/17/21
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	
L21-01	Gradually Transition to AHCM Tax Schedule Triggers	7/15/21	
L21-02	Gradually Increase the Maximum WBR to $450/week	7/15/21	
L21-03	Eliminate the 1-week Waiting Period	7/15/21	
L21-04	Expand Worker Misclassification Penalties	7/15/21	
L21-05	DWD Trust Fund Study	7/15/21	
M21-01	UI Computer Upgrade	7/15/21	
M21-02	Union Referral Service Work Search Criteria	7/15/21	
M21-03	Definition of Employee vs. Independent Contractor	7/15/21	
M21-04	Quit Good Cause Revision	7/15/21	
M21-05	Link Benefit Eligibility Weeks to Unemployment Rate	7/15/21	
M21-06	Clarify Definitions/Grounds for Misconduct and Sub. Fault	7/15/21	

STATE OF WISCONSIN DWD
Department of Workforce Development

Unemployment Insurance
Advisory Council

2021 Unemployment Insurance Advisory Council Schedule

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
June 17, 2021	Scheduled Meeting of UIAC Discuss Department Proposals and Labor & Management Proposals
July 15, 2021	Scheduled Meeting of UIAC Discuss Department Proposals and Labor & Management Proposals
August 17, 2021	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
September 16, 2021	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
October 21, 2021	Scheduled Meeting of UIAC Final Review and Approval of LRB Draft of Agreed Upon Bill
November 18, 2021	Scheduled Meeting of UIAC Agreed Upon Bill Sent to the Legislature for Introduction
December 16, 2021	Tentative Meeting of UIAC
January 2022	Tentative Meeting of UIAC