



Unemployment Insurance Advisory Council

Meeting Agenda

January 19, 2023, 10:00 a.m. – 4:00 p.m.

The public may attend by teleconference:

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)
Meeting number (access code): 2597 259 1232 Password: DWD1

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

1. Call to order and introductions
2. Approval of minutes of the September 15, 2022 UIAC meeting
3. Wisconsin's Workforce – Dennis Winters
4. Department update
5. Quarterly report on UI information technology systems ([7/1/22-9/30/22](#))
6. Trust Fund update – Shashank Partha
7. Public Records and Open Meetings Training – Jennifer Wakerhauser
8. Judicial update
 - [Neisler v. Lab. & Indus. Rev. Comm'n](#)
 - [Legacy Assurance Plan of Am., Inc. v. Lab. & Indus. Rev. Comm'n](#)
 - [Catholic Charities Bureau, Inc. v. Lab. & Indus. Rev. Comm'n](#)
9. Unemployment Insurance Public Hearing summary
10. Labor and Management proposals to amend the unemployment insurance law
11. Research requests
12. 2023-2024 UIAC timeline
13. Future meeting dates: February 16, March 16, April 20, May 18, June 15
14. 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 15, 2022
Held In-person and via Teleconference

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

Members: Janell Knutson (Chair), David Bohl, Dennis Delie, DiAnn Fechter, Sally Feistel, Corey Gall, Mike Gotzler, Shane Griesbach, Susan Quam and Kathy Thornton-Bias.

Department Staff: Jim Chiolino, Jim Moe, Andy Rubsam, Jason Schunk, Shashank Partha, Linda Hendrickson, Jeff Laesch, Mike Myszewski, Robert Usarek, Kinen Fleming, Mary Jan Rosenak, Jennifer Wakerhauser (DWD Chief Legal Counsel), Samantha Ahrendt Caitlan Madden and Joe Brockman

Members of the Public: Gary Raistrom, Brenda Lewison, Keri Routhieaux (Legislative Audit Bureau), Victor Forberger (Attorney, Wisconsin UI Clinic)

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:02 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

2. Approval of Minutes

Motion by Ms. Feistel, second by Ms. Quam to approve the minutes of the May 19, 2022, meeting. The vote was taken by roll call and passed unanimously

3. Department Update

Mr. Chiolino stated that the UI Call Center is now staffed entirely by UI employees. The contractors ended their service on July 15, 2022. Mr. Chiolino stated that the Call Center is operating with expanded hours.

Mr. Chiolino stated that several updates have been made to the Claimant Portal. Spanish has been added as an option for initial claims and many UI documents are available in Spanish.

Mr. Chiolino stated that UI has received grant funding from the U.S. Department of Labor for Tiger Team projects. One of the projects under Tiger Teams that has been successfully completed and implemented is the NASWA Data Hub. The Data Hub contains data repositories and analysis tools to assist with fraud detection and prevention.

Ms. Thornton-Bias asked if there has been an UI audit of its cyber security protocols.

Mr. Chiolino responded that cyber security is an ongoing concern for UI. Mr. Chiolino stated that he is aware that the Legislative Audit Bureau looked at UI's cyber security protocols.

4. Report on Information Technology Systems Update (4/1/22 – 6/30/22)

Mr. Chiolino stated that the quarterly report given by Secretary-Designee Pechacek to the Legislature can be found in members' packets.

Mr. Chiolino stated that the cloud-based contact center has been implemented that includes an artificial intelligence chatbot. The UI modernization is being funded with \$80 million in federal money. The system is being converted from a COBOL-based mainframe system to a Cloud-based flexible system. Infrastructure items have been completed and the modernization project is going well.

5. Worker Classification Section Update

Mr. Myszewski stated that the Worker Classification Section (WCS) is operating at pre-pandemic levels. So far in 2022, the WCS has conducted 454 investigations, as compared to 287 investigations in all of 2021.

Mr. Myszewski stated that, since the program was initiated in 2013, the WCS has conducted 3,736 investigations, reclassified 9,704 workers as employees, assessed \$3.34 million UI tax and interest, and issued \$112,000 administrative penalties in 20 cases for intentional misclassification. Approximately 62% of WCS investigations involve the construction industry.

Mr. Myszewski stated that one of the outcomes of the Worker Classification Task Force has been the creation of a working group consisting of Unemployment Insurance, Workers Compensation, the Department of Revenue, and the Department of Justice to exchange intelligence on companies that misclassify and to conduct joint investigations when appropriate.

6. Trust Fund Update

Mr. Partha reported that the financial statement for July is found in members' packets.

Mr. Partha stated that year-to-date benefits paid were \$188.9 million, tax receipts were \$373.3 million, interest was \$9.2 million, and the UI Trust Fund balance was \$1.266 billion, an increase from last year.

Mr. Partha stated that \$1.2 million remains of the \$2 million that was set aside for charging of benefits financed by reimbursable employers in cases of identity theft.

Mr. Bohl asked about the 56% decline in benefit payments from last year to this year.

Ms. Knutson stated benefit payments fell because the unemployment rate has fallen and more people are now employed.

Ms. Thornton-Bias asked about the trend in employment versus unemployment and the connection to benefits paid.

Ms. Knutson stated that the Department will provide the requested information in chart form for the members.

7. Program Integrity Assessment

Ms. Knutson summarized a letter from Secretary-Designee Pechacek regarding the Program Integrity Assessment of .01% for program integrity activities. Secretary-Designee Pechacek recommended continuing the assessment for program integrity activities. The amount generated through the assessment is \$3.3 million, which is approximately 5.7% of the federal UI administrative grant and 0.26% of the Trust Fund balance. The Department has noted increased attempts at fraud, and the Department places a priority on program integrity.

Ms. Knutson asked the Council if it would entertain a motion in support of Secretary-Designee Pechacek's recommendation to levy the Program Integrity Assessment for this year.

The motion was made by Ms. Feistel and seconded by Mr. Delie to approve the Program Integrity Assessment of .01%. The vote was taken by roll call and passed unanimously.

Mr. Gotzler asked if the Department publishes a periodic anti-fraud report.

Ms. Knutson stated that the Department publishes an annual Fraud Report that includes information on criminal prosecutions. Ms. Knutson stated that fewer criminal fraud cases were investigated and referred for prosecution during the Pandemic because staff were working on identity theft cases. Ms. Knutson stated that fraud in the federal Pandemic programs does not affect the UI Trust Fund or Wisconsin employers.

8. Rule Making Update

Permanent Rule, DWD Ch. 100-150 (CR 22-010) eff. 7/1/22

This rule converts references from Standard Industrial Classification codes to the North American Industry Classification System codes; and other minor technical changes to the unemployment insurance program.

Permanent Rule, LIRC Ch. 1-4 (CR 21-105) eff. 8/1/22

This rule makes changes to the rules of procedure for the Labor and Industry Review Commission.

Mr. Gotzler asked if the LIRC rule change was substantive.

Mr. Rubsam stated that the setting of a 14-day deadline for filing answers to petitions for review was the main procedural aspect of the rule change.

9. Research Requests

There were no research requests.

10. Unemployment Insurance Public Hearing Schedule

Ms. Knutson stated that, in even numbered years, the UIAC holds a public hearing, normally in November. The next public hearing could be scheduled for November 17, 2022. The last hearing was held via Webex in a two-hour time block in the afternoon, with a second 1.5-hour block in the late afternoon. Ms. Knutson stated that a few people appeared at the later session.

Ms. Knutson stated that she is requesting that a couple of Council members, if possible, attend the sessions. Ms. Knutson stated that an email box will be available for public comments. Ms. Knutson stated that public comments may also be received via U.S. mail. Ms. Knutson stated that flyers will be prepared for distribution to Council members' constituencies.

Ms. Thornton-Bias asked if Webex will be used for this year's meeting.

Ms. Knutson replied that it would.

The consensus of the Council was for Department staff to set the date.

11. Future Meeting Dates

Ms. Knutson stated that the following dates have been reserved for UIAC meetings:

October 22, 2022

November 17, 2022

January 19, 2023

Ms. Knutson stated that the October 22nd date is available if the Council wants to meet. Ms. Knutson stated that she can send the financial summary to the Council by email in lieu of a meeting. Ms. Knutson stated that the Council could hold the public hearing in lieu of the November meeting.

The consensus of the Council was for email updates.

Ms. Knutson stated that the Council should plan on having its next meeting on January 19, 2023. Ms. Knutson stated that she will send financial updates by email to the Council members.

Ms. Quam asked for a review for new Council members of how the Council operates.

Ms. Knutson stated that new members recently received a brief orientation presentation. Ms. Knutson stated that the timeline for Council activities for next year will be prepared for the January 19, 2023, meeting. Ms. Knutson stated that the January 19th meeting will be held in person.

12. Adjourn

Motion by Ms. Feistel, second by Mr. Gall, to adjourn the meeting. The vote was taken by voice vote and passed unanimously. The meeting was adjourned at 10:47 am.

STATE OF WISCONSIN

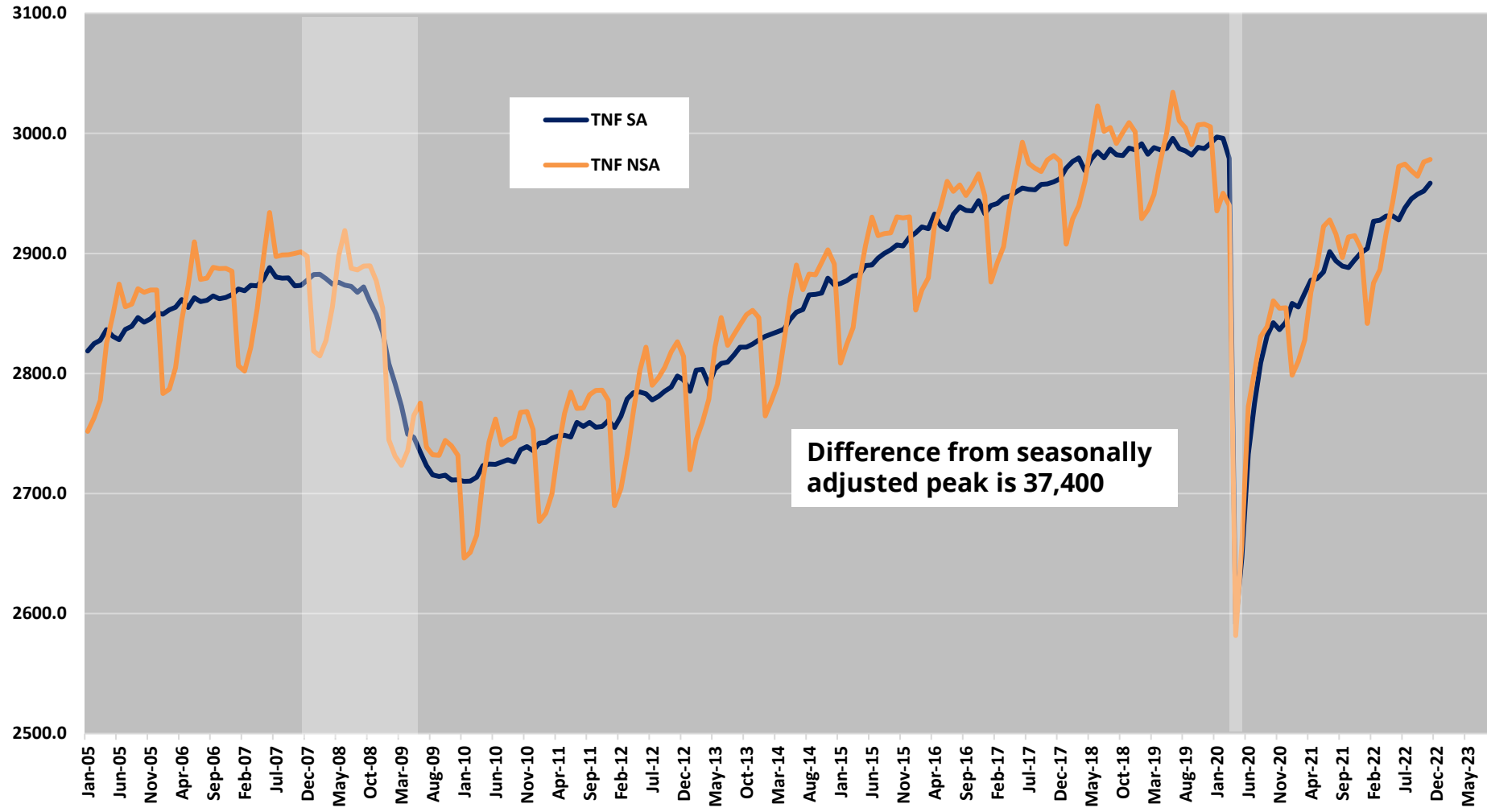


Department of Workforce Development

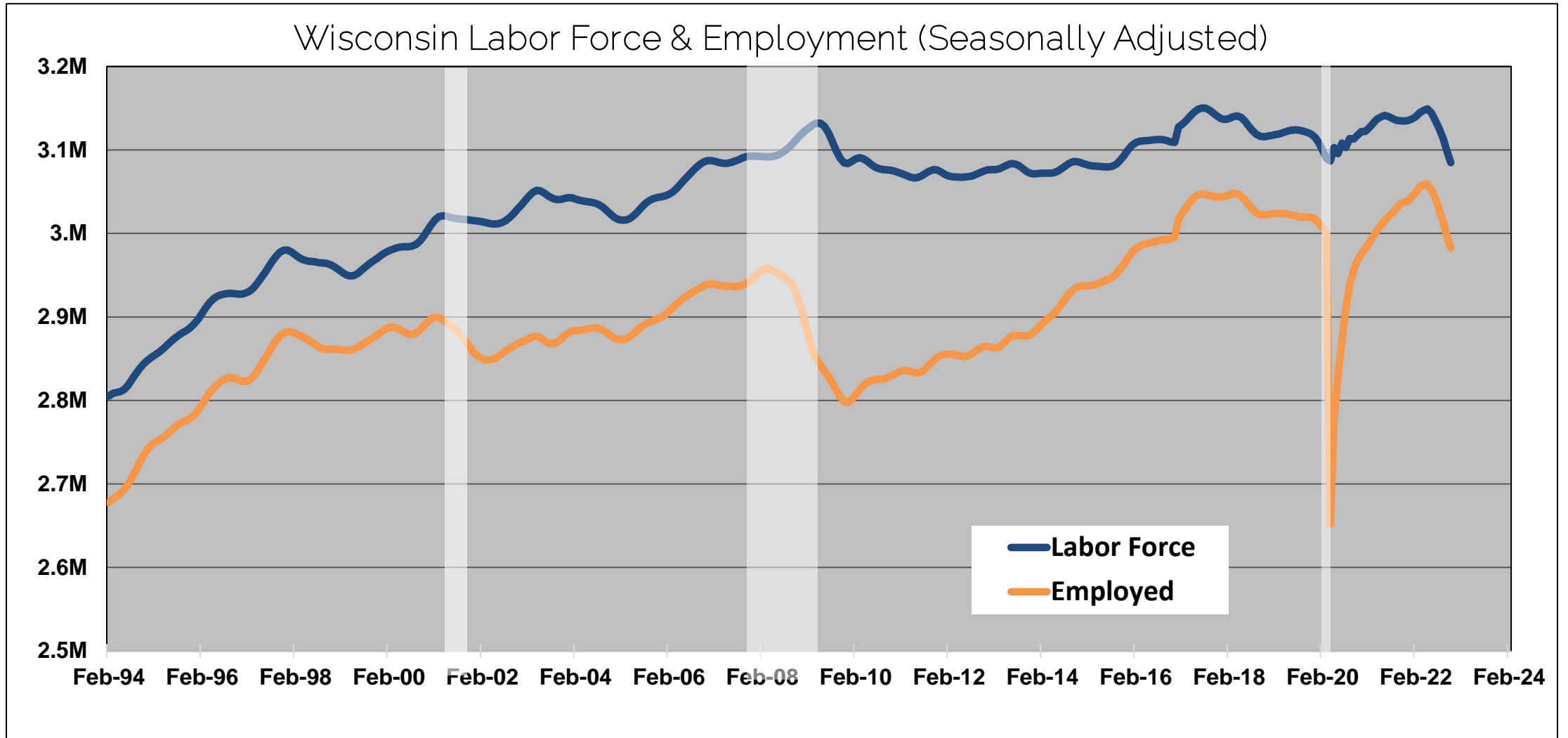
Dennis Winters

Current Employment Statistics (CES) Nonfarm Jobs

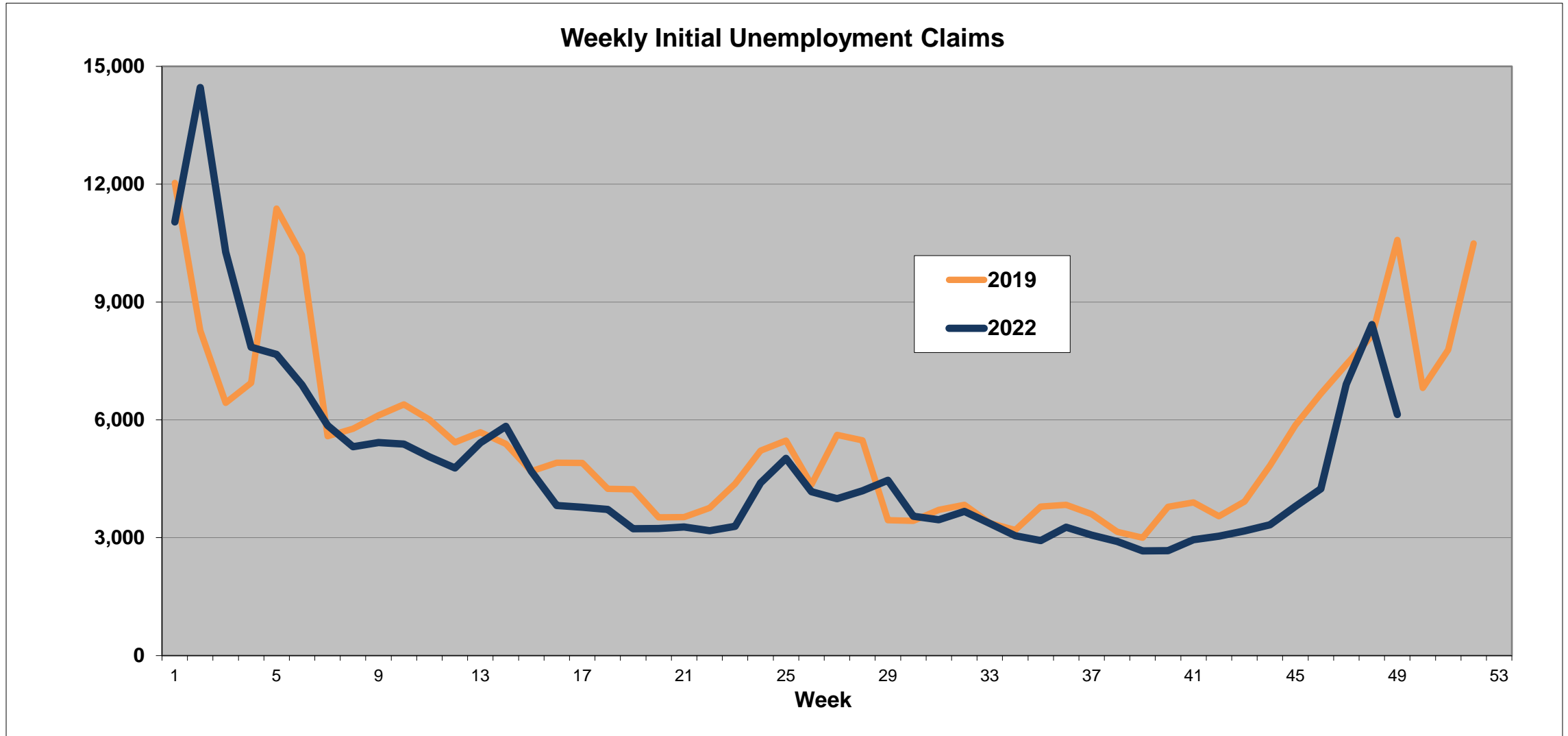
CES Wisconsin NonFarm Jobs



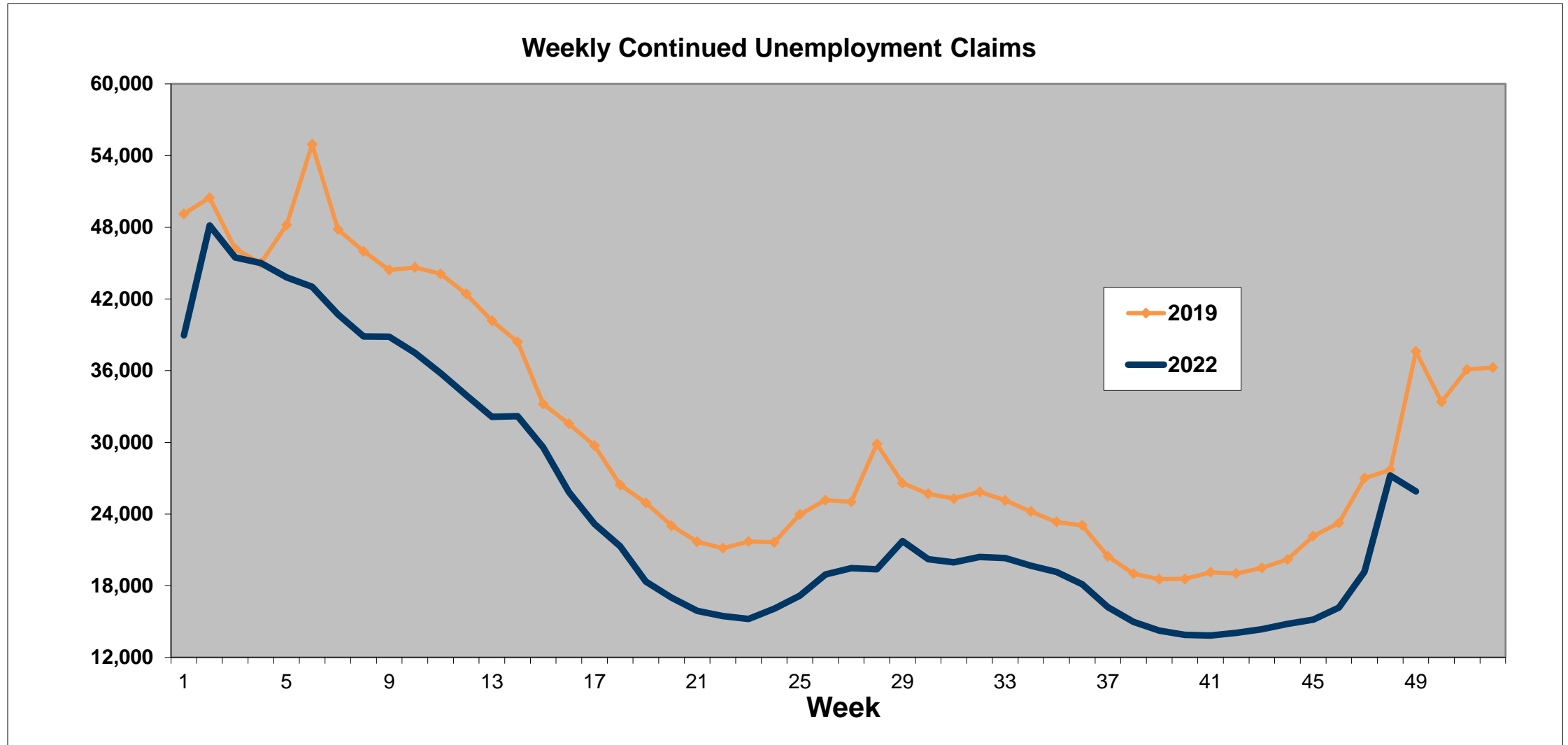
Wisconsin Employment



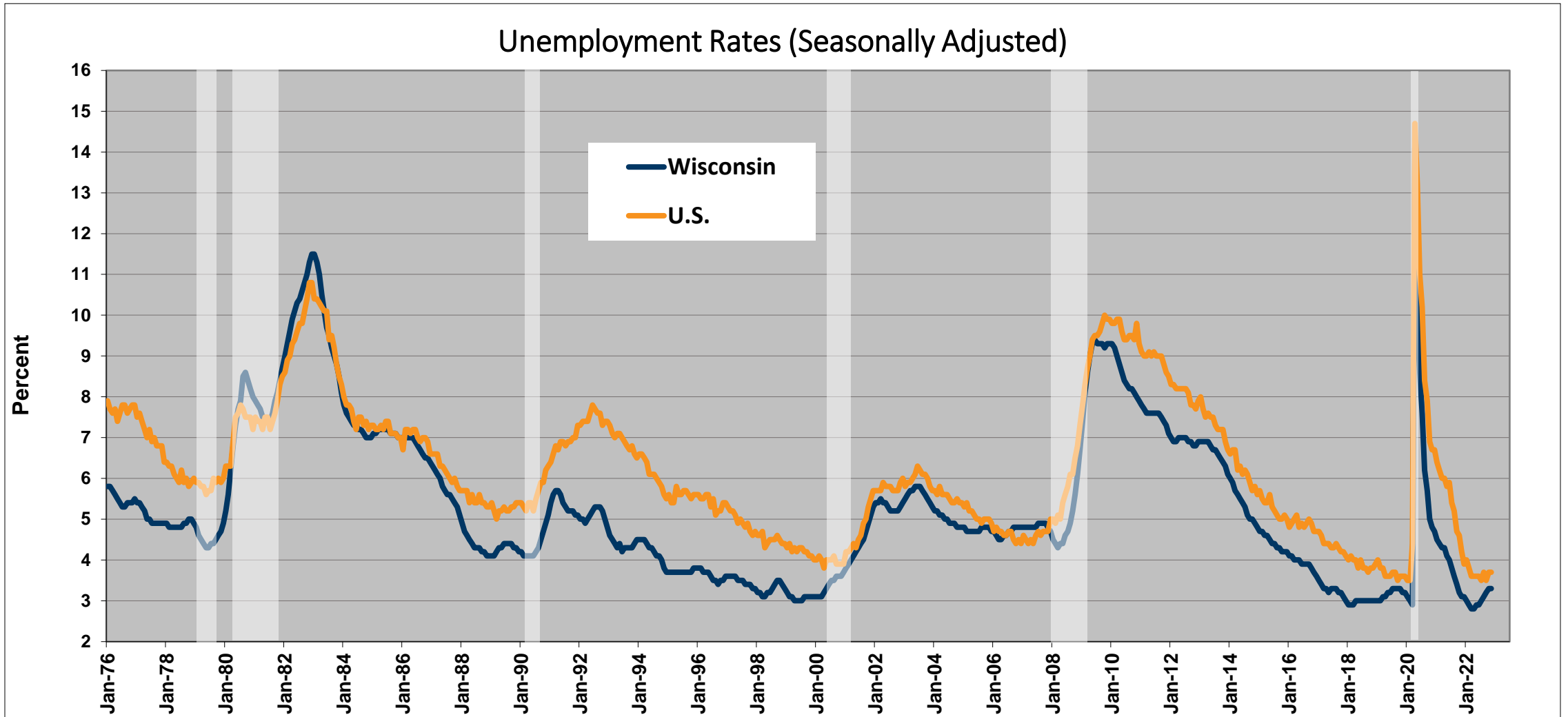
Unemployment Insurance Claims



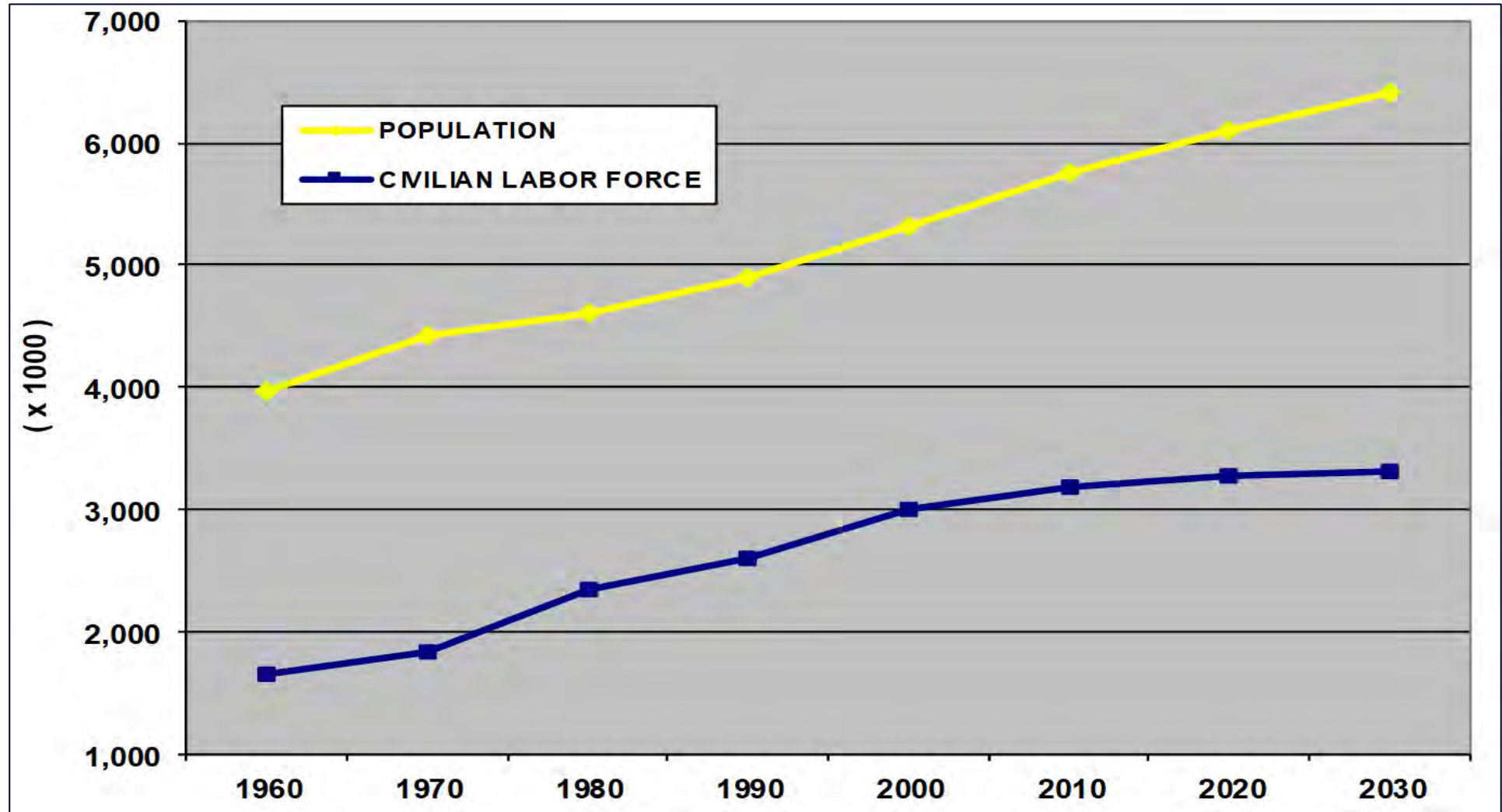
Unemployment Insurance Claims



Unemployment Statistics



Labor Quantity Challenge – WI Population & Labor Force





QUESTIONS



State of Wisconsin

Date: October 31, 2022

To: Members of the Joint Committee on Finance and Joint Committee on Information Policy and Technology

From: Department of Administration Secretary-designee Kathy Blumenfeld *Kathy Blumenfeld*
Department of Workforce Development Secretary-designee Amy Pechacek *Amy Pechacek*

Subject: 2021 Wisconsin Act 4 Quarterly Report – Third Quarter 2022

Pursuant to 2021 Wisconsin Act 4, under Wis. Stat. s. 108.14(27)(e), this report serves to update you on the progress the Department of Workforce Development (DWD) has made on its project to update the information technology (IT) systems used for processing and paying claims for unemployment insurance (UI) benefits from April 1 through June 30, 2022. We are pleased to share in this report that DWD has continued to make good progress in its UI modernization efforts. We also invite you to watch this brief video DWD released last month, which summarizes the progress achieved under the first year of DWD's contract with Flexion: <https://youtu.be/Anm48A3EQk>.

Unemployment Insurance System Modernization

DWD's Unemployment Insurance (UI) Modernization project is the effort to modernize the UI IT systems from a COBOL-based mainframe system to a cloud-based flexible system able to nimbly adopt to changes in the demands on the agency and changes in the program requirements. The goal of this project is to create a more modern, maintainable, sustainable, and adaptable system to meet the current and changing UI needs. Over time, the project will entirely replace the existing antiquated mainframe, which has limitations in the availability of the system and directly impacts staffing and recruiting resources. The future UI system will provide end-to-end services to DWD customers (claimants and employers) in a timely manner. DWD staff will be able to administer programs inclusively and efficiently, with modern online tools.

As previously reported, DWD has been working with Wisconsin-based Flexion to develop many of the early components of a modernized system. We are taking a two-pronged approach to our work with Flexion: 1) To establish a cloud-based infrastructure that is modern, secure, and flexible enough to meet the changing demands; and 2) To begin development work to incrementally move the processing of claims from the legacy system to the modern solution in an agile and iterative approach. This approach allows for continuous improvement of the overall development process to ensure each phase of development meets the needs of the UI programs.

Throughout the first phase of this project, DWD has prioritized eliminating manual processing, including the determination of whether a claimant meets the criteria for benefits, the amount of benefits, and the charging associated with benefits. This work is needed as a foundation for future phases. During this reporting period, development focused on establishing the infrastructure to support a working estimation screen for UI benefits that integrates with the legacy system in a secure manner with a built-in validation tool to ensure that the results are as expected. The estimation screen is used as a calculator to estimate a claimant's benefits based on limited wage information, which refers to system-available wage information or manually entered wage information.

We are proud to report that the UI Modernization team was able to successfully implement the first product in live environment in the form of an estimation screen and validation tool. Early phases of this tool have been released to a small subset of UI staff so that the team can gather information about the experience and improve upon the results. As with any new release, work will be undertaken to refine the product that was released to meet the end users' needs.

In order to achieve this implementation milestone, work over the last quarter focused on the last mile of establishing a working process to move software from development to a working production environment that is connected to live data, while maintaining the security and integrity of that data in the transition. As the connections were made between the legacy and modern components, work was done to continue to layer on additional security controls to prevent unauthorized access and access to the data and both the legacy and new system.

Future efforts will build on the success of the estimation screen to include increasingly more complex benefit calculations and the charging of those benefits to the appropriate employers. Work will continue to focus on these calculations. Over the next few years, DWD will build upon the foundation to provide more timely and real-time services to DWD customers by reducing manual processing, reducing training time by using current technology, and improving real-time processing within the system.

We hope you find this information helpful. We will provide the next quarterly update on the UI modernization project to you in January 2023. In the meantime, please do not hesitate to contact us with questions.

UI Reserve Fund Highlights

January 19, 2023

- Benefit payments through December 2022 declined by \$230.9 million or 46.0% when compared to benefits paid through December 2021.

Benefits Paid	2022 <i>(in millions)</i>	2021 <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Total Regular UI Paid	\$271.3	\$502.2	(\$230.9)	(46.0%)

- Tax receipts through December 2022 declined by \$12.3 million or 2.7% when compared to taxes paid through December 2021. Since both tax years were rated in Schedule D, any change reflects the improvement of individual employers' tax rates.

Tax Receipts	2022 <i>(in millions)</i>	2021 <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Total Tax Receipts	\$451.2	\$463.5	(\$12.3)	(2.7%)

- The December 2022 Trust Fund ending balance was over \$1.2 billion, an increase of 25.5% when compared to the same time last year. If the balance on June 30 is at least \$1.2 billion that would mean that employers would continue in Schedule D, the schedule with the lowest tax rates.

UI Trust Fund Balance	December 2022 <i>(in millions)</i>	December 2021 <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Trust Fund Balance	\$1,273.10	\$1,014.20	\$258.90	25.5%

- Interest earned on the Trust Fund was \$20.4 million for 2022 and 2021.

UI Trust Fund Interest	2022 <i>(in millions)</i>	2021 <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Total Interest Earned	\$20.4	\$20.4	\$0.0	0.0%

FINANCIAL STATEMENTS

For the Month Ended December 31, 2022



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED December 31, 2022

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
CASH:		
U.I. CONTRIBUTION ACCOUNT	(332,008.99)	(1,241,162.15)
U.I. BENEFIT ACCOUNTS	379,710.93	83,791.64
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,355,590,613.97</u>	<u>1,122,691,172.76</u>
TOTAL CASH	<u>1,355,638,315.91</u>	<u>1,121,533,802.25</u>
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	208,227,357.16	194,127,492.11
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(59,275,180.69)</u>	<u>(42,199,987.92)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	148,952,176.47	151,927,504.19
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	30,176,240.11	30,995,440.92
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(15,619,168.94)</u>	<u>(14,675,704.27)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	14,557,071.17	16,319,736.65
OTHER EMPLOYER RECEIVABLES	21,911,450.39	89,772,322.85
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(8,187,510.31)</u>	<u>(8,039,960.21)</u>
NET OTHER EMPLOYER RECEIVABLES	13,723,940.08	81,732,362.64
TOTAL ACCOUNTS RECEIVABLE	<u>177,233,187.72</u>	<u>249,979,603.48</u>
TOTAL ASSETS	<u><u>1,532,871,503.63</u></u>	<u><u>1,371,513,405.73</u></u>
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	119,025,013.72	121,920,223.99
OTHER LIABILITIES	51,015,794.88	143,671,984.37
FEDERAL BENEFIT PROGRAMS	1,153,335.82	(2,744,436.45)
CHILD SUPPORT HOLDING ACCOUNT	7,153.00	9,457.00
FEDERAL WITHHOLDING TAXES DUE	314.18	74,410.00
STATE WITHHOLDING TAXES DUE	1,466,473.56	2,932,081.48
DUE TO OTHER GOVERNMENTS (8)	<u>506,539.36</u>	<u>331,747.41</u>
TOTAL LIABILITIES	<u>173,174,624.52</u>	<u>266,195,467.80</u>
EQUITY:		
RESERVE FUND BALANCE	2,703,003,184.58	2,575,721,804.36
BALANCING ACCOUNT	<u>(1,343,306,305.47)</u>	<u>(1,470,403,866.43)</u>
TOTAL EQUITY	<u>1,359,696,879.11</u>	<u>1,105,317,937.93</u>
TOTAL LIABILITIES AND EQUITY	<u><u>1,532,871,503.63</u></u>	<u><u>1,371,513,405.73</u></u>

1. \$19,199,357 of this balance is for administration purposes and is not available to pay benefits.
2. \$1,269,730 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$11,563,658 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 31.2%. The allowance for uncollectible delinquent employer taxes is 44.8%. 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 \$137,954. Deferrals for the prior year were \$209,821.
6. \$16,051,038, or 53.2%, of this balance is estimated.
7. \$97,140,947 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$21,884,067 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 \$4,694. The 12/31/2022 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$67,042. 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 December 31, 2022

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	3,174,262,114.42	3,025,371,200.23	2,067,917,022.31
BALANCING ACCOUNT	<u>(1,793,657,495.20)</u>	<u>(1,920,053,262.30)</u>	<u>(896,424,588.78)</u>
TOTAL BALANCE	1,380,604,619.22	1,105,317,937.93	1,171,492,433.53
INCREASES:			
TAX RECEIPTS/RFB PAID	1,053,039.70	315,814,898.96	328,747,102.28
ACCRUED REVENUES	(1,840,196.05)	1,928,000.22	6,717,136.39
SOLVENCY PAID	201,521.76	135,419,120.08	134,736,675.60
FORFEITURES	0.00	804.00	9,765.00
BENEFIT CONCEALMENT INCOME	138,912.97	1,500,110.43	535,577.00
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	60,000,000.00	0.00
INTEREST EARNED ON TRUST FUND	5,761,194.05	20,399,982.10	20,423,182.43
FUTA TAX CREDITS	0.00	1,909.95	9,611.50
OTHER CHANGES	29,661.16	252,688.58	37,717,267.36
TOTAL INCREASES	<u>5,344,133.59</u>	<u>535,317,514.32</u>	<u>528,896,317.56</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	21,276,298.89	208,731,110.64	(645,158,011.68)
QUIT NONCHARGE BENEFITS	3,447,735.13	27,277,815.38	(102,268,549.71)
OTHER DECREASES	106,774.80	10,174,100.94	93,157,103.92
OTHER NONCHARGE BENEFITS	1,421,064.88	34,755,546.18	1,249,340,270.63
TOTAL DECREASES	<u>26,251,873.70</u>	<u>280,938,573.14</u>	<u>595,070,813.16</u>
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,703,003,184.58	2,703,003,184.58	2,575,721,804.36
BALANCING ACCOUNT	<u>(1,343,306,305.47)</u>	<u>(1,343,306,305.47)</u>	<u>(1,470,403,866.43)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,359,696,879.11</u></u>	<u><u>1,359,696,879.11</u></u>	<u><u>1,105,317,937.93</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,303,839,732 because of non-cash accrual items.

10. \$19,199,357 of this balance is set up in the Trust Fund in two subaccounts to be used for administration purposes and is not available to pay benefits.

11. \$1,269,730 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$11,563,658 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 12/31/2022**

<u>RECEIPTS</u>	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE</u>	<u>PRIOR YEAR TO DATE</u>
TAX RECEIPTS/RFB	\$1,053,039.70	\$315,814,898.96	\$328,747,102.28
SOLVENCY	201,521.76	135,419,120.08	134,736,675.60
ADMINISTRATIVE FEE	60.61	390.15	621.17
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	4,372.73	3,573,355.53	3,333,312.67
UNUSED CREDITS	(115,851.11)	447,942.74	(37,018,919.18)
GOVERNMENTAL UNITS	461,687.93	7,636,373.23	38,309,817.21
NONPROFITS	398,631.94	9,016,389.79	47,234,959.70
REDA PAID	0.00	0.00	0.00
INTERSTATE CLAIMS (CWC)	141,714.22	3,305,363.82	10,749,650.50
ERROR SUSPENSE	(5,318.79)	(1,640.66)	6,987.59
FEDERAL PROGRAMS RECEIPTS	(450,538.56)	30,149,455.61	1,885,526,685.24
OVERPAYMENT COLLECTIONS	2,847,752.11	35,365,274.60	40,130,650.99
FORFEITURES	0.00	804.00	9,765.00
BENEFIT CONCEALMENT INCOME	138,912.97	1,500,110.43	535,577.00
EMPLOYER REFUNDS	(1,155,744.67)	(99,662,216.30)	(9,166,851.06)
COURT COSTS	50,718.23	426,118.84	311,859.51
INTEREST & PENALTY	247,072.96	3,909,631.52	3,629,650.35
CARD PAYMENT SERVICE FEE	2,045.67	26,314.74	27,552.53
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	187,395.77	2,023,721.43	773,227.35
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	1,683.63	8,319.85	20,445.29
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	1,044.92	11,873.74	31,165.17
SPECIAL ASSESSMENT FOR INTEREST	2,945.48	15,049.20	17,605.64
LOST WAGES ASSISTANCE (LWA) ADMIN	0.00	33,229.41	426,199.38
EMERGENCY UC RELIEF (EUR)	0.00	0.00	32,452,349.00
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	60,000,000.00	0.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	5,761,194.05	20,399,982.10	20,423,182.43
MISCELLANEOUS	(442.72)	206,835.45	99,490.16
TOTAL RECEIPTS	<u>\$9,773,898.83</u>	<u>\$529,626,698.26</u>	<u>\$2,501,348,761.52</u>
 <u>DISBURSEMENTS</u>			
CHARGES TO TAXABLE EMPLOYERS	\$23,698,680.48	\$246,911,535.41	(\$588,959,081.50)
NONPROFIT CLAIMANTS	464,494.65	5,638,196.82	(69,369,413.75)
GOVERNMENTAL CLAIMANTS	596,478.84	4,212,212.07	(56,980,428.32)
INTERSTATE CLAIMS (CWC)	266,945.39	2,897,434.04	5,613,057.85
QUITS	3,447,735.13	27,277,815.38	(102,268,549.71)
OTHER NON-CHARGE BENEFITS	1,533,557.15	(32,199,651.63)	1,317,227,630.31
CLOSED EMPLOYERS	1,724.42	(534.81)	(146,923.75)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	112,185.42	1,357,996.20	3,532,315.34
EX-MILITARY (UCX)	19,136.12	252,721.46	1,071,131.11
TRADE ALLOWANCE (TRA/TRA-NAFTA)	61,375.82	1,119,427.68	378,948.76
DISASTER UNEMPLOYMENT (DUA)	0.00	0.00	0.00
WORK-SHARE (STC)	(765,550.65)	215,784.35	19,930,740.18
FEDERAL PANDEMIC UC (FPUC)	(595,825.46)	9,687,496.52	1,241,676,455.54
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	(47,002.50)	3,053,815.43	13,219,657.24
MIXED EARNERS UC (MEUC)	900.00	39,600.00	520,600.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	(7,302.95)	3,969,457.64	153,479,629.08
PANDEMIC EMERGENCY UC (PEUC)	(135,124.53)	7,015,165.43	379,915,518.93
PANDEMIC FIRST WEEK (PFW)	40,375.46	787,195.35	72,282,110.93
EMER UC RELIEF REIMB EMPL (EUR)	94.08	2,061,300.75	87,600,048.09
2003 TEMPORARY EMERGENCY UI (TEUC)	(682.71)	(8,113.17)	(7,564.38)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(7,542.76)	(150,021.74)	(164,562.74)
FEDERAL EMERGENCY UI (EUC)	(87,893.41)	(1,269,906.54)	(1,436,798.30)
FEDERAL EXTENDED BENEFITS (EB)	6,568.49	162,861.96	4,072,897.26
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	0.00	752.92	18,679.25
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	0.00	(197.68)	4,445.94
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(573.01)	76,369.79	(7,112.70)
INTEREST & PENALTY	423,537.42	3,917,863.84	3,541,964.85
CARD PAYMENT SERVICE FEE TRANSFER	1,711.56	25,881.71	29,178.04
PROGRAM INTEGRITY	112,817.37	5,470,503.12	4,847,949.35
SPECIAL ASSESSMENT FOR INTEREST	0.00	14,316.19	18,866.74
COURT COSTS	26,138.83	391,638.12	321,574.03
ADMINISTRATIVE FEE TRANSFER	20.75	344.36	661.82
LOST WAGES ASSISTANCE (LWA) ADMIN TRANSFER	0.00	33,229.41	426,199.38
FEDERAL WITHHOLDING	119,781.82	74,095.82	283,736.00
STATE WITHHOLDING	(644,927.00)	1,465,607.92	20,834,361.00
REED ACT & ARRA SPECIAL ADMIN EXPENDITURES	0.00	1,021,900.43	585,427.87
FEDERAL LOAN REPAYMENTS	0.00	(1,909.95)	(9,611.50)
TOTAL DISBURSEMENTS	<u>\$28,641,834.22</u>	<u>\$295,522,184.60</u>	<u>\$2,512,083,738.24</u>
NET INCREASE(DECREASE)	<u>(18,867,935.39)</u>	<u>234,104,513.66</u>	<u>(10,734,976.72)</u>
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,374,506,251.30	\$1,121,533,802.25	\$1,132,268,778.97
BALANCE AT END OF MONTH/YEAR	<u>\$1,355,638,315.91</u>	<u>\$1,355,638,315.91</u>	<u>\$1,121,533,802.25</u>

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED December 31, 2022

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,322,482,572.81	\$1,048,002,601.08	\$1,137,108,896.48
INCREASES:			
TAX RECEIPTS/RFB PAID	1,053,039.70	315,814,898.96	328,747,102.28
U.I. PAYMENTS CREDITED TO SURPLUS	794,799.53	134,053,416.57	152,146,598.69
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	60,000,000.00	0.00
INTEREST EARNED ON TRUST FUND	5,761,194.05	20,399,982.10	20,423,182.43
FUTA TAX CREDITS	0.00	1,909.95	9,611.50
TOTAL INCREASE IN CASH	<u>7,609,033.28</u>	<u>530,270,207.58</u>	<u>501,326,494.90</u>
TOTAL CASH AVAILABLE	<u>1,330,091,606.09</u>	<u>1,578,272,808.66</u>	<u>1,638,435,391.38</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	21,276,298.89	208,731,110.64	(645,158,011.68)
BENEFITS CHARGED TO SURPLUS	4,975,480.73	62,618,764.45	1,147,405,326.02
TOTAL BENEFITS PAID DURING PERIOD	<u>26,251,779.62</u>	<u>271,349,875.09</u>	<u>502,247,314.34</u>
REED ACT EXPENDITURES	0.00	1,021,900.43	585,427.87
EMER UC RELIEF REIMB EMPL EXPENDITURES	94.08	2,061,300.75	87,600,048.09
ENDING U.I. CASH BALANCE (13) (14) (15) (16)	<u><u>1,303,839,732.39</u></u>	<u><u>1,303,839,732.39</u></u>	<u><u>1,048,002,601.08</u></u>

13. \$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.

14. \$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.

15. \$1,269,730 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

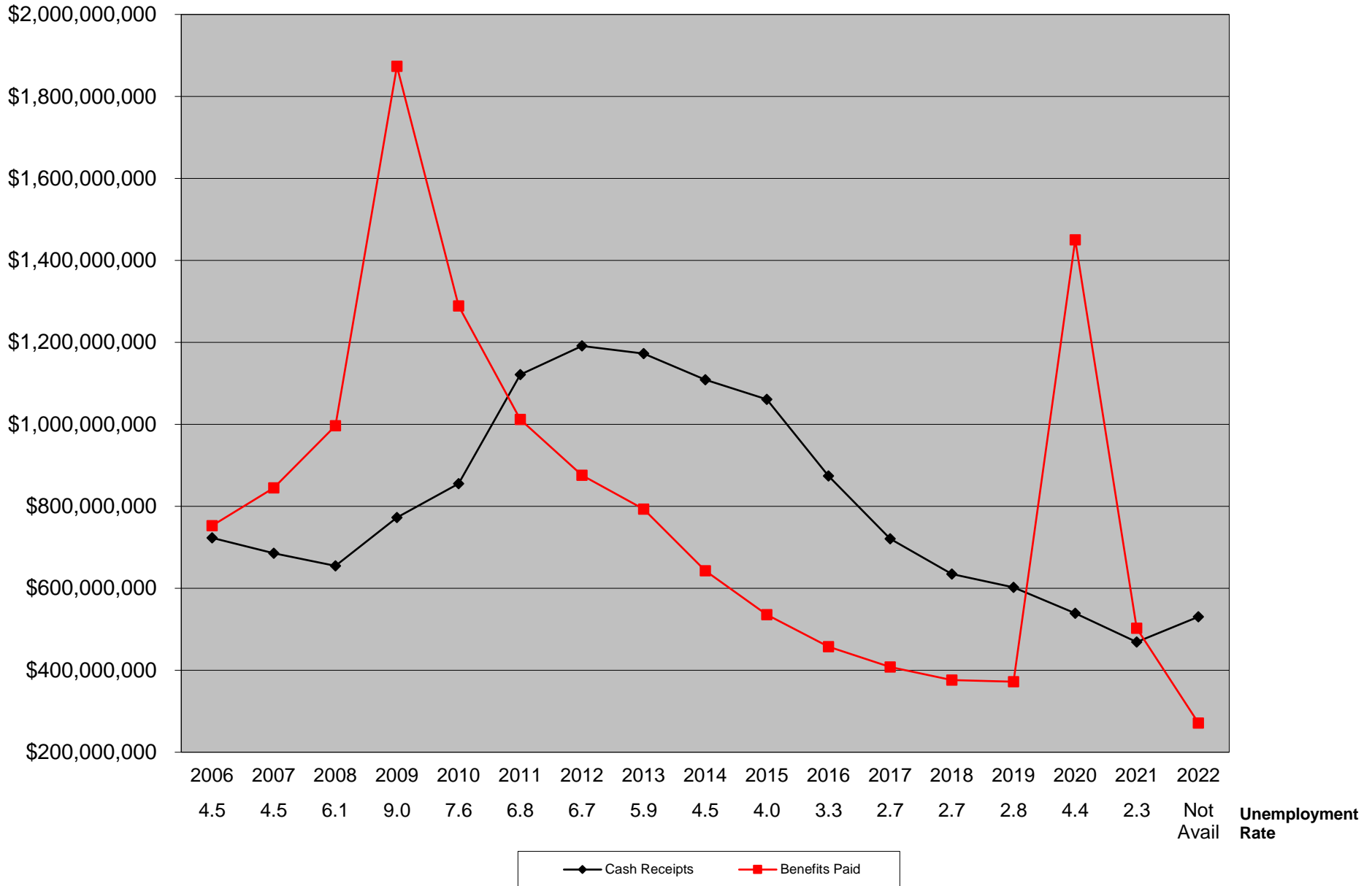
16. \$11,563,658 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, 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 December 31, 2022

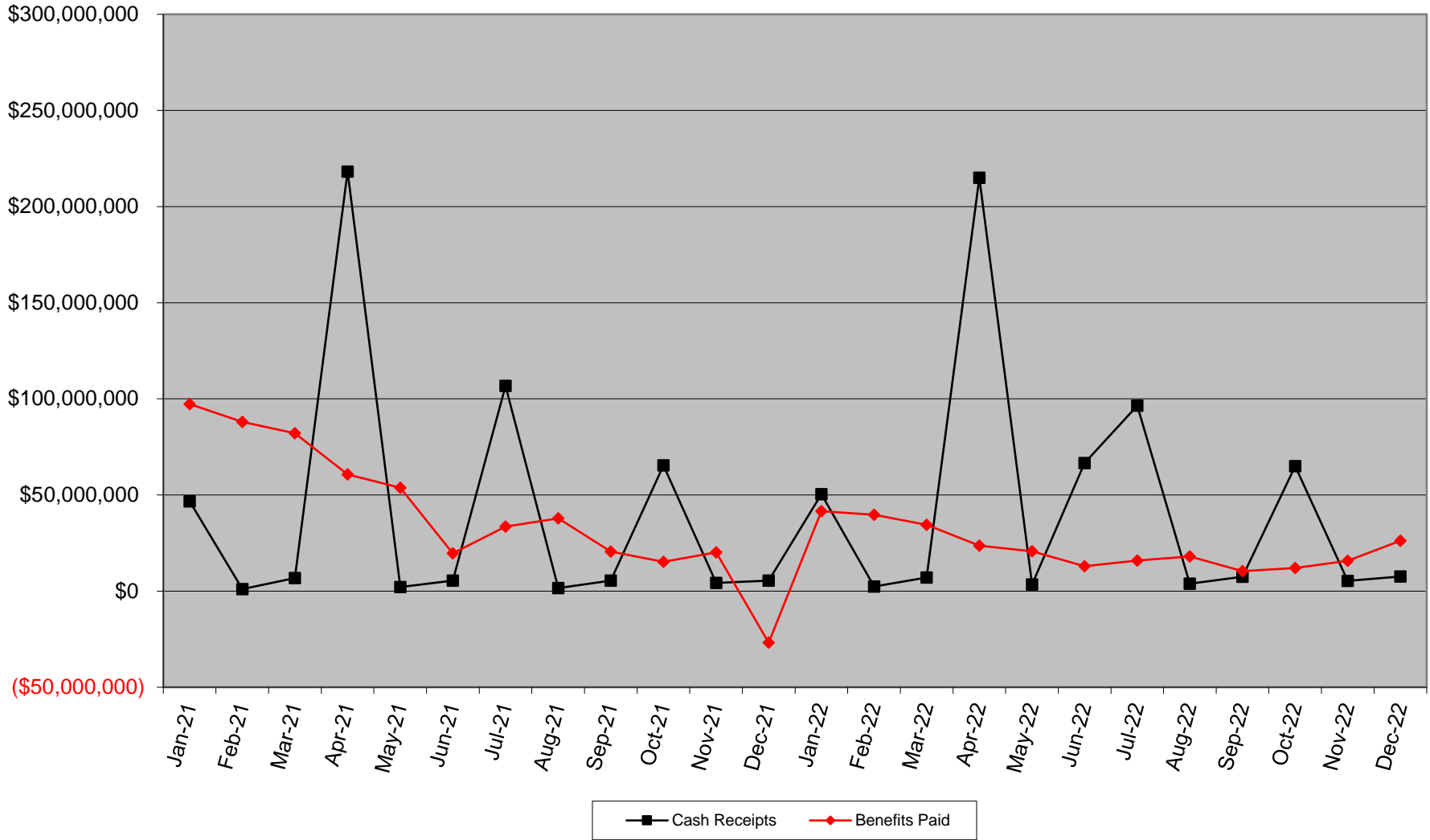
	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$1,400,738,881.98)	(\$1,527,719,203.28)	(\$484,263,072.65)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	201,521.76	135,419,120.08	134,736,675.60
FORFEITURES	0.00	804.00	9,765.00
OTHER INCREASES	593,277.77	(1,366,507.51)	17,400,158.09
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	<u>794,799.53</u>	<u>134,053,416.57</u>	<u>152,146,598.69</u>
TRANSFERS BETWEEN SURPLUS ACCTS (17)			
2021 WI ACT 58 TRANSFERS TO TRUST FUND	(4,988.98)	(20,197,591.90)	19,555,278.73
INTEREST EARNED ON TRUST FUND	0.00	60,000,000.00	0.00
FUTA TAX CREDITS	5,761,194.05	20,399,982.10	20,423,182.43
	0.00	1,909.95	9,611.50
TOTAL INCREASES	<u>6,551,004.60</u>	<u>194,257,716.72</u>	<u>192,134,671.35</u>
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	3,447,735.13	27,277,815.38	(102,268,549.71)
OTHER NON-CHARGE BENEFITS	1,527,745.60	35,340,949.07	1,249,673,875.73
BENEFITS CHARGED TO SURPLUS SUBTOTAL	<u>4,975,480.73</u>	<u>62,618,764.45</u>	<u>1,147,405,326.02</u>
REED ACT EXPENDITURES			
EMER UC RELIEF REIMB EMPL EXPENDITURES	0.00	1,021,900.43	585,427.87
	94.08	2,061,300.75	87,600,048.09
BALANCE AT THE END OF THE MONTH/YEAR	<u>(1,399,163,452.19)</u>	<u>(1,399,163,452.19)</u>	<u>(1,527,719,203.28)</u>

17. The 10% writeoff for 2022 was \$45.6 million and is included in this balance. The 10% writeoff shifts employer benefit charges to the balancing account. The 10% writeoff has no effect on receivable balances.

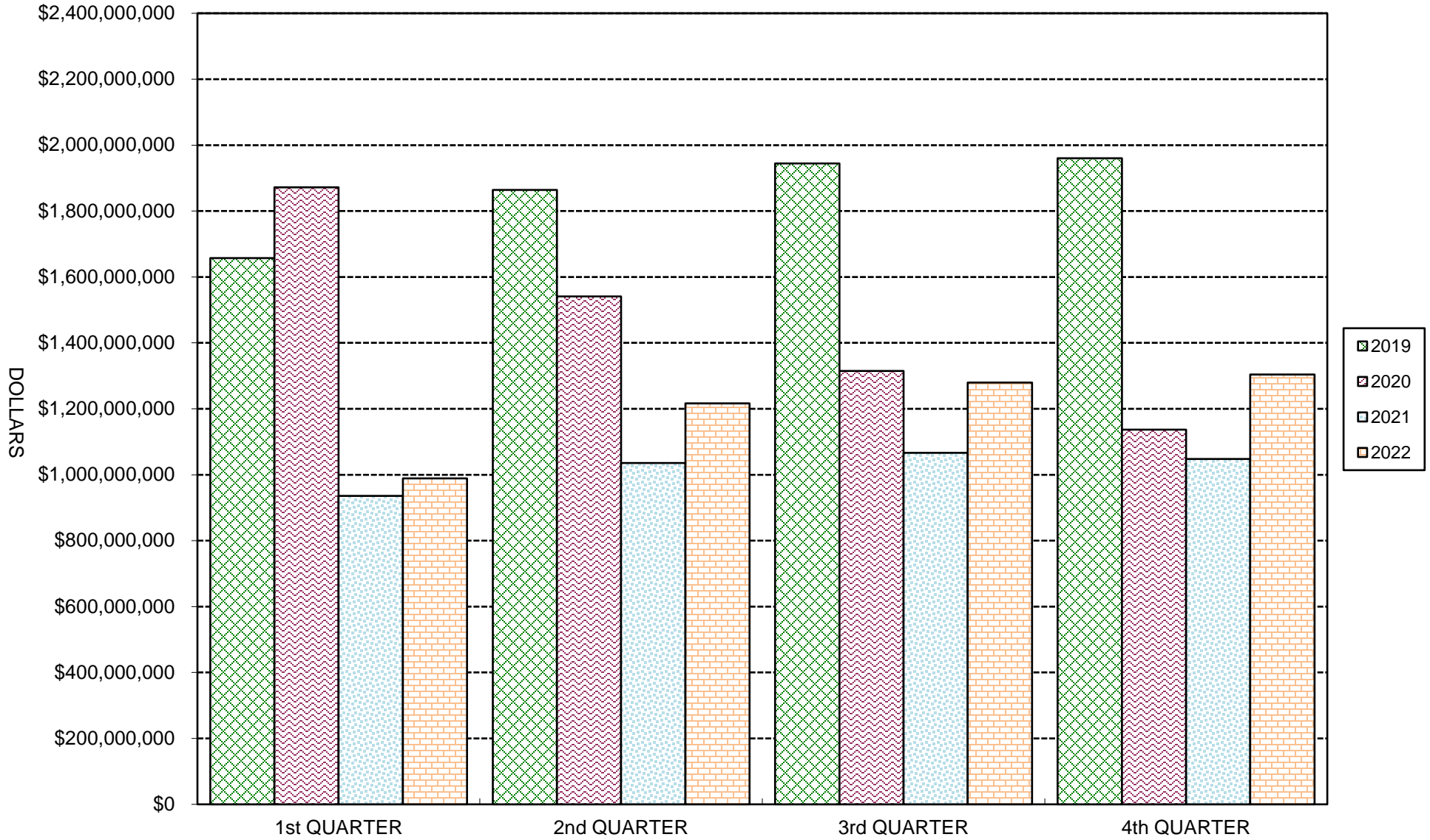
Cash Activity Related to Taxable Employers with WI Unemployment Rate (for all years from January to December)



Cash Activity Related to Taxable Employers - Most Recent 24 Months Excluding FUTA Tax Credits

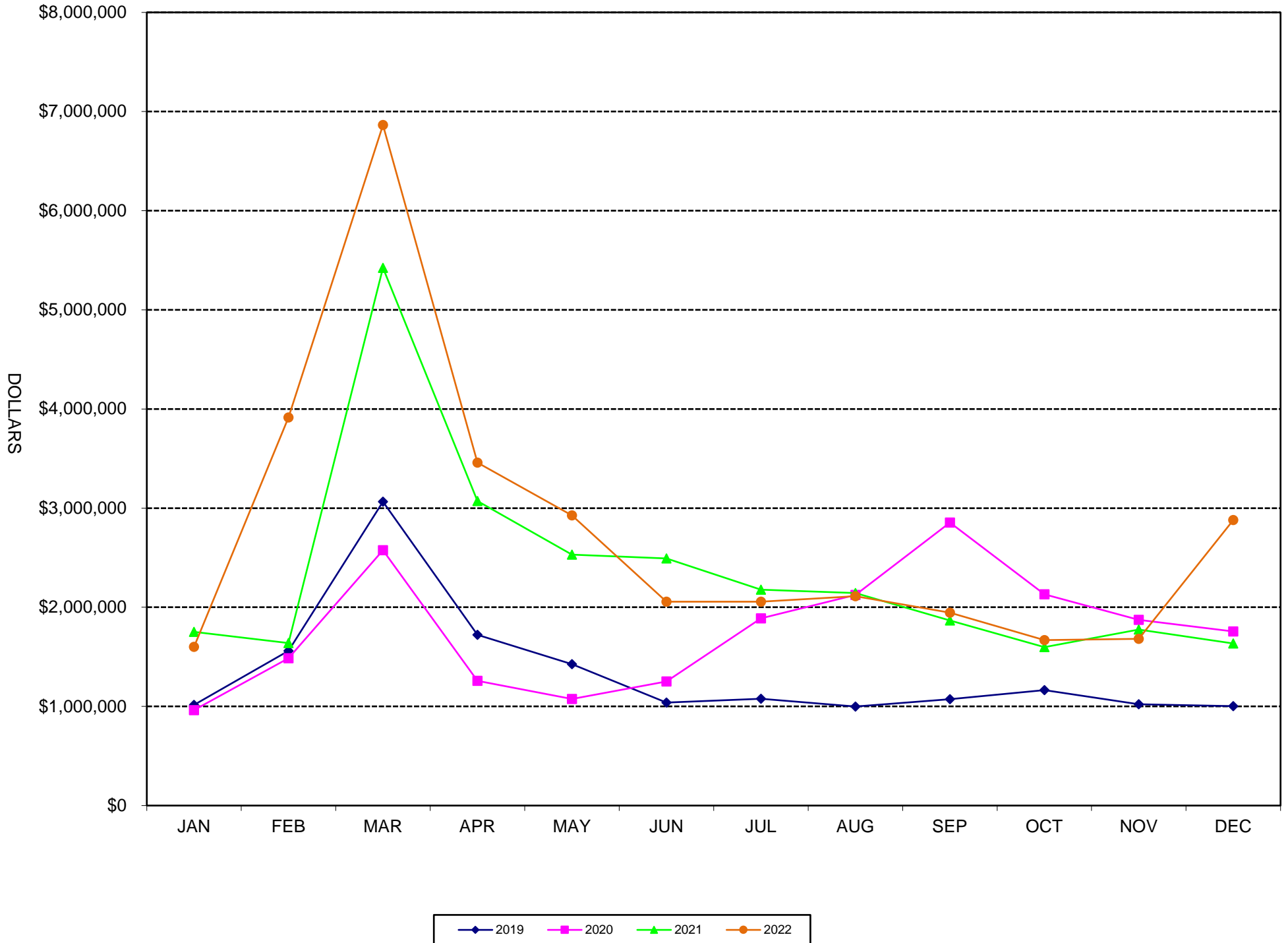


CASH BALANCE RELATED TO TAXABLE EMPLOYERS

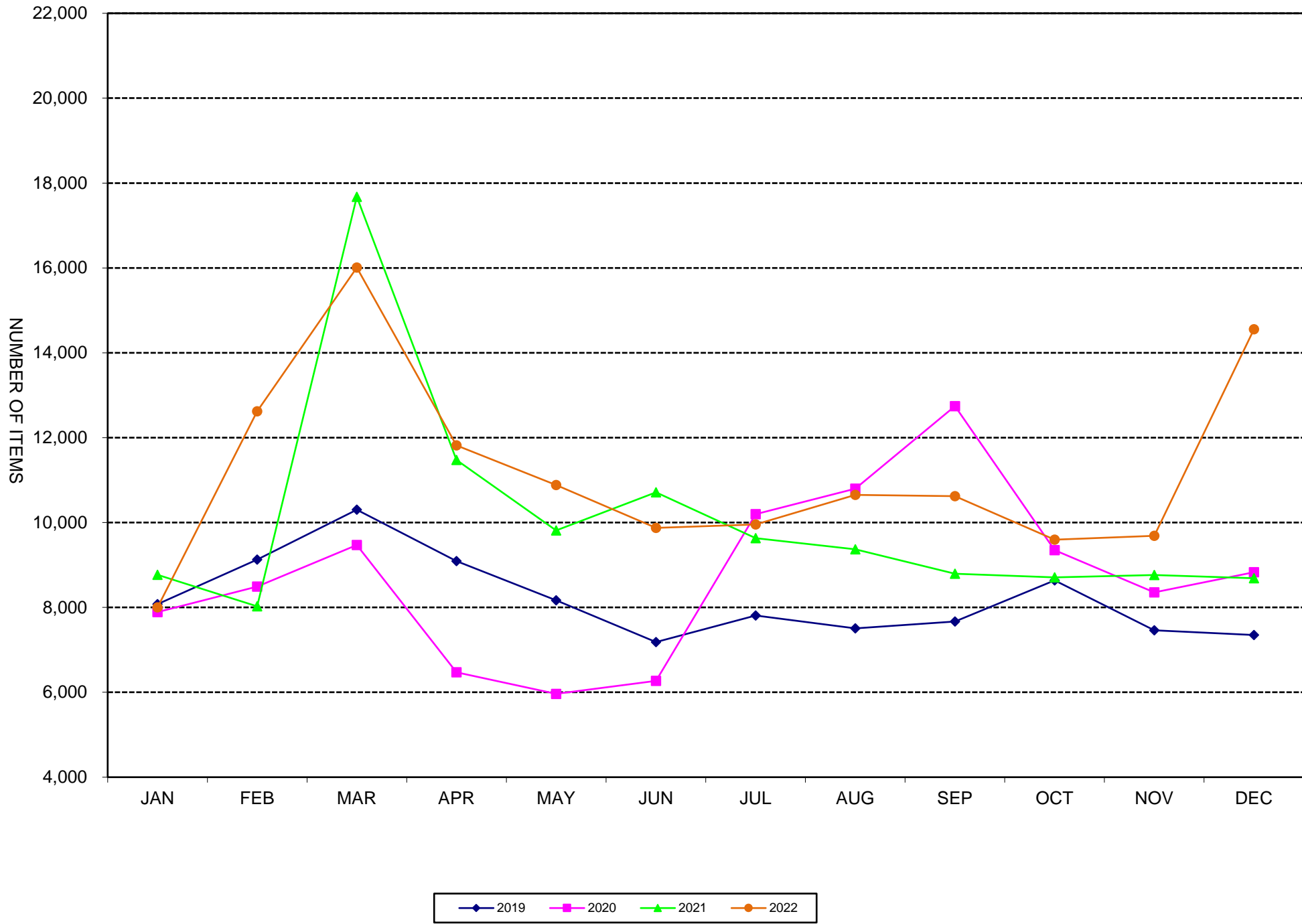


MONTHLY OVERPAYMENT CASH RECEIPTS

(by dollar amount)

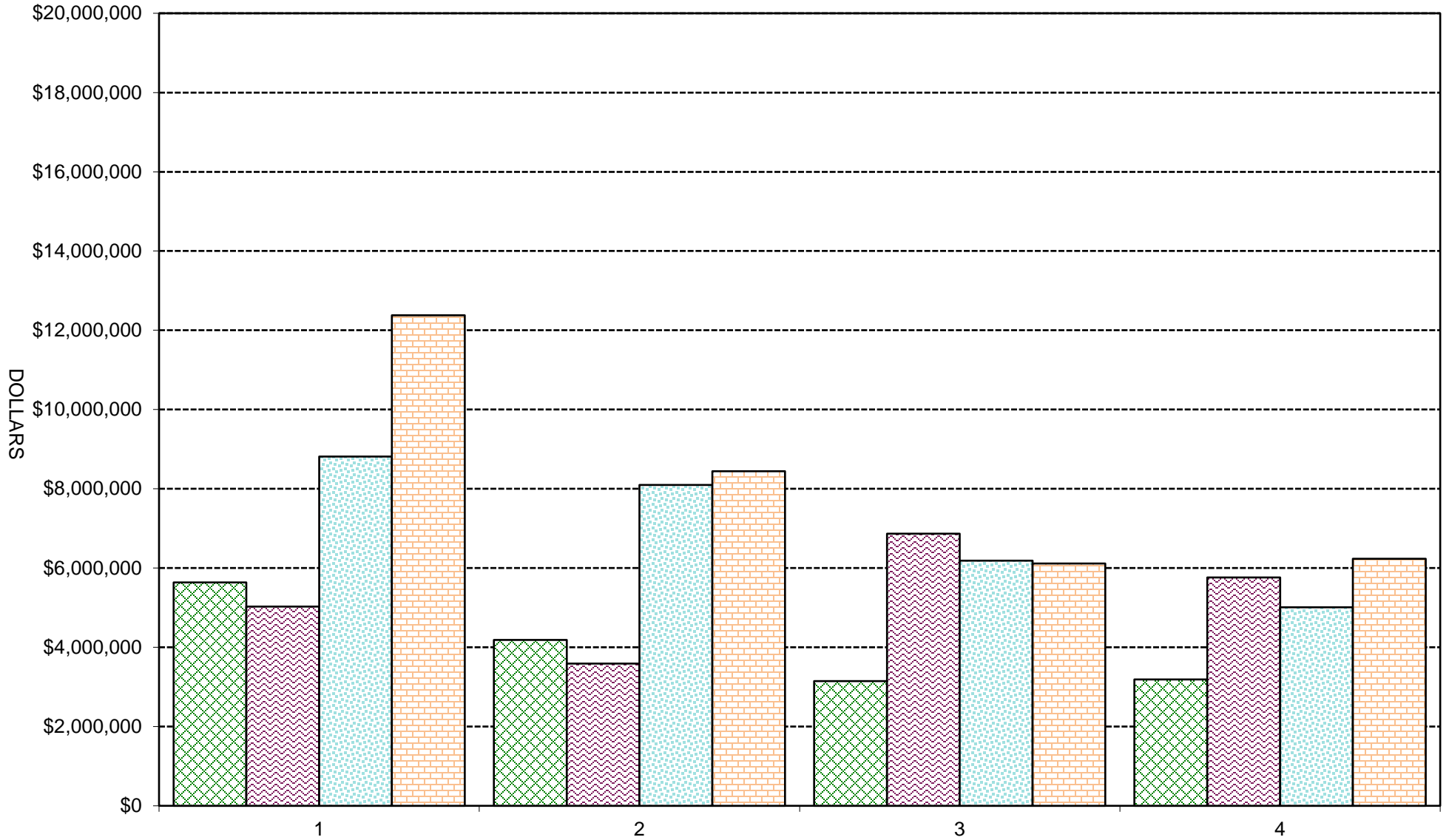


MONTHLY OVERPAYMENT CASH RECEIPTS (by number of items)



QUARTERLY OVERPAYMENT CASH RECEIPTS

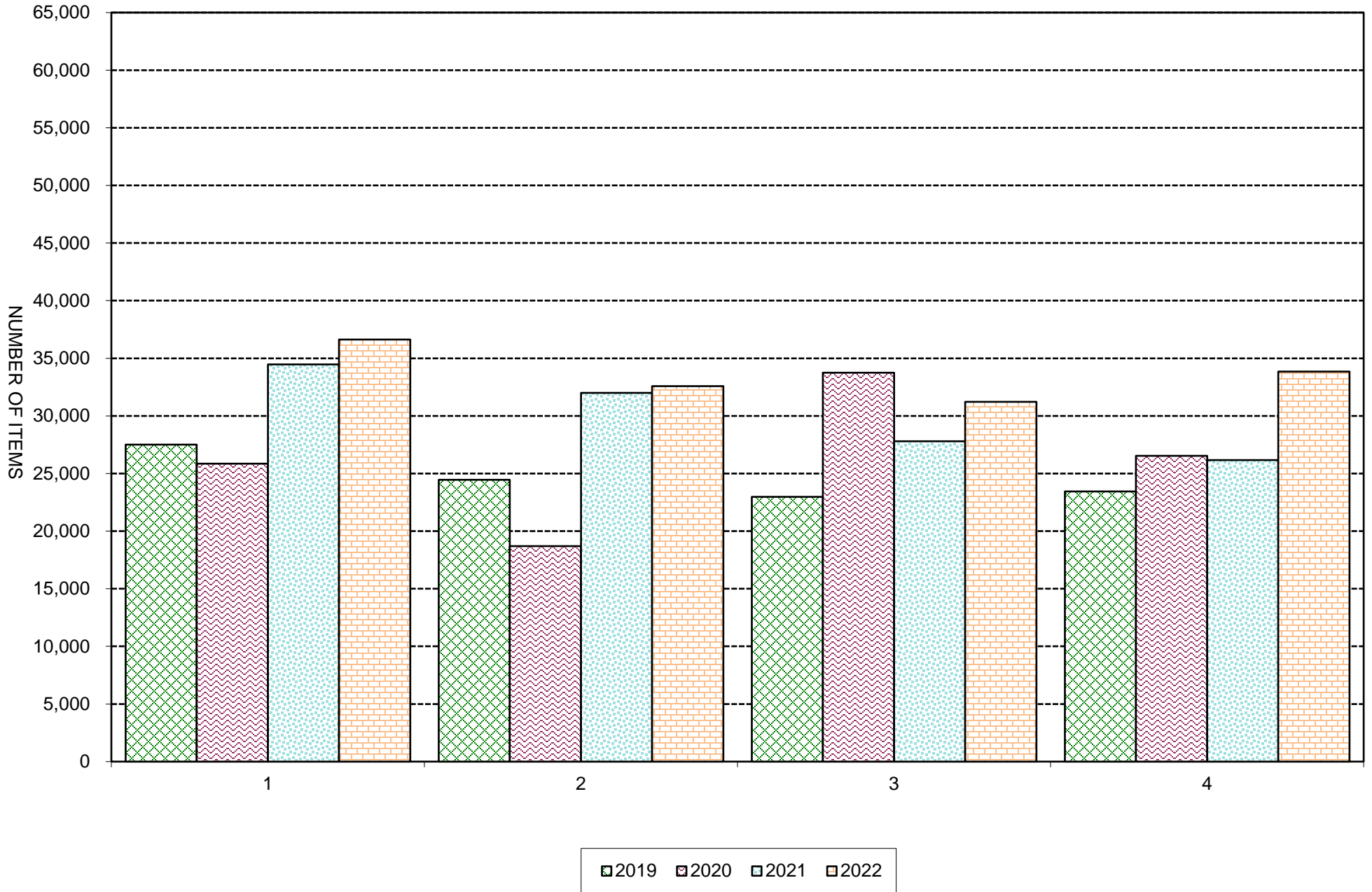
(by dollar amount)



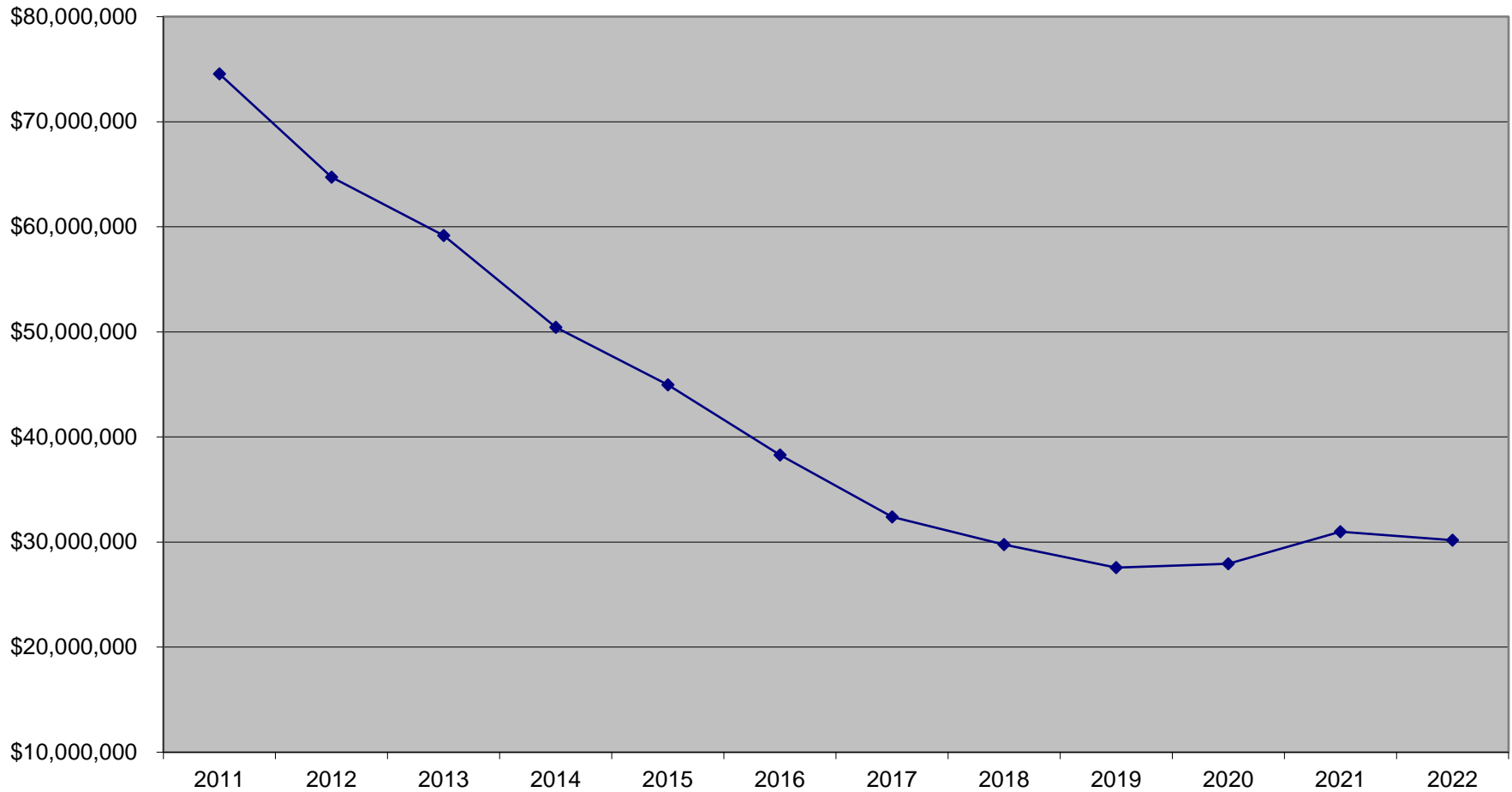
2019 2020 2021 2022

QUARTERLY OVERPAYMENT CASH RECEIPTS

(by number of items)

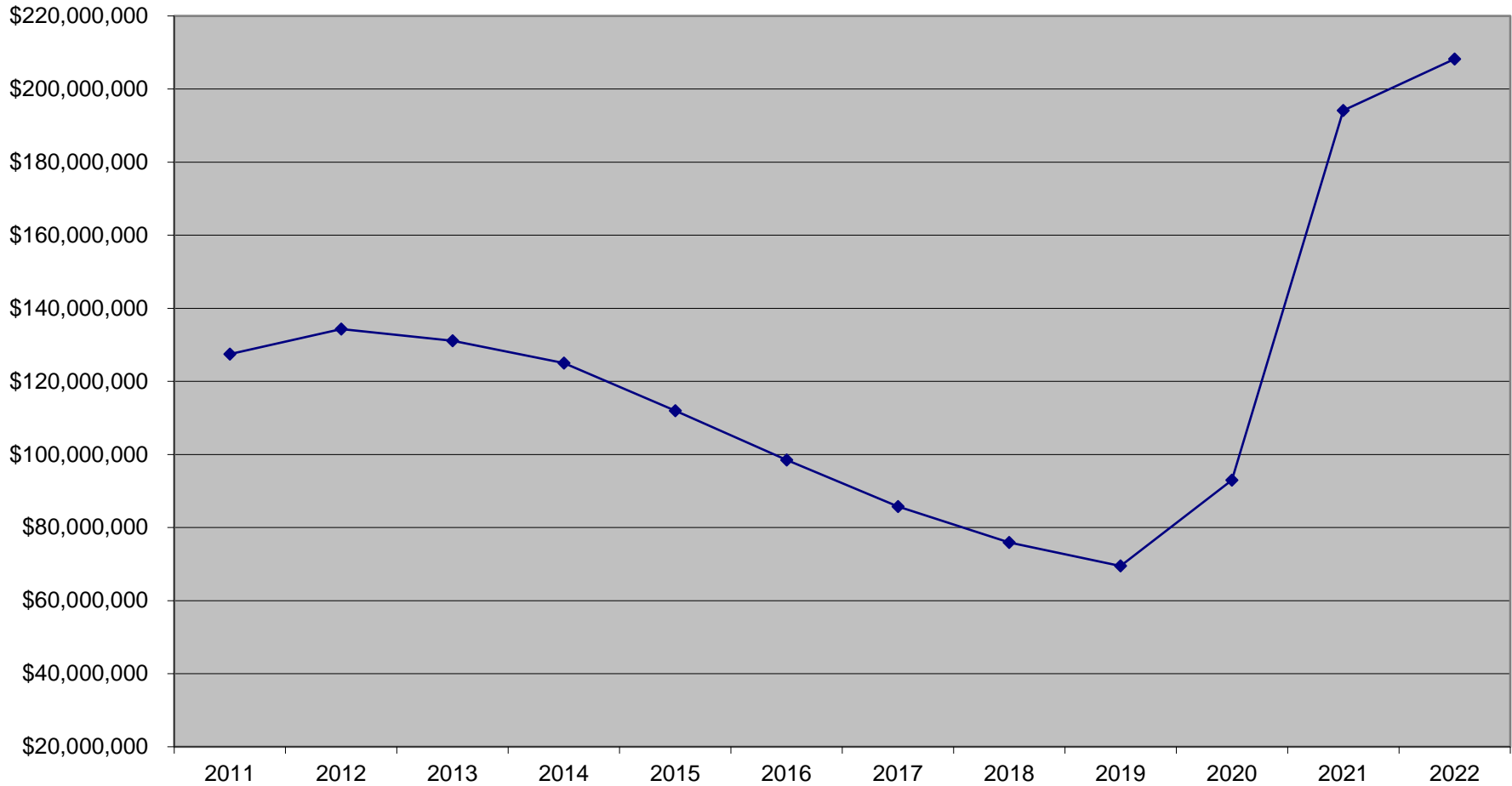


TOTAL TAXABLE EMPLOYER RFB & SOLVENCY RECEIVABLES
(for all years as of December)



Source: Monthly Balance Sheet

TOTAL BENEFIT OVERPAYMENT RECEIVABLES
(for all years as of December)



Source: Monthly Balance Sheet

WISCONSIN



DWD

**Unemployment Insurance Advisory Council
(UIAC)**

Jennifer Wakerhauser

Chief Legal Counsel

Department of Workforce Development

Open Meetings



The Wisconsin Open Meetings Law

- Wis. Department of Justice – Office of Open Government, May 2019
- <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/OML-GUIDE.pdf>



Open Meetings Law

Wis. Stat. § 19.81

- “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that **the public is entitled to the *fullest and most complete information* regarding the affairs of government as is compatible with the conduct of governmental business.**”



The UIAC is a “governmental body”

- All UIAC meetings
 - Must be preceded by public notice, and
 - Must be held in a public place that is open and reasonably accessible to all members of the public.



A “meeting” occurs whenever:

- Members **convene** for the **purpose** of conducting governmental business; and
- The **number** of members present is sufficient to determine the body's course of action

State et rel. Newspapers v. Showers, 135 Wis. 2d 77 (1987)



Meetings presumed open

- Meetings begin in open session
 - Citizens right to attend and observe
 - Allow recording, filming, or photographing the meeting



Meetings presumed open (cont.)

- By motion, may go into closed session
 - Wis. Stat. § 19.85(1)(ee) provides an exemption to the UIAC for deliberations
 - Votes of each member must be recorded
 - Chair must announce the statutory exemption authorizing closed session and the nature of the business to be considered



Public Records



The Wisconsin Public Records Law

- Wis. Department of Justice – Office of Open Government, October 2019
- <https://www.doj.state.wi.us/office-open-government/open-government-law-and-compliance-guides>



Public Records Law

Wis. Stat. § 19.31

- The public records law “shall be construed in every instance with **a presumption of complete public access, consistent with the conduct of government business.** The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”



The UIAC must produce records upon request

- “Record” is “[a]ny material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which **has been created or is being kept by** an authority.”

Wis. Stat. § 19.32(2)



Not a “record”

- Drafts, notes, and preliminary documents
- Published material available for sale or at library
- Purely personal property
- Material with limited access rights, such as copyrights or patents



Emails, text messages, and documents on private accounts

- May be “records”
- Content determines whether it is a “record”, not the medium, format or location
- **Personal materials on the same private accounts are not subject to disclosure**



Sufficient request

- May be in writing or oral
- “Magic words” not required
- Must be reasonably specific as to time and subject matter
- Must reasonably describe the information or records requested



Response

- As soon as practicable, without delay:
 - Provide records
 - Deny or partial denial
 - Respond that there are no records



If the UIAC receives a request:

- DWD will assist with the response
- Do not delay – forward the request to DWD Legal: OpenRecords@dwd.wisconsin.gov
- Council members will likely need to search for responsive records



Questions?

Jennifer Wakerhauser

Chief Legal Counsel

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JenniferL.Wakerhauser@dwd.wisconsin.gov

www.dwd.wisconsin.gov



**COURT OF APPEALS
DECISION
DATED AND FILED**

October 20, 2022

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2020AP1430
STATE OF WISCONSIN**

Cir. Ct. No. 2019CV518

**IN COURT OF APPEALS
DISTRICT IV**

MATHEW NEISLER,

PLAINTIFF-APPELLANT,

V.

**LABOR AND INDUSTRY REVIEW COMMISSION,
DEPARTMENT OF WORKFORCE DEVELOPMENT,
AND AMP MAINTENANCE INC.,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dodge County:
BRIAN A. PFITZINGER, Judge. *Affirmed.*

Before Kloppenburg, Graham, and Nashold, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Mathew Neisler, pro se, appeals a circuit court order upholding a Labor and Industry Review Commission decision that required Neisler to repay unemployment benefits paid in 2005. We affirm.

¶2 Although the unemployment benefits at issue were paid in 2005, the present dispute began when Neisler contested an overpayment notice he received in August 2018. The notice stated that Neisler was overpaid benefits for weeks 22 to 24 of 2005. In contesting the notice, Neisler claimed that he had been incarcerated and had not sought or received benefits during those weeks.

¶3 The Department of Workforce Development investigated Neisler's claim. It determined that Neisler's credentials had been used to obtain unemployment benefits for weeks 22 to 24, and it rejected the possibility that someone other than Neisler had applied for the benefits without Neisler's knowledge or permission. Additionally, as a result of its investigation, the Department determined that Neisler had received an overpayment of benefits for weeks 13 to 16 of 2005.

¶4 The Commission reviewed the Department's determination that Neisler was not eligible for benefits during weeks 13 to 16. It concluded that Neisler was not eligible during those weeks because he was incarcerated without work release privileges and not available for full time work.

¶5 Neisler sought review in the circuit court, and the circuit court upheld the Commission's decision. Neisler now seeks review in this court.

¶6 “We review the agency's decision, not that of the circuit court, and the scope of our review is the same as that of the circuit court.” *Gilbert v. LIRC*,

2008 WI App 173, ¶8, 315 Wis. 2d 726, 762 N.W.2d 671. The court may set aside the Commission’s decision only upon the following grounds:

- a. That the commission acted without or in excess of its powers.
- b. That the order was procured by fraud.
- c. That the findings of fact by the commission do not support the order.

WIS. STAT. § 108.09(7)(c)6. (2019-20).¹

¶7 Neisler makes one set of arguments relating to weeks 22 to 24, and another set of arguments relating to weeks 13 to 16. We address each in turn.

Weeks 22 to 24

¶8 As to weeks 22 to 24, Neisler does not explicitly invoke our standard of review and instead argues that the doctrine of laches should bar the Department from pursuing overpayments for those weeks. According to Neisler, laches applies because the Department failed to provide him with notice of the overpayments for those weeks prior to August 2018 even though the Department had been aware of the overpayments since 2005.

¶9 The Commission disagrees. It points to evidence that the Department began sending Neisler notice of the overpayments for weeks 22 to 24

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Neisler cites WIS. STAT. § 227.57 for our standard of review, but WIS. STAT. § 108.09(7) contains the applicable standard for Commission decisions relating to unemployment benefits. *See* § 108.09(7)(b), (7)(c)1. (providing that “[a]ny judicial review under this chapter ... shall be in accordance with this subsection” and that “the order of the commission is subject to review only as provided in this subsection and not under ch. 227 or s. 801.02”).

as early as June 2005, starting with a “UCB-38” notice mailed to Neisler’s address of record. The Commission argues that Neisler waived any challenge to the overpayments for weeks 22 to 24 because he did not timely object to the UCB-38 notice as required by WIS. STAT. § 108.09(2)(a) (2005-06).

¶10 We agree with the Commission that Neisler waived any challenge to the overpayments for weeks 22 to 24 by failing to timely object to the UCB-38 notice. WISCONSIN STAT. § 108.09(2)(a) (2005-06) provides that the Department shall mail a notice of any computation or recomputation of benefits to a party’s last-known address and that “a party’s failure to make specific written objection, received by the department within 14 days after [that] mailing, ... is a waiver by such party of any objection thereto.” The mailing of the notice creates a presumption that the notice was delivered and received, *see State ex rel. Flores v. State*, 183 Wis. 2d 587, 612, 516 N.W.2d 362 (1994), and Neisler does not point to any evidence to rebut this presumption.²

² Neisler makes other arguments relating to whether he had proper notice of the overpayments for weeks 22 to 24, but each of those arguments plainly lacks merit or is insufficiently developed. For example, Neisler argues that the Department did not provide notice in accordance with the service requirements for a civil lawsuit, but Neisler provides no reason to think that those requirements apply in this context.

We may make allowances for pro se parties, and we have done so here, but we will not accept meritless arguments or develop arguments on a party’s behalf. To the extent we do not expressly discuss any argument made by Neisler, we have rejected it as plainly meritless or insufficiently developed. *See Libertarian Party of Wis. v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (“[C]hallenges not discussed with specificity can be deemed to lack sufficient merit to warrant individual attention.”); *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (“We cannot serve as both advocate and judge.”). We also decline to address arguments that Neisler raises for the first time in his reply brief. *See Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981) (“We will not, as a general rule, consider issues raised by appellants for the first time in a reply brief.”).

Weeks 13 to 16

¶11 We turn to weeks 13 to 16. As previously noted, the Commission concluded that Neisler was not eligible for benefits during those weeks because he was incarcerated without work release privileges and not available for full time work.

¶12 Neisler does not challenge the Commission's finding that he was incarcerated without work release privileges during weeks 13 to 16. Rather, he contends that the Commission exceeded its authority by relying on an administrative code provision created in 2008 as the basis for its conclusion that his incarceration made him unavailable for work.

¶13 The administrative code provision is set forth in WIS. ADMIN. CODE § DWD 128.01. That provision specifies that an individual claiming unemployment benefits who is incarcerated without work release privileges may be deemed "unavailable for work" and thus not eligible for the benefits. *See* § DWD 128.01(4)(a), (4)(a)4.

¶14 The Commission maintains that it acted within its powers because the administrative code provision was based on a preexisting policy and implemented a preexisting statute. The statute, WIS. STAT. § 108.04(2)(a) (2005-06), sets forth eligibility requirements, including a requirement that the claimant be "available for work." According to the Commission, a claimant is not available for work within the meaning of the statute when the claimant is incarcerated without work release privileges.

¶15 We conclude that the Commission acted within its powers under the preexisting statute when it concluded that Neisler was not available for work. The

Commission's conclusion was consistent with the statutory language that was in effect in 2005, when Neisler applied for the benefits at issue in this case. Neisler does not explain how a contrary conclusion would have been permissible under the statute.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 9, 2022

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2020AP2139

Cir. Ct. No. 2020CV126

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

LEGACY ASSURANCE PLAN OF AMERICA, INC.,

PLAINTIFF-APPELLANT,

v.

**LABOR AND INDUSTRY REVIEW COMMISSION AND DEPARTMENT OF
WORKFORCE DEVELOPMENT,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Washington County:
SANDRA J. GIERNOTH, Judge. *Affirmed.*

Before Gundrum, P.J., Neubauer and Grogan, JJ.

**Per curiam opinions may not be cited in any court of this state as precedent
or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

¶1 PER CURIAM. Legacy Assurance Plan of America, Inc., appeals an order affirming a decision of the Labor and Industry Review Commission (LIRC) holding Legacy liable for unemployment benefits for a Legacy sales representative, Carol Farrand. Legacy claims LIRC erroneously found that: (1) Legacy was a statutory employer subject to Wisconsin Unemployment Insurance law; and (2) Farrand performed her services for Legacy as an employee, not an independent contractor. We affirm.

BACKGROUND

¶2 Legacy is a Florida-based business that offers estate planning services. Carol Farrand was a sales representative for Legacy in Wisconsin from September 9, 2016, until January 12, 2017. As a sales representative, Farrand met with potential clients to present and sell Legacy's estate planning services. Farrand used Legacy's official services presentation and provided customers with Legacy's application and enrollment form. Farrand earned a total commission of \$4,450.00 for the services she provided Legacy in 2016 and \$75.00 for the services she provided in 2017.

¶3 In 2017, Farrand filed a claim for unemployment benefits. The Department of Workforce Development (DWD) determined that Legacy was subject to Wisconsin Unemployment Insurance law effective January 1, 2016, based on services Farrand performed as an employee of Legacy. Legacy appealed and a hearing was held before an administrative law judge (ALJ) acting as an appeal tribunal. At the hearing, a Teams Analyst for the DWD testified that the DWD's determination was based in part on an Employment Status Questionnaire completed by Legacy. Richard Follett, the Regional Vice President for Legacy, also testified about the services Farrand provided and the terms of a

Representative Agreement that Farrand signed with Legacy on September 9, 2016. Farrand did not testify.

¶4 The ALJ affirmed the DWD’s decision. In a written order, LIRC affirmed the DWD with some modifications, concluding that: (1) Legacy was a statutory employer subject to Wisconsin Unemployment Insurance law beginning January 1, 2016; and (2) Farrand performed her services as an employee, not an independent contractor, under WIS. STAT. § 108.02(12)(bm) (2017-18).¹ The circuit court affirmed LIRC’s decision.

DISCUSSION

¶5 On appeal, Legacy renews the arguments it made before LIRC and the circuit court. Specifically, Legacy claims LIRC erroneously found that: (1) Legacy was a statutory employer subject to Wisconsin Unemployment Insurance law; and (2) Farrand performed her services for Legacy as an employee, not an independent contractor. We address each issue in turn.

A. *Standard of Review*

¶6 We review LIRC’s decision rather than that of the circuit court. *Gilbert v. LIRC*, 2008 WI App 173, ¶8, 315 Wis. 2d 726, 762 N.W.2d 671. In the absence of fraud, LIRC’s findings of fact are conclusive if they are supported by credible and substantial evidence. See WIS. STAT. § 102.23(1)(a)1.; *Kowalchuk v. LIRC*, 2000 WI App 85, ¶7, 234 Wis. 2d 203, 610 N.W.2d 122. Credible and substantial evidence is “relevant, credible, and probative evidence upon which

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

reasonable persons could rely to reach a conclusion.” *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 54, 330 N.W.2d 169 (1983). When determining whether credible and substantial evidence supports LIRC’s factual findings, a court may not “substitute its judgment for that of [LIRC] as to the weight or credibility of the evidence.” Sec. 102.23(6).

¶7 We review LIRC’s “conclusions of law under the same standard [that] we apply to a circuit court’s conclusions of law—de novo.” *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21. Although we no longer defer to administrative agency decisions, we give those decisions due weight. *See id.*, ¶78. “‘Due weight’ is a matter of persuasion, [and] not [one of] deference.” *Id.* It affords “respectful, appropriate consideration” of LIRC’s determination, while affording us “independent judgment in deciding questions of law.” *Id.*

B. *Statutory Employer*

¶8 Legacy claims that LIRC erroneously found that Legacy met the statutory definition of an employer subject to unemployment insurance obligations under WIS. STAT. ch. 108. As material, an employer is subject to Wisconsin Unemployment Insurance law under either of the following provisions in WIS. STAT. § 108.02(13):

(e) Any other employing unit, except a government unit, shall become an employer as of the beginning of any calendar year if the employing unit:

1. Paid or incurred liability to pay wages for employment which totaled \$1,500 or more during any quarter in either that year or the preceding calendar year;

...

(f) Any employing unit which is subject to the federal unemployment tax act for any calendar year, or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, the social security act, or any other federal law, to be an employer, shall become an employer as of the beginning of such calendar year.

Section 108.02(13)(e)1. & (f). LIRC found that Legacy was a statutory employer under § 108.02(13) because: (1) Legacy paid Farrand for services in Wisconsin in 2016; and (2) Legacy was subject to federal unemployment law in Florida. These findings are supported by credible and substantial evidence.

¶9 The Record shows that Legacy paid \$1,500 or more to Farrand in a calendar quarter. Farrand's commission report, which was submitted as an exhibit at the administrative hearing, lists payments Legacy made to Farrand from October 20, 2016, through January 12, 2017. For the fourth quarter of 2016, the report lists \$7,775 in commissions and bonuses, and \$3,325 in commission and bonus chargebacks, for a total amount paid of \$4,450. An additional exhibit, Tax Form 1099-MISC, issued by Legacy to Farrand, provides that Farrand's income for 2016 was \$4,450. Accordingly, Legacy is subject to Wisconsin Unemployment Insurance law under WIS. STAT. § 108.02(13)(e)1. because it paid more than \$1,500 to Farrand as an employee during the fourth quarter of 2016.

¶10 The Record also shows that Legacy is subject to the Federal Unemployment Tax Act (FUTA). At the administrative hearing, Follett testified that Legacy was subject to Florida's unemployment insurance law. The definition of employer in the Florida statutes, FLA. STAT. § 443.1215(1)(a)1., conforms to

the definition of employer under FUTA, 26 U.S.C. § 3306(a)(1)(A) (2020).² *See also Reese Reemployment Assistance Appeals Comm’n*, 103 So. 3d 195, 197 (2012) (language in Florida unemployment provision “almost identical” to language in FUTA). Accordingly, because Legacy is subject to Florida’s unemployment insurance laws, it is also subject to FUTA. *See id.* at 198 (“[O]ne of the purposes of the Unemployment Compensation Law is to cooperate with the federal government in the administration of controlling federal legislation so that the state, as well as private employers and their employees, can receive the benefits of this legislation.”). This renders Legacy a statutory employer subject to Wisconsin Unemployment Insurance law under WIS. STAT. § 108.02(13)(f). We thus turn to the second issue, whether Farrand was an employee or an independent contractor.

C. *Employee vs. Independent Contractor*

¶11 Determining whether persons are employees for unemployment compensation purposes requires a two-step analysis. *Gilbert*, 315 Wis. 2d 726, ¶33. The first step is to determine whether the individual has performed services for pay. *Id.*; *see also* WIS. STAT. § 108.02(12)(a). Here, Legacy does not dispute that the DWD established Farrand performed services for pay. Therefore, Farrand is presumed to be an employee for purposes of unemployment compensation. *See Princess House*, 111 Wis. 2d at 65-66.

² FLORIDA STAT. § 443.1215(1)(a)1. defines an employer as “[a]n employing unit that ... [i]n a calendar quarter during the current or preceding calendar year paid wages of at least \$1,500 for service in employment.”

The Federal Unemployment Tax Act defines employer as “any person who ... during any calendar quarter in the calendar year or the preceding calendar year paid wages of \$1,500 or more.” 26 U.S.C. § 3306(a)(1)(A).

¶12 The second step is to determine whether the individual is exempt under WIS. STAT. § 108.02(12)(bm). *Gilbert*, 315 Wis. 2d 726, ¶33. Under this step, the burden shifts to Legacy to show that Farrand is exempt under both parts of the test in § 108.02(12)(bm): (1) Farrand performed her services free from Legacy’s control or direction; and (2) Farrand had an independently established business, or what is referred to as “economic independence and entrepreneurial risk.” We address each part of the test in turn.

¶13 Under the first part of the test, Legacy must show both “by contract and in fact” that Farrand’s services were “performed free from [its] control or direction.” WIS. STAT. § 108.02(12)(bm)1. Section 108.02(12)(bm)1. provides five conditions to consider:

- a. Whether the individual is required to comply with instructions concerning how to perform the services.
- b. Whether the individual receives training from the employing unit with respect to the services performed.
- c. Whether the individual is required to personally perform the services.
- d. Whether the services of the individual are required to be performed at times or in a particular order or sequence established by the employing unit.
- e. Whether the individual is required to make oral or written reports to the employing unit on a regular basis.

Section 108.02(12)(bm)1.a.-e. Legacy does not dispute LIRC’s determination that Legacy satisfied condition d., that Farrand was not required to perform her services at a particular time or in a particular order. Accordingly, we analyze whether Legacy has shown by contract and in fact that the remaining four conditions were met.

¶14 The first condition is whether Farrand was obligated to comply with instructions concerning how to perform the services. *See* WIS. STAT. § 108.02(12)(bm)1.a. Legacy claims that there is insufficient evidence to support LIRC’s finding that this condition was not met. It argues that the Representative Agreement Farrand signed on September 9, 2016, did not provide any instructions on the means, method, or process for marketing or conducting sales solicitations. Rather, Legacy asserts that the Representative Agreement provided a limited number of general provisions that did not instruct Farrand on how to perform her services. LIRC expressly found that this argument was “belied by the numerous requirements that Farrand had to follow that were contained in the Representative Agreement and Schedule A attached to the Representative Agreement.” This finding is supported by credible and substantial evidence.

¶15 Paragraph twenty-three in the Representative Agreement, titled Presentation Manual and Script, “required” Farrand to use Legacy’s “official services presentation” and “include [a]ll disclaimers ... in every presentation” to prospective customers. It further instructed that Farrand was “strictly prohibited” from “us[ing], produc[ing], or distribut[ing] alternative presentation materials” and that “the only permissible modifications to the official presentation are the rearrangement of the pages to account for a representative’s personality or delivery style and the addition of third-party publications (subject to prior approval by [Legacy] and actual probate records from their jurisdiction.” Paragraph twenty-three made clear that if Farrand used, produced, or distributed an alternate presentation or failed to include all disclaimers, she could be immediately terminated.

¶16 The Representative Agreement also provided that Farrand “shall at all times abide by the procedures, polices, rules and regulations of [Legacy]

pertaining to such duties, including but not limited to the specific rules and regulations set forth in Schedule A to this Agreement.” Under Schedule A, titled Rules and Regulations, Farrand was required to use the current application and enrollment form provided by Legacy; orally inform individuals of their right to cancel the Agreement as set forth in the Notice of Right to Cancel form; provide the customer with two copies of the Notice of Right to Cancel form; inform individuals of their right to consult with an independent attorney from Legacy’s network or employ an attorney of their choice; and advise the customer that all applications were subject to approval by Legacy. Finally, in its response to the DWD’s Employment Status Questionnaire, Legacy admitted that Farrand was required to “[a]dhere to policies or procedures regarding the services performed.”

¶17 Legacy claims that this condition was met because Farrand was allowed to modify the sales presentation to account for her personality, delivery style, and the addition of third-party information. It claims this condition shows a “degree of flexibility” inconsistent with an employment relationship. We are not persuaded. This provision did not provide Farrand with a degree of flexibility sufficient to show Farrand was free from Legacy’s control or direction. Under this provision, Farrand was only allowed to rearrange the pages of the presentation. She was still required to follow Legacy’s official services presentation, use Legacy’s application and enrollment form, and abide by Legacy’s procedures, policies, rules, and regulations. LIRC’s finding that Legacy failed to meet its burden on this element is supported by credible and substantial evidence.

¶18 The second condition is whether Farrand received training from Legacy with respect to the services performed. *See* WIS. STAT. § 108.02(12)(bm)1.b. Legacy claims that it did not provide training to Farrand on how to perform her sales presentation. It argues that any training Farrand received

was product orientation and unrelated to the sales services Farrand provided. Legacy further argues that it had no need to train Farrand on how to perform sales solicitation services because Farrand relied on her past experience as a business owner and outside sales person. LIRC rejected this argument, finding that the Representative Agreement required Farrand to complete Legacy's six-to-eight hour webinar training before performing her services for Legacy and complete all specialized training regarding Legacy's services and operations plans in its designated market. This finding is also supported by credible evidence.

¶19 Legacy's argument ignores the evidence that its training went beyond the estate planning products it offered to include training on its services, operational plans, and Farrand's duties. Paragraph three of the Representative Agreement provided that Farrand "shall complete all [Legacy] provided specialized training regarding [Legacy's] *services* and operational plans in its designated market." (Emphasis added.) Schedule A also required Farrand to complete Legacy's representative online training at the start of her employment and to participate in training "from time to time as [Legacy] provides *related to Representative's duties*." (Emphasis added.) Follett's testimony confirmed that Farrand was required to complete a six-to-eight hour webinar prior to her employment "to be familiar with the product, *services* and the company itself." (Emphasis added.) Finally, in its response to the DWD's Employment Status Questionnaire, Legacy admitted that it provided "instructions, training or orientation" for Farrand and that Farrand was required to "[c]omply with [Legacy's] *training or instructions on how to do the work*." (Emphasis added.)

¶20 The third condition is whether Farrand was personally required to perform the services. See WIS. STAT. § 108.02(12)(bm)1.c. Legacy claims that it met its burden on this condition because paragraph twenty-one of the

Representative Agreement allowed Farrand to outsource her services. It also points to Follett’s testimony that Farrand was free to outsource various components of her services “anywhere from administration to marketing to scheduling appointments.” We agree with LIRC that Legacy’s argument ignores the plain language in paragraph twenty-one of the Representative Agreement which provides that Farrand could not authorize another person to perform her services unless she had Legacy’s written consent:

This Agreement may not be assigned by Representative without the written consent of [Legacy] and any attempt to make an assignment shall be void. Representative may not authorize any other person to act as a sub-representative under this Agreement, or to perform Representative’s duties hereunder, without the written consent of [Legacy].

Under this provision, Farrand was required to personally perform her services for Legacy unless she obtained Legacy’s express permission to do otherwise.

¶21 The last condition is whether Farrand was required to make oral or written reports to Legacy on a regular basis. *See* WIS. STAT. § 108.02(12)(bm)1.e. Legacy points to Follett’s testimony that Legacy did not require oral or written reports to argue that it met its burden on this element. It claims the Representative Agreement required Farrand to submit successful customer applications to Legacy only if she wanted to get paid. Legacy argues that customer applications are not reports and that, even if the applications could be considered reports, they were not submitted on a regular basis because Farrand solicited thousands of prospective customers, but only produced fifteen applications for payment. LIRC rejected this argument because “the contract actually required Farrand to report all of her appointments, applications, and activities each day and mandated that all reports for the week be submitted by 11:59 p.m. on Sunday.” Again, this finding is supported by the language in the Representative Agreement.

¶22 The clear language in Schedule A required Farrand to “report all activity, including but not limited to, appointments and applications, in [Lead Access Management] every day. The [Lead Access Management] reporting for the week must be completed no later than 11:59 pm Sunday.” Additionally, in its response to the DWD’s Employment Status Questionnaire, Legacy admitted that Farrand was required to “[m]ake regular oral or written reports to [Legacy] regarding the services performed.” LIRC’s finding that Legacy failed to meet its burden on this element is supported by credible and substantial evidence. *See Tri-State Home Improvement Co. v. LIRC*, 111 Wis.2d 103, 110-11, 330 N.W.2d 186 (1983) (employer exercised control in fact over sales representatives by making submission of checklist “prerequisite for payment of commissions”). Accordingly, as only one of the five conditions in WIS. STAT. § 108.02(12)(bm)1. was met, we conclude that Legacy did not meet its burden to show by contract and in fact that Farrand was free from Legacy’s control or direction. We thus turn to the second part of the statutory test—economic independence and entrepreneurial risk.

¶23 To satisfy the second part of the test, whether the individual has an independently established business, or “economic independence and entrepreneurial risk,” Legacy must prove “by contract and in fact” at least six of nine conditions:

- a. The individual advertises or otherwise affirmatively holds himself or herself out as being in business.
- b. The individual maintains his or her own office or performs most of the services in a facility or location chosen by the individual and uses his or her own equipment or materials in performing the services.
- c. The individual operates under multiple contracts with one or more employing units to perform specific services.

- d. The individual incurs the main expenses related to the services that he or she performs under contract.
- e. The individual is obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work.
- f. The services performed by the individual do not directly relate to the employing unit retaining the services.
- g. The individual may realize a profit or suffer a loss under contracts to perform such services.
- h. The individual has recurring business liabilities or obligations.
- i. The individual is not economically dependent upon a particular employing unit with respect to the services being performed.

WIS. STAT. § 108.02(12)(bm)2.a-i. Legacy does not dispute LIRC's determination that Legacy satisfied the following conditions: (1) Farrand incurred the main expenses related to the services she performed under the contract (condition d.); (2) Farrand was obligated to redo unsatisfactory work for no additional compensation or was subject to a monetary penalty for unsatisfactory work (condition e.); and (3) Farrand may realize a profit or suffer a loss under the contract to perform such services (condition g.). Accordingly, we analyze whether Legacy has shown by contract and in fact whether the remaining six conditions were met.

¶24 The first condition is whether Farrand advertised or otherwise affirmatively held herself out as being in business. See WIS. STAT. § 108.02(12)(bm)2.a. Under this condition, a truly independent contractor will advertise or hold out to the public, or at least to a certain class of customers, the existence of an independent business. See *Keeler v. LIRC*, 154 Wis. 2d 626, 633, 453 N.W.2d 902 (Ct. App. 1990). Legacy argues that this condition was met

because Farrand advertised and affirmatively held herself out as an independent sales representative. As proof, it points to Follett's testimony that Farrand performed her services "[u]nder her own name," and developed her own marketing strategy. Legacy also alleges that Farrand advertised her services using direct mail flyers that did not identify Legacy or provide any connection with Legacy.

¶25 LIRC found that Legacy did not meet its burden of proof because the flyers were for the performance of Farrand's services as a Legacy representative and not as an independent business. LIRC also noted that "Farrand did not testify, and there was no evidence that [Farrand] otherwise held herself out as being in business as a sales representative." LIRC correctly determined that Legacy did not meet its burden of proof on this condition. The only evidence in the Record concerning the flyers is Follett's testimony that Farrand advertised her services using "several thousand direct mail flyers ... for delivery to potential customers." Follett did not testify about the content of the flyers and Legacy did not provide a copy of the flyer for the ALJ to view. Follett's testimony that Farrand used flyers to advertise her services, standing alone, is insufficient to establish that Farrand advertised the existence of an independent business.

¶26 The next condition is whether Farrand maintained her own office or performed most of the services in a facility or location chosen by her and whether Farrand was required to use Legacy's equipment or materials in performing her services. *See* WIS. STAT. § 108.02(12)(bm)2.b. The focus of this criterion is on "whether a separate business, i.e., an enterprise created and existing separate and apart from the relationship with the putative employer, is being maintained with the individual's own resources." *Gilbert*, 315 Wis. 2d 726, ¶39 (citation omitted).

We begin by looking at whether Farrand maintained her own office or performed her services in a location chosen by her.

¶27 LIRC determined that there was no evidence that Farrand maintained an office devoted to business purposes or that Farrand chose where she performed her services. Legacy argues that this condition was met based on Follett's un rebutted testimony that Farrand performed her sales solicitation services at her home office or prospective customer's private homes. It further claims that Farrand chose where to perform her services because she could decide which potential customers to visit. These claims are not supported by the Record. While Follett testified that Farrand "explained ... that she worked out of her home," he admitted that he did not see her home office and was not sure whether Farrand used her equipment and materials for personal use:

Q. [Y]ou said that she had a business phone[. D]o you know if that was also her personal phone number?

A. I do not. That was the number that she indicated as her business number[.]

Q. You indicated that you had her email account, the Hotmail account; do you know if that was also the same as her personal email?

A. I do not know.

Q. [Y]ou said that ... you knew she had the internet, the computer, a printer, paper, phone, a vehicle; do you know if she had all those things before she began working for Legacy Assurance Plan?

A. From our conversations, some of her prior ... job, I do specifically remember her telling me about her home office arrangement and how she worked out of her home, etcetera, um, in that capacity in that—that prior ... with the prior employer.

Q. Do you know if she also used those items for her personal use?

A. I don't have any specific knowledge of that.

Legacy also fails to point to any evidence in the Record showing where Farrand actually conducted the sales presentations. Without more, Legacy failed to meet its burden to show that Farrand had a separate office or performed most of the services in a facility or location chosen by her. *See, e.g., id.*, ¶41 (typical indicators of an existing business include maintaining an office, equipment, materials, and other facilities). We thus turn to the second part of this condition, whether Farrand used her own equipment or materials.

¶28 LIRC found that Legacy “required that Farrand use its materials in its presentation manual and forms to perform her services.” Legacy claims that Farrand did not use any standardized forms to perform her sales solicitation because she simply provided Legacy’s application to customers but she did not help customers complete it. Again, this claim is not supported by the Record. Legacy does not point to any evidence showing that the customers filled out the application. Moreover, in addition to Legacy’s application, LIRC relied on Legacy’s requirement that Farrand use its services presentation in finding this condition was not met. As we have seen in the section on control and direction, Farrand was “strictly prohibited” from using, producing, or distributing alternative presentation materials. Accordingly, LIRC’s finding that Farrand was required to use Legacy’s materials is supported by credible and substantial evidence.

¶29 The next condition is whether Farrand operated under multiple contacts with one or more employing units to perform specific services. *See* WIS. STAT. § 108.02(12)(bm)2.c. Legacy argues that this condition is met because

Legacy did not prohibit Farrand from operating under multiple contracts.³ LIRC found that this was not sufficient to satisfy Legacy's burden. We agree. The plain language of § 108.02(12)(bm)2.c. provides that Legacy must prove by contract and in fact that Farrand "operate[d] under multiple contracts," not that Farrand *could* operate under multiple contracts. *See State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (we give statutory language its plain meaning). In this case, only one contract, the September 9, 2016, Representative Agreement between Legacy and Farrand, was presented and offered into evidence. Follett further testified that he did not know whether Farrand performed services under a contract with any other individual or entity during the period of time she performed services for Legacy: "I don't have the—any specific knowledge of that, one way or another. She certainly is not prohibited from doing that ... but I don't have any specific knowledge one way or another as to whether or not she did." Finally, in its response to the Department's Employment Status Questionnaire, Legacy admitted that it had a single contract with Farrand. LIRC's finding that this condition was not met is supported by credible and substantial evidence.

¶30 The next condition is whether the services Farrand performed directly relate to Legacy as the employing unit retaining her services. *See WIS.*

³ In making this argument, Legacy also relies in its reply brief on Farrand's Worker Status Questionnaire, which it labeled "Exhibit A." The DWD moves to strike Farrand's Questionnaire on the ground that it was not introduced into evidence at the administrative hearing. *See WIS. STAT. § 108.09(7)(c)5.; Kenwood Merch. Corp. v. LIRC*, 114 Wis. 2d 226, 236, 338 N.W.2d 312 (Ct. App. 1983) ("It is well established that reviewing courts are limited to the record ..."). On appeal, our review is limited to the Record before LIRC. *See id.* Farrand's Questionnaire was not included in the Record before the LIRC. Accordingly we grant the motion to strike that portion of the reply brief, and we have not considered that document in deciding this appeal.

STAT. § 108.02(12)(bm)2.f. We previously held that the condition of integration is best explained by

the example of a tinsmith called upon to repair a company's gutters when the company is engaged in a business unrelated to either repair or manufacture of gutters. Because the tinsmith's activities are totally unrelated to the business activity conducted by the company retaining his services, the services performed by the tinsmith do not directly relate to the activities conducted by the company retaining these services and these services were therefore not integrated into the alleged employer's business.

Keeler, 154 Wis. 2d at 633. Legacy argues that there is a tangential division between Farrand's services as a sales representative and Legacy's business of providing estate planning services because Farrand does not provide estate planning services while Legacy is not in the sales business. LIRC rejected this argument, finding that Farrand's services "directly relate to providing the clients for Legacy's estate planning services." This finding is supported by credible and substantial evidence.

¶31 At the administrative hearing, Follett testified that Farrand was selling the estate planning services that Legacy provides. As we have seen, the Representative Agreement required Farrand to use Legacy's services presentation and materials to sell Legacy's estate planning services. Legacy also admitted in the Department's Employment Status Questionnaire that Farrand was performing her services under Legacy's name. Accordingly, there is evidence that Farrand's sales presentation was integrated into Legacy's business of providing estate

planning services. Without Legacy’s estate planning services, Farrand would have nothing to sell.⁴

¶32 We next look at whether Farrand had recurring business liabilities or obligations. See WIS. STAT. § 108.02(12)(bm)2.h. “This condition requires proof of a cost of doing business that the claimant would incur even during a period of time that he was not performing work for [the putative employer], such as office rent, professional or license fees, [or] liability insurance.” *Cortez-Robles v. Pro One Janitorial, Inc.*, Hearing No. 11403642AP (LIRC May 3, 2012).⁵ Legacy argues that this condition was met because the indemnification clause in the Representative Agreement required Farrand to indemnify and hold Legacy harmless for liability arising from her services. It also asserts that Farrand paid for the recurring costs of the flyers and paid for her computer, printer, internet, telephone, vehicle, meals, paper, and office supplies. LIRC rejected this argument because there was no evidence to support Legacy’s assertions and it “decline[d] to speculate that Farrand had these recurring business expenses or what they might

⁴ Legacy relies on an unpublished opinion, *Varsity Tutors LLC v. LIRC*, 2018AP1951, unpublished slip op. (WI App Oct. 15, 2019), to argue that Farrand’s services are not directly related to its estate planning services. See WIS. STAT. § 809.23(3)(b) (unpublished case authored by member of a three-judge panel may be considered for persuasive value). *Varsity Tutors* is distinguishable. *Varsity Tutors* concluded that an online digital platform that connected tutors with students was not directly related to the services offered by one of its tutors. *Id.*, No. 2018AP1951, ¶13. It reasoned that the tutor’s activities were separate because the platform did not provide any tutoring services, did not train tutors, and did not assess the quality of the tutoring sessions or critique tutor performance. *Id.* In contrast, Farrand is selling the exact service Legacy is providing. Legacy also required Farrand to undergo training and, as found by LIRC in its written decision, Farrand was obligated to redo unsatisfactory work for no additional compensation and was subject to a monetary penalty for unsatisfactory work.

⁵ Although LIRC’s decisions are not binding authority, we may consider prior LIRC decisions on review. See, e.g., *Gilbert v. LIRC*, 2008 WI App 173, ¶10, 315 Wis. 2d 726, 762 N.W.2d 671.

have been.” LIRC correctly determined that Legacy failed to meet its burden of proof on this condition.

¶33 The only evidence of recurring expenses in the Record is that Farrand paid \$4,875 to purchase the flyers. This expense does not qualify as a business liability. Farrand would not have incurred this expense if she were not performing work for Legacy. *See id.* Aside from the flyers, Legacy did not present any evidence that Farrand had any recurring business liabilities or obligations related to the indemnification clause. It also failed to show that Farrand actually incurred expenses for her computer, printer, internet, telephone, vehicle, meals, paper, or office supplies. As we have seen, while Follett testified that Farrand worked from her home, he admitted that he did not see her home office and was not sure whether Farrand used her equipment and materials for personal use. *See Ziburski v. Castforce Inc.*, Hearing No. 13202144EC (LIRC Nov. 22, 2013) (expenses must be for business purposes only).

¶34 The final condition is whether Farrand was economically dependent upon Legacy with respect to the services she performed. *See WIS. STAT. § 108.02(12)(bm)2.i.* We have long recognized that “economic dependence is not a matter of how much money an individual makes from one source or another. Instead, it refers to the survival of the individual’s independently established business if the relationship with the putative employer ceases to exist.” *Larson v. LIRC*, 184 Wis. 2d 378, 392, 516 N.W.2d 456 (Ct. App. 1994) (citation omitted).

¶35 LIRC found that this condition was not met because the non-compete clause in the Representative Agreement prohibited Farrand “from engaging in similar work, so [Farrand] was not able to generate income in a similar sales representative capacity with any other entity, only Legacy.” This

finding is supported by the terms of the non-compete clause in the Representative Agreement. Section B of the non-compete clause provides: “During the term of this Agreement, Representative agrees to offer the products and services available through [Legacy] and any associated companies only, and not for or on behalf of Representative’s own account or for any other person, company, business, or entity.” Additionally, under Section C(1), Farrand was prohibited “[f]or a period of two (2) years after the date of termination of this Agreement,” from “sell[ing] or attempt[ing] to sell, whether on his own behalf or on behalf of any other person, company or entity, any financial or insurance products to a customer of [Legacy].”

¶36 Legacy claims that Farrand was not economically dependent on Legacy because Section C of the non-compete clause only prohibited Farrand from selling the financial or insurance products that Legacy sells. It argues that Farrand could continue operating her business because Farrand was free to sell other types of products or services to Legacy customers after her relationship with Legacy ended. Legacy does not point to any evidence in the Record, however, that Farrand performed as a sales representative for any other business or product. Accordingly, Legacy has not met its burden to show that Farrand had a viable independently established business that would continue to operate in the absence of her work with Legacy. Accordingly, as only three of the nine conditions in WIS. STAT. § 108.02(12)(bm)2. were met, we conclude that Legacy did not meet its burden to show by contract and in fact that Farrand had an independently established business.

CONCLUSION

¶37 In sum, we conclude that LIRC’s determination that Legacy is a statutory employer subject to Wisconsin Unemployment Insurance law under WIS. STAT. § 108.02(13) is supported by credible and substantial evidence. We also conclude that Legacy failed to satisfy the conditions required for Farrand to be considered an independent contractor under § 108.02(12)(bm). For these reasons, we affirm the circuit court’s order.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 13, 2022

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2020AP2007

Cir. Ct. No. 2019CV324

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**CATHOLIC CHARITIES BUREAU, INC., BARRON COUNTY
DEVELOPMENTAL SERVICES, INC., DIVERSIFIED SERVICES, INC.,
BLACK RIVER INDUSTRIES, INC. AND HEADWATERS, INC.,**

PETITIONERS-RESPONDENTS,

v.

STATE OF WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION,

RESPONDENT-CO-APPELLANT,

STATE OF WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Douglas County:
KELLY J. THIMM, Judge. *Reversed.*

Before Stark, P.J., Hruz and Gill, JJ.

¶1 STARK, P.J. This unemployment insurance case requires us to determine the proper interpretation of the religious purposes exemption under WIS. STAT. § 108.02(15)(h)2. (2019-20).¹ The petitioner-respondents are the Catholic Charities Bureau, Inc. (CCB) as well as four of its sub-entities: Barron County Developmental Services, Inc.; Diversified Services, Inc.; Black River Industries, Inc.; and Headwaters, Inc.² CCB asserts that it is exempt from Wisconsin’s Unemployment Compensation Act under § 108.02(15)(h)2. because it is “operated primarily for religious purposes.” In considering whether it is exempt under the statute, CCB argues that the proper consideration is whether it is operated primarily for a religious *motive* or *reason*.

¶2 Conversely, the Department of Workforce Development (DWD) and the Labor and Industry Review Commission (LIRC)³ contend that whether CCB is operated primarily for religious purposes depends on whether its *activities* are primarily religious in character. The parties also dispute whether the religious purposes exemption is ambiguous and, if so, how that ambiguity should be resolved. Finally, both CCB and DWD argue, albeit for different reasons, that adopting the opposing party’s interpretation of the religious purposes exemption will violate the First Amendment to the United States Constitution.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² For ease of reading, we will refer to CCB and its sub-entities collectively as CCB when referring to their arguments made on appeal, unless referring to the sub-entities individually. Otherwise, we refer to them as CCB and its sub-entities.

³ DWD filed a brief in this appeal, and LIRC filed a letter indicating that it concurred with the arguments raised in DWD’s brief and would not be submitting a separate brief. For ease of reading, we will therefore refer to the appellants as DWD throughout, unless referring to LIRC’s decision.

¶3 For the reasons that follow, we conclude that the reviewing body must consider the nonprofit organization’s motives *and* activities to determine whether that organization is “operated primarily for religious purposes” under WIS. STAT. § 108.02(15)(h)2., such that the religious purposes exemption to unemployment taxation applies. We further determine that the First Amendment is not implicated in this case. Given the facts here, we conclude that LIRC correctly determined that CCB and its sub-entities are not organizations operated primarily for religious purposes; thus, employees of the organizations do not perform their services under excluded employment as that is defined under § 108.02(15)(h)2. We therefore reverse the circuit court’s order and reinstate LIRC’s decision.

BACKGROUND

¶4 The facts of this case are undisputed. Every Roman Catholic diocese in Wisconsin has a Catholic Charities entity that functions as the diocese’s social ministry arm. Catholic Charities’ stated mission is “to provide service to people in need, to advocate for justice in social structures and to call the entire church and other people of good will to do the same.” During the administrative proceedings in this case, Archbishop Jerome ListECKI testified that this mission is “rooted in scripture,” which “mandate[s]” that the Catholic Church “serve the poor.” According to Archbishop ListECKI, inherent in the church’s teachings is a “demand” that Catholics respond in charity to those in need.

¶5 CCB is the Catholic Charities entity for the Diocese of Superior, Wisconsin. CCB’s statement of philosophy provides that the “purpose” of CCB is “to be an effective sign of the charity of Christ” by providing services that are “significant in quantity and quality” and are not duplicative of services already

adequately provided by public or private organizations. CCB provides these services according to an “Ecumenical orientation,” such that “no distinctions are made by race, sex, or religion in reference to clients served, staff employed and board members appointed.”

¶6 Under CCB’s umbrella, numerous separately incorporated nonprofit sub-entities operate sixty-three “programs of service,” which provide aid “to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty and those in need of disaster relief.” As noted above, four of those sub-entities are at issue in this appeal.

¶7 Barron County Developmental Services, Inc. (BCDS) is a “[c]ommunity rehabilitation program providing services to individuals with developmental disabilities” that focuses “on the development of vocational and social skills that allow a person to reach their highest potential within the community.” BCDS contracts with DWD’s Division of Vocational Rehabilitation (DVR) to perform job placement, job coaching, and other employment services to assist individuals with disabilities to obtain employment in the community. BCDS is funded “primarily” through government funding via DVR, but it also receives some funding from private companies. It receives no funding from the Diocese of Superior. BCDS was formerly known as Barron County Developmental Disabilities Services, but in December 2014, its board of directors “requested to become an affiliate agency” of CCB and its name was changed. Prior to becoming a sub-entity of CCB, BCDS had no religious affiliation. The type of services and programming provided by the organization did not change after it became affiliated with CCB.

¶8 Black River Industries, Inc. (BRI) provides “in-home services, community-based services, and facility-based services” to individuals with developmental disabilities, mental health disabilities, and limited incomes. To serve those in need, BRI works with DVR to provide participants with job training skills; it provides transportation services to disabled adults and seniors; it has a contract with Taylor County to provide mental health services; and it has a food service production facility, a paper shredding program, and a mailing services program to serve the community and provide job training. “[M]uch” of BRI’s funding comes from government organizations, including “county services, Department of Health Services, Long-Term Care Division[,] as well as” DVR. BRI receives no funding from the Diocese of Superior.

¶9 Diversified Services, Inc. (DSI) provides services to individuals with developmental disabilities. To do so, DSI offers “meaningful employment opportunities” to these individuals and also hires individuals without disabilities to do production work. Most of DSI’s funding comes from Family Care, a Medicaid long-term care program, and from private contracts. DSI receives no funding from the Diocese of Superior.

¶10 Headwaters, Inc., provides “various support services for individuals with disabilities,” including “training services related to activities of daily living,” employment-related training services, and job placement. In addition, Headwaters has work-related contracts for individuals to learn work skills while earning a paycheck; provides Head Start home visitation services to eligible families with children; and provided birth-to-three services before Tri-County Human Services assumed providing those services. The majority of Headwaters’ funding comes from government grants, and it too receives no funding from the Diocese of Superior.

¶11 CCB's role is to provide management services and consultation to its sub-entities, establish and coordinate the sub-entities' missions, and approve capital expenditures and investment policies. CCB's executive director, who is not required to be a Catholic priest, oversees each sub-entity's operations. Nonetheless, CCB's internal organizational chart establishes that the bishop of the Diocese of Superior oversees CCB in its entirety, including its sub-entities, and is ultimately "in charge of" CCB. New CCB employees are provided with CCB's mission statement, statement of philosophy, and code of ethics, and they are informed that their employment "is an extension of Catholic Social Teachings and the Catechism of the Church." Employees of CCB and its sub-entities are not required to be members of the Catholic faith, but they are prohibited from engaging in activities that violate Catholic social teachings.

¶12 As noted above, CCB's sub-entities provide services to all people in need, regardless of their religion, pursuant to the Catholic social teaching of "Solidarity," which is a belief that "we are our brothers' and sisters' keepers, wherever they live. We are one human family." Program participants are not required to attend any religious training or orientation to receive the services that CCB's sub-entities provide. Neither CCB nor its sub-entities engage in devotional exercises with their employees or program participants nor do they disseminate religious materials to those individuals, except for providing new hires with the CCB mission statement and code of ethics and philosophy. Neither CCB nor its sub-entities "try to inculcate the Catholic faith with program participants."

¶13 CCB became subject to Wisconsin's Unemployment Compensation Act, WIS. STAT. ch. 108, in 1972, following CCB's submission of an employer's

report stating that the nature of its operations was charitable, educational, and rehabilitative.⁴ CCB’s sub-entities report their employees under CCB’s unemployment insurance account. In 2015, a Douglas County Circuit Court judge ruled that Challenge Center, Inc.—another CCB sub-entity providing services to developmentally disabled individuals—was operated primarily for religious purposes and was therefore exempt from the Unemployment Compensation Act under the religious purposes exemption, WIS. STAT. § 108.02(15)(h)2. CCB and the four sub-entities at issue in this appeal then sought a determination from DWD that they, too, were exempt.

¶14 DWD determined that CCB and the sub-entities did not qualify for the religious purposes exemption. CCB sought administrative review of that determination, and an administrative law judge (ALJ) reversed, concluding that CCB and the sub-entities qualified for the exemption because they were operated primarily for religious purposes. DWD appealed to LIRC, which reversed the ALJ’s decision. CCB then sought judicial review, and the circuit court again reversed, agreeing with the ALJ that CCB and the sub-entities qualified for the exemption. DWD appeals.

DISCUSSION

¶15 “Wisconsin’s unemployment compensation statutes embody a strong public policy in favor of compensating the unemployed.” *Operton v. LIRC*, 2017

⁴ CCB and its sub-entities are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code under a group exemption. The group exemption includes “the agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions” that are subordinate to the United States Conference of Catholic Bishops.

WI 46, ¶31, 375 Wis. 2d 1, 894 N.W.2d 426. When the Wisconsin Legislature enacted the Unemployment Compensation Act, it recognized that unemployment in Wisconsin is “an urgent public problem, gravely affecting the health, morals and welfare of the people of this state. The burdens resulting from irregular employment and reduced annual earnings fall directly on the unemployed worker and his or her family.” WIS. STAT. § 108.01(1). The legislature acknowledged that “[i]n good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners.” *Id.* As a result, the legislature concluded that “[e]ach employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers.” *Id.* “Consistent with this policy, WIS. STAT. ch. 108 is ‘liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.’” *Operton*, 375 Wis. 2d 1, ¶32 (quoting *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 62, 330 N.W.2d 169 (1983)).

I. WISCONSIN STAT. § 108.02(15)(h)

¶16 Nevertheless, Wisconsin’s unemployment insurance law exempts some services from the “employment” services that are covered by WIS. STAT. ch. 108.⁵ The issue in this case, then, is whether CCB and its sub-entities qualify under one of those exemptions. WISCONSIN STAT. § 108.02(15)(h) sets forth the statutory formula for the type of exemption that CCB argues is applicable here. That statute provides:

⁵ For purposes of the Unemployment Compensation Act, the term “[e]mployment” means “any service, including service in interstate commerce, performed by an individual for pay.” WIS. STAT. § 108.02(15)(a).

(h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:

1. In the employ of a church or convention or association of churches;

2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

Sec. 108.02(15)(h). Here, the parties’ dispute is focused on subd. 2., the religious purposes exemption, which has two requirements: (1) the nonprofit organization is “operated primarily for religious purposes”; and (2) the nonprofit organization is “operated, supervised, controlled, or principally supported by a church or convention or association of churches.”⁶ Sec. 108.02(15)(h)2. There is no dispute that CCB and its sub-entities are nonprofit organizations and that they are “operated, supervised, controlled, or principally supported by a church.” Thus, the only issue before us is whether CCB and its sub-entities are “operated primarily for religious purposes” and are therefore exempt from paying unemployment tax on behalf of their employees. *See id.*

¶17 To date, no Wisconsin Supreme Court decision or published court of appeals decision has addressed the interpretation of the religious purposes exemption in WIS. STAT. § 108.02(15)(h)2. Our statute, however, is essentially

⁶ For ease of reading, we will refer to the controlling entity as “a church” throughout this decision rather than as “a church or convention or association of churches.” *See* WIS. STAT. § 108.02(15)(h)2.

identical to the exemption found in the Federal Unemployment Tax Act (FUTA). *See* 26 U.S.C. § 3309(b)(1)(B). DWD asserts—and CCB does not dispute—that § 108.02(15)(h)2. was enacted to “conform Wisconsin’s unemployment law with [the] federal law in 26 U.S.C. § 3309(b)(1)(B).” *See* 1971 Wis. Laws, ch. 53, § 6. Other states have also included religious purposes exemptions in their unemployment insurance laws; however, there is a distinct lack of consensus as to the proper interpretation of the relevant statutory language among these different jurisdictions.⁷ Our task, then, is to determine the statute’s meaning based on its language and relevant legal authority.

II. Standard of Review

¶18 On appeal, we review LIRC’s decision, rather than the decision of the circuit court. *Operton*, 375 Wis. 2d 1, ¶18. Our scope and standard of judicial review of LIRC’s decisions concerning unemployment insurance are established in WIS. STAT. § 108.09(7). We may confirm or set aside LIRC’s order, but its decision may be set aside only upon one or more of the following grounds: (1) LIRC acted without or in excess of its powers; (2) the order or award was procured by fraud; and (3) LIRC’s findings of fact do not support the order. Sec. 108.09(7)(c)6. An agency acts outside its power, contrary to § 108.09(7)(c)6.a., when it incorrectly interprets a statute. *See DWD v. LIRC*, 2018 WI 77, ¶12, 382 Wis. 2d 611, 914 N.W.2d 625.

⁷ For this reason, we certified the question in this case to our supreme court, but it denied certification. We subsequently held oral argument in this case on August 3, 2022, in Superior, Wisconsin.

¶19 We will uphold LIRC’s findings of fact if they are supported by credible and substantial evidence. *Operton*, 375 Wis.2d 1, ¶18. Whether an employer has proven that it is exempt from coverage under Wisconsin’s unemployment system involves the application of facts to a particular legal standard, which is a conclusion of law that we review independently. *See Nottelson v. DILHR*, 94 Wis. 2d 106, 116, 287 N.W.2d 763 (1980). Because the facts of this case are undisputed, the only issue on appeal is the proper interpretation of WIS. STAT. § 108.02(15)(h)2. Therefore, we review LIRC’s legal conclusions de novo. *Mueller v. LIRC*, 2019 WI App 50, ¶17, 388 Wis. 2d 602, 933 N.W.2d 645.

¶20 The interpretation of a statute is a legal conclusion. *See Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶12, 382 Wis. 2d 496, 914 N.W.2d 21. “[O]ur supreme court recently ended the practice of deferring to an administrative agency’s conclusions of law.” *Mueller*, 388 Wis. 2d 602, ¶17 (citing *Tetra Tech*, 382 Wis. 2d 496, ¶¶3, 84). While we no longer defer to administrative agency decisions, we give those decisions “due weight.” *See Tetra Tech*, 382 Wis. 2d 496, ¶78. “Due weight is a matter of persuasion, not deference,” and it does not “oust the court as the ultimate authority or final arbiter.” *Id.* Instead, it affords “respectful, appropriate consideration” of LIRC’s determination and grants us “independent judgment in deciding questions of law.” *See id.*

III. Statutory Interpretation

¶21 DWD and CCB have framed this case as a disagreement over whether WIS. STAT. § 108.02(15)(h)2. requires a reviewing body to consider either the activities or the motivations of either the nonprofit organization or the church. In particular, DWD faults the circuit court for defining “purposes” as the “reason

something is done” and for holding that it is the religious motivation of the Diocese of Superior in operating CCB and its sub-entities that determines whether the organizations are operated for religious purposes. Instead, DWD argues that the term “religious purposes” requires an examination of an organization’s activities, rather than its motivation, and that the “purpose” we are to examine is that of the nonprofit organization, not the church. Here, DWD asserts, CCB and its sub-entities are engaged in purely secular activities.

¶22 In contrast, CCB argues that an organization is operated primarily for religious purposes when it is operated primarily “for a religious motive or reason.” Thus, motivation is the important consideration, specifically the church’s motive in operating, supervising, controlling, or principally supporting the organizations. According to CCB, CCB and its sub-entities are operated primarily for a religious motive or reason—specifically, to comply with the Catholic Church’s scriptural and doctrinal mandate to serve the poor and respond in charity to those in need.

¶23 We begin, as we must, with the language of the statute. *See State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We give statutory language its common, ordinary, and accepted meaning, except that technical or specially defined words or phrases are given their technical or special definitional meanings. *Id.* We interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46. “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* (citation omitted). If, however, the statute “is capable of being understood by reasonably

well-informed persons in two or more senses,” then the statute is ambiguous. *Id.*, ¶47.

¶24 We first consider each word used in the phrase “operated primarily for religious purposes.” Operate means “to work, perform, or function,” “to act effectively; produce an effect; exert force or influence,” or “to perform some process of work or treatment.” *Operate*, <https://www.dictionary.com/browse/operate> (last visited Dec. 2, 2022). The term “operate” therefore connotes an action or activity. Primarily means “essentially; mostly; chiefly; principally” or “in the first instance; at first; originally.” *Primarily*, <https://www.dictionary.com/browse/primarily> (last visited Dec. 2, 2022). The statute’s use of the term “primarily” suggests that there may be other purposes for which an organization operates, and it need not be operated exclusively for religious purposes. Religious means “of, relating to, or concerned with religion.” *Religious*, <https://www.dictionary.com/browse/religious> (last visited Dec. 2, 2022). And purpose means “the reasons for which something exists or is done, made, used, etc.” or “an intended or desired result; end; aim; goal.” *Purpose*, <https://www.dictionary.com/browse/purpose> (last visited Dec. 2, 2022). Purpose can also mean “something that one sets before himself [or herself] as an object to be attained” and “an object, effect, or result aimed at, intended, or attained.” *Purpose*, WEBSTER’S THIRD NEW INT’L DICTIONARY (unabr. 1993). While these terms generally have a plain meaning interpretation, they are not necessarily dispositive of the meaning of the statute as a whole. Instead, they provide guidance in determining the statute’s overall meaning.

a. The Nonprofit Organization's Purpose Controls

¶25 The first question we must address to determine the statute's meaning is which entity's purpose the reviewing body is to consider: the purpose of the nonprofit organization or the purpose of the church in operating, supervising, controlling, or principally supporting the nonprofit organization. In other words, are we to consider "the reasons for which something exists or is done" from the perspective of the nonprofit organization or from the perspective of the church? As noted, the parties disagree on this point. We conclude that the statute is not ambiguous as to this question and that the plain language of WIS. STAT. § 108.02(15)(h)2. demonstrates that the reviewing body is to consider the purpose of the nonprofit organization, not the church's purpose in operating the organization.

¶26 First and foremost, the religious purposes exemption applies to "service ... [i]n the employ" of the nonprofit organization, not service in the employ of the church. WIS. STAT. § 108.02(15)(h)2. As noted, we must consider the statutory language in the context in which it is used. *See Kalal*, 271 Wis. 2d 633, ¶46. Each of the subdivisions of § 108.02(15)(h) apply to an individual's "service" in a different context: § 108.02(15)(h)1. addresses church employees, § 108.02(15)(h)2. addresses employees of "an organization operated primarily for religious purposes," and § 108.02(15)(h)3. addresses ministers and members of a religious order. Therefore, considering the context of the surrounding subdivisions, we conclude that employees who fall under subd. 2. are to be focused on separately in the statutory scheme from employees of a church. *Compare* § 108.02(15)(h)1. *with* § 108.02(15)(h)2. The exemption under subd. 2. applies specifically to employees of the organizations, so the focus must be on the organizations.

¶27 Second, under the rules of statutory interpretation, an interpretation that focuses on the church’s purpose could render the religious purposes exemption language unnecessary. In order to give meaning to every word in the statute, all words need to be read together. *See, e.g., Kalal*, 271 Wis. 2d 633, ¶46 (“Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.” (citations omitted)); *State v. Martin*, 162 Wis. 2d 883, 894, 470 N.W.2d 900 (1991) (“A statute should be construed so that no word or clause shall be rendered surplusage and every word if possible should be given effect.” (citation omitted)). WISCONSIN STAT. § 108.02(15)(h)2. has two parts. The first part of subd. 2. addresses “religious purposes,” and the second part, which is not at issue in this appeal, provides that the employment must be “for a nonprofit organization” that is “operated, supervised, controlled, or principally supported by a church.” Sec. 108.02(15)(h)2. These distinct requirements are separated by a conjunction—“and”—meaning that *both* elements are required. Thus, the analysis of whether a nonprofit organization is “operated primarily for religious purposes” would need to be conducted only where the organization is also “operated, supervised, controlled, or principally supported by a church.” Whatever “religious purposes” the church may have in operating these organizations, for purposes of the unemployment taxation law, the fact that both elements are required means we should focus on the organization, not the “parent” church.

b. Both the Motives and the Activities of the Nonprofit Organization Determine Whether It Is Operated for a Religious Purpose

¶28 The second question we must address is how the reviewing body is to determine whether a nonprofit organization has a religious purpose and whether the organization is being operated primarily for that religious purpose. As noted above, DWD argues that it is the *activities* of the nonprofit that dictate the

analysis, while CCB claims that “an enterprise must be created or exist ‘chiefly/mostly for a religious *motive* or reason” in order for it to be operated primarily for a religious purpose. (Emphasis added.) For the reasons that follow, we conclude that the reviewing body must consider both the organization’s activities as well as the motivation behind those activities to determine whether the religious purposes exemption applies.

¶29 We again look first to the plain language of the statute to determine whether the reviewing body must consider the nonprofit organization’s motives or its activities. The phrase “religious purposes” is not defined in the statutory scheme, and DWD argues in its reply brief that the language is ambiguous, such that it is not clear from the statute’s language how a reviewing body is to determine when a nonprofit organization has a religious purpose. In support of its position, DWD observes that courts in other jurisdictions have interpreted the religious purposes exemption in different ways, with some courts focusing on an

organization’s activities, others focusing on its motivations, and some considering both.⁸

⁸ Compare *Concordia Ass’n v. Ward*, 532 N.E.2d 411, 413-14 (Ill. App. Ct. 1988) (concluding cemetery formed by several Lutheran churches not operated primarily for religious purposes because “[b]urial of the dead is a matter of public concern” and “[t]he functions performed by [the cemetery] are no different than those performed in a secular cemetery”); *Terwilliger v. St. Vincent Infirmary Med. Ctr.*, 804 S.W.2d 696, 699 (Ark. 1991) (concluding Catholic hospital not operated primarily for religious purposes because although the hospital’s motivation may have been religious in nature, evidence showed it was operated primarily for purpose of providing health care); *Samaritan Inst. v. Prince-Walker*, 883 P.2d 3, 7-8 (Colo. 1994) (concluding organization providing administrative support and accreditation for religiously affiliated counseling centers not operated primarily for religious purposes because “[a]n organization that provides essentially secular services falls outside of the scope of” the religious purposes exemption); *DeSantis v. Board of Rev.*, 372 A.2d 1362, 1364 (N.J. Super. Ct. App. Div. 1977) (concluding Catholic social service agency not operated primarily for religious purposes because provision of “nondenominational community service” for senior citizens was “eleemosynary and not religious”); *Cathedral Arts Project, Inc. v. Department of Econ. Opportunity*, 95 So. 3d 970, 973 (Fla. Dist. Ct. App. 2012) (concluding church-affiliated organization not operated primarily for religious purposes because although motivation may have been religious, primary purpose in operating—i.e., giving art instruction to underprivileged children—was not religious); *St. Augustine’s Ctr. for Am. Indians, Inc. v. Department of Lab.*, 449 N.E.2d 246, 249 (Ill. App. Ct. 1983) (concluding organization providing aide to Native Americans in Chicago not operated primarily for religious purposes, considering the organization’s activities and not its motivation); *Imani Christian Acad. v. Unemployment Comp. Bd. of Rev.*, 42 A.3d 1171, 1175 (Pa. Commw. Ct. 2012) (holding Christian school not operated primarily for religious purposes because no evidence as to the extent of religious underpinnings that pervade curriculum), with *Department of Emp. v. Champion Bake-N-Serve, Inc.*, 592 P.2d 1370, 1371-73 (Idaho 1979) (holding commercial bakery operated by Seventh Day Adventists exempt because students perform work under tenets of religion stressing value of labor and work); *Schwartz v. Unemployment Ins. Comm’n*, 2006 ME 41, ¶¶1-3, 11, 13, 895 A.2d 965 (finding that nondenominational charitable work did not prevent the organization from being operated primarily for religious purposes where mission was to demonstrate “God’s love and compassion to marginalized people in the area [it] serve[s]” (alterations in original)); *Kendall v. Director of Div. of Emp. Sec.*, 473 N.E.2d 196, 198-99 (Mass. 1985) (“The fact that the religious motives of the [Catholic] sisters ... also serve the public good by providing for the education and training of the mentally [handicapped] is hardly reason to deny the Center a religious exemption.”); *Peace Lutheran Church v. Unemployment Appeals Comm’n*, 906 So. 2d 1197 (Fla. Dist. Ct. App. 2005) (concluding child care organization operated by the church, located on the church property, and subsidized by the church exempt because its services and church outreach were religious purposes); see also *By the Hand Club for Kids, NFP, Inc. v. Department of Emp. Sec.*, 2020 IL App (1st) 181768, ¶¶21, 39, 51-54, 188 N.E.3d 1196 (noting that courts “generally have been ‘quite cautious in attempting to define, for tax [and unemployment insurance] purposes, what is or is not a ‘religious’ activity or organization—for obvious policy and constitutional reasons” and concluding that a court will instead consider “all the facts and circumstances of a particular case in order to decide whether an organization is engaged in

(continued)

¶30 As previously discussed, a statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses. *Kalal*, 271 Wis.2d 633, ¶47. However, “[i]t is not enough that there is a disagreement about the statutory meaning; the test for ambiguity examines the language of the statute ‘to determine whether well-informed persons *should have* become confused, that is, whether the statutory ... language reasonably gives rise to different meanings.’” *Id.* (emphasis added; citation omitted). “An otherwise unambiguous provision is not rendered ambiguous solely because it is difficult to apply the provision to the facts of a particular case.” *Stuart v. Weisflog’s Showroom Gallery, Inc.*, 2008 WI 86, ¶20, 311 Wis. 2d 492, 753 N.W.2d 448.

¶31 Looking at the language of the statute, we disagree that the phrase “operated primarily for religious purposes” is ambiguous. Instead, we conclude that phrase is reasonably susceptible to only one interpretation based on the plain language of the statute and when viewed in the context of the statutory scheme. *See Kalal*, 271 Wis. 2d 633, ¶¶45-46. That interpretation requires the reviewing body to consider both the nonprofit organization’s motivations and its activities to determine whether the organization qualifies under the religious purposes exemption.

¶32 We first return to the text and structure of the statute to determine its meaning “so that it may be given its full, proper, and intended effect.” *See id.*, ¶44. Here, we note the use of both the words “operated” and “purposes” within

primarily religious activities” (alteration in original; citations omitted)); *Community Lutheran Sch. v. Iowa Dep’t of Job Serv.*, 326 N.W.2d 286, 287, 291-92 (Iowa 1982) (finding that religious schools separately incorporated from church were operated primarily for religious purposes, but considering both the school’s activities and statement of purpose).

the same statutory provision. As recognized above, the word “operated” connotes an action or activity—to act, to work, to perform—meaning *what* the nonprofit organization does and *how* it does it. “Purpose,” in contrast, has been defined to mean “the reasons for which something exists or is done,” *Purpose*, <https://www.dictionary.com/browse/purpose> (last visited Dec. 2, 2022), suggesting that motive should be considered such that we should ask *why* the organization acts. While the appearance of both words in the statute might suggest ambiguity, we conclude that those words reveal the intended effect of the religious purposes exemption.

¶33 In that way, DWD and CCB are not necessarily wrong in their respective plain language analyses. The problem is that each party focuses on different words and fails to read the statute as a whole. For example, if we focus on the word “purposes,” as CCB does, we may conclude that qualification for the exemption is based on the organization’s reason for acting or its motivation, without considering whether the work performed or the services provided are inherently “religious.” If, however, we focus on the word “operated,” as DWD appears to do, we may conclude that the focus of the exemption is on the actions of the organization, meaning its activities and the work it is performing, without allowing any consideration of whether the work is part of a central mission of a religion. Both words appear in the statute and therefore both must be given meaning.

¶34 The only reasonable interpretation of the statute’s language is that the reviewing body must consider both the *activities* of the organization as well as the organization’s professed *motive* or purpose. Neither consideration alone is sufficient under the statute. If the reviewing body considered only the activities of the nonprofit organization, it would essentially render the word “purposes”

superfluous because the organization’s reason for acting, or motivation, would not be a consideration. Given the mandate that statutes are to be “read where possible to give reasonable effect to every word,” see *Kalal*, 271 Wis. 2d 633, ¶46, this interpretation would be unreasonable. Therefore, under a plain language reading of the statute, for an employee’s services to be exempt from unemployment tax the organization must not only have a religious motivation, but the services provided—its activities—must also be primarily religious in nature.

¶35 There are other reasons why an organization’s motivation cannot be the sole determination. Here, again we highlight the use of the term “operated,” this time as it is used in conjunction with “primarily.” Had the legislature intended that the reviewing body focus on only the motives of the organization to determine a religious purpose, there would be no need to include the phrase “operated primarily.” Instead, those words could have been removed from the statute to provide that an employee’s services are exempt from taxation if they are “in the employ of an organization with religious purposes.” To give effect to the phrase “operated primarily,” rather than render the phrase unnecessary within the statutory scheme, the only reasonable reading of the statute is that the reviewing body should also look to the organization’s operations—its activities, meaning the particular services individuals receive—and determine if they are primarily religious in nature.

¶36 This reading of the religious purposes exemption—considering both the motivations and the activities of the nonprofit organization—is also in line with the rules of statutory interpretation. As DWD argues, the unemployment insurance law is remedial in nature; therefore, the statutes must be “liberally construed” to provide benefits coverage, and exceptions to the law must be interpreted narrowly. See *Princess House*, 111 Wis. 2d at 62; see also *Wisconsin*

Cheese Serv., Inc. v. DILHR, 108 Wis. 2d 482, 489, 322 N.W.2d 495 (Ct. App. 1982) (“In order to foster a reduction of both the individual and social consequences of unemployment, courts have construed the statutes broadly.”). “A general rule of statutory construction is that exceptions within a statute ‘should be strictly, and reasonably, construed and extend only as far as their language fairly warrants.’ If a statute is liberally construed, ‘it follows that the exceptions must be narrowly construed.’” *McNeil v. Hansen*, 2007 WI 56, ¶10, 300 Wis. 2d 358, 731 N.W.2d 273 (citations omitted); *see also Dominican Nuns v. La Crosse*, 142 Wis. 2d 577, 579, 419 N.W.2d 270 (Ct. App. 1987) (“Taxation is the rule, and exemption the exception. As a result, ‘[s]tatutes exempting property from taxation are to be strictly construed and all doubts are resolved in favor of its taxability.’” (alteration in original; citation omitted)). “[T]he burden of proving entitlement to [a tax] exemption is on the one seeking the exemption. ‘To be entitled to tax exemption the taxpayer must bring himself [or herself] within the exact terms of the exemption statute.’” *Wauwatosa Ave. United Methodist Church v. City of Wauwatosa*, 2009 WI App 171, ¶7, 321 Wis. 2d 796, 776 N.W.2d 280 (citation omitted).

¶37 Here, DWD argues, and we agree, that a narrow interpretation is appropriate because it protects an employee’s eligibility for benefits. As noted above, WIS. STAT. ch. 108 is “liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.” *Princess House*, 111 Wis. 2d at 62. The more broadly the religious purposes exemption is read, the more employers are exempt and the larger impact the exemption will have on unemployment compensation coverage for employees of those organizations as well as all employees who are impacted by the reserve fund being depleted. *See* WIS. STAT.

§§ 108.02(4)(a) (benefits are dependent on employee's base period, which is impacted if employer is exempt), 108.18(1) (requiring employer to pay contributions to the unemployment reserve fund based on yearly payroll). Construing the statute broadly ignores the stated public policy purposes of the unemployment insurance compensation program. *See* WIS. STAT. § 108.01.

¶38 For this reason, LIRC's decision rejected an approach that considered only an organization's motivations because it would cast too broad a net. As DWD explained, if the reviewing body looked only at motives, "it would allow the organization to determine its own status without regard to its actual function." This analysis could allow any nonprofit organization affiliated with a church to exempt itself from unemployment insurance by professing a religious motive without being required to provide support for that motive. *See Living Faith, Inc. v. Commissioner*, 950 F.2d 365, 372 (7th Cir. 1991) (noting, in an income tax exemption case, that "[w]hile we agree with Living Faith that an organization's good faith assertion of an exempt purpose is relevant to the analysis of tax-exempt status, we cannot accept the view that such an assertion be dispositive" and further observing that "[p]ut simply, saying one's purpose is exclusively religious doesn't necessarily make it so"). Allowing an organization to possibly create its own exemption would effectively render the "operated primarily for religious purposes" language unnecessary and without effect under the law. Such a broad reading of the statute is contrary to the requirement that we must construe the religious purposes exemption narrowly to guarantee that the exemption is applied only when necessary. An interpretation that considers the activities of each individual organization seeking the exemption in addition to its professed motives accomplishes that directive.

¶39 CCB’s response is that “[a]ll Catholic entities (and many other religious entities) operate their own unemployment system(s). The church provides equivalent benefits to CCB employees, more efficiently at lesser cost.” CCB therefore claims, quoting the circuit court, that “CCB employees are all ‘covered.’” This argument is a nonstarter. Whether an organization provides private unemployment insurance to its employees is not a factor under the religious purposes exemption. CCB has not identified any language in the statute altering the analysis if an employer provides additional or other coverage, and, as DWD argues, considering the availability of such coverage in the analysis would impermissibly add words to the statute. See *State v. Simmelink*, 2014 WI App 102, ¶11, 357 Wis. 2d 430, 855 N.W.2d 437 (a court “should not read into [a] statute language that the legislature did not put in” (citation omitted)). Further, as DWD observes, the religious purposes exemption “cannot be interpreted one way for Catholic entities and another way for entities affiliated with different faiths.” Thus, we decline to rewrite the religious purposes exemption to consider the availability of private unemployment insurance; that fact is therefore immaterial to the statute’s interpretation or application.

¶40 Instead, DWD directs our attention to the Seventh Circuit Court of Appeals’ decision in *United States v. Dykema*, 666 F.2d 1096 (7th Cir. 1981), which we find instructive. The question before the Seventh Circuit in that case was whether a church was an exempt organization under 26 U.S.C. § 501(c)(3), which grants tax exempt status to “[c]orporations ... organized and operated

exclusively for religious ... purposes.”⁹ *Dykema*, 666 F.2d at 1099. In considering the “term ‘religious purposes,’” the court stated that it is “simply a term of art in tax law.” *Id.* at 1101. According to the court, the IRS’s role is “to determine whether [the organization’s] actual activities conform to the requirements which Congress has established as entitling them to tax exempt status.” *Id.* The Seventh Circuit explained:

In connection with this inquiry, it is necessary and proper for the IRS to survey all the activities of the organization, in order to determine whether what the organization in fact does is to carry out a religious mission or to engage in commercial business. Such a survey could be made by observation of the organization’s activities or by the testimony of other persons having knowledge of such activities, as well as by examination of church bulletins, programs, or other publications, as well as by scrutiny of minutes, memoranda, or financial books and records relating to activities carried on by the organization.

Typical activities of an organization operated for religious purposes would include (a) corporate worship services, including due administration of sacraments and observance of liturgical rituals, as well as a preaching ministry and evangelical outreach to the unchurched and missionary activity in partibus infidelium; (b) pastoral counseling and comfort to members facing grief, illness, adversity, or spiritual problems; (c) performance by the

⁹ As noted previously, CCB and its sub-entities are exempt from federal income tax under 26 U.S.C. § 501(c)(3) under a group exemption. *See supra* note 4. CCB therefore argues in its briefing and at oral argument that “[f]ederal law has already decided the issue” in this case as “[p]ursuant to that interpretation by [the] IRS, each CCB entity in this case has been continuously determined by the IRS to be operating ‘exclusively’ for a religious purpose.” (Formatting altered.)

We agree with DWD that CCB’s assertion is not supported by the record. The IRS did not determine that CCB and its sub-entities are operated exclusively for religious purposes. According to the record, the organizations are covered under a group exemption, “[s]ubordinate organizations under a group exemption do not receive individual exemption letters,” and the exemption applies to educational and charitable institutions, not just religious organizations. *See* 26 U.S.C. § 501(c)(3) (“Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes ...”). Thus, the IRS group ruling did not determine that the employers in this case are operated exclusively for religious purposes.

clergy of customary church ceremonies affecting the lives of individuals, such as baptism, marriage, burial, and the like; (d) a system of nurture of the young and education in the doctrine and discipline of the church, as well as (in the case of mature and well developed churches) theological seminaries for the advanced study and the training of ministers.

Id. at 1100. The court also concluded that an objective inquiry into the activities of an organization would not run afoul of the First Amendment, but that entering into a subjective inquiry with respect to the truth of the organization’s religious beliefs would “be forbidden.” *Id.*

¶41 In summary, the *Dykema* court’s decision endorses an interpretation of the religious purposes exemption that considers both motives and activities. The court expressly held that under a similar inquiry in the federal tax code, “it is necessary and proper for the IRS to survey all the *activities* of the organization, in order to determine whether what the organization in fact does is to carry out a religious *mission*.” *See id.* (emphasis added); *see also Living Faith*, 950 F.2d at 372 (“Put simply, saying one’s purpose is exclusively religious doesn’t necessarily make it so. This [c]ourt and others have consistently held that an organization’s purposes may be inferred from its manner of operations.”). Thus, a review considering both the organization’s activities and its motivations would comport with the *Dykema* court’s analysis, which we conclude is sound.

¶42 DWD also cites our supreme court’s decision in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868, which LIRC relied on in reaching its decision. There, our supreme court held that the Free Exercise Clause of the First Amendment to the United States Constitution and article I, section 18 of the Wisconsin Constitution precluded a teacher who had been laid off from a Catholic school from bringing an age discrimination claim

against her former employer under the Wisconsin Fair Employment Act. *Coulee*, 320 Wis. 2d 275, ¶¶1-3. The court explained that the state may not “interfere with the hiring or firing decisions of religious organizations with a religious mission with respect to employees who are important and closely linked to that mission”—a principle that is colloquially called the ministerial exception. *Id.*, ¶¶39, 67.

¶43 In order to determine whether the ministerial exception is applicable, our supreme court explained that courts must conduct a two-part test. *Id.*, ¶¶45, 48. The first part of the test asks whether the organization “has a fundamentally religious mission” “in both statement and practice.” *Id.*, ¶48. In other words, “does the organization exist primarily to worship and spread the faith?” *Id.* That determination is fact-specific, as

[i]t may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to religion, while another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, evangelism, and worship. Similarly, one religious school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the religious faith, while another similarly situated school may be committed to life and learning grounded in a religious worldview.

Id. The second part of the ministerial exception test then asks how close an employee’s work is to the organization’s fundamental mission. *Id.*, ¶49. After applying this test, the *Coulee* court determined that the employer in that case—a school committed to the inculcation of the Catholic faith—had a fundamentally religious mission and that the teacher’s position was closely linked to that mission, and it thereafter dismissed her claim. *Id.*, ¶¶72-80.

¶44 The analysis conducted in *Coulee* provides guidance in understanding the religious purposes exemption here. While we acknowledge that

Coulee is factually and legally distinguishable, we cite the decision as a tool to help further understand the language in WIS. STAT. § 108.02(15)(h)2. In *Coulee*, to determine an organization’s mission, our supreme court considered not only the motives of the organization or its stated purpose, but it also required that the motive or mission be clear “in both statement and *practice*.” *Id.*, ¶48 (emphasis added). “Practice” means the “actual performance or application.” *Practice*, <https://www.merriam-webster.com/dictionary/practice> (last visited Dec. 2, 2022). Stated differently, practice means the organization’s *activities*. Accordingly, *Coulee* is instructive as to the type of analysis that can inform the meaning of the religious purposes exemption and lends support to an interpretation that considers both an organization’s motives and activities.

¶45 Finally, DWD cites a report of the House Ways and Means Committee (the House Report) pertaining to an amendment to FUTA. DWD claims that the House Report on the bill to amend FUTA informs the interpretation of the Wisconsin statute because WIS. STAT. § 108.02(15)(h)2. was enacted to conform Wisconsin law to 26 U.S.C. § 3309(b)(1)(B).¹⁰ See *Leissring v. DILHR*, 115 Wis. 2d 475, 485-88, 340 N.W.2d 533 (1983) (relying on congressional

¹⁰ CCB challenges DWD’s reliance on the House Report, arguing that these types of reports “have been repeatedly called into question” because “[l]egislative history is a ‘rival text’ created by a group other than the voting legislature, which has no authority.” Thus, CCB argues that it is improper to rely upon any extrinsic source. However, courts may consider an extrinsic source if that source confirms the plain reading of the text, so long as the extrinsic source is not treated as authoritative on the meaning of the text. *United Am., LLC v. DOT*, 2021 WI 44, ¶18, 397 Wis. 2d 42, 959 N.W.2d 317; *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶51, 271 Wis. 2d 633, 681 N.W.2d 110. Further, DWD argues that the House Report is a reliable extrinsic source because it was relied on by the United States Supreme Court to discern legislative intent as to 26 U.S.C. § 3309. See *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 781 (1981). Accordingly, we see no reason to ignore the House Report.

committee reports on bills amending FUTA when interpreting Wisconsin laws enacted to conform with FUTA).

¶46 The House Report explains the federal religious exemption in 26 U.S.C. § 3309(b)(1)(B). It provides, in relevant part, that § 3309(b)(1)(B)

excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.

H.R. Rep. No. 91-612, at 44 (1969). DWD argues, and we agree, that the House Report demonstrates that the religious purposes exemption was not intended to apply to religiously affiliated organizations whose activities are primarily comprised of the provision of what are otherwise viewed as not inherently religious, charitable services, despite the asserted “religious in orientation” or “church related” nature of the organization. Instead, the House Report is clear that the focus of the religious purposes exemption is on the type of religious activities engaged in by the organization even where the religious motive of the organization is clear.

c. The First Amendment Is Not Implicated

¶47 CCB, however, rejects an interpretation of the religious purposes exemption focusing on activities rather than only motives, arguing that it violates the First Amendment because “[a] determination by the state that CCB is not ‘religiously purposed enough,’ represents a constitutionally impermissible Free Exercise violation.” (Formatting altered.) In essence, CCB argues that considering activities favors those religious entities that engage in proselytizing and provide services only to members of their own religion, which would impermissibly burden CCB’s free exercise of the Catholic tenet of “solidarity”—i.e., “[b]eing ecumenical in social ministry.” As CCB stated during oral argument, we should look at the religious purposes exemption under First Amendment standards, beginning with the requirement that the organization hold a sincerely held religious belief. *See Coulee*, 320 Wis. 2d 275, ¶62; *see also Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421-22 (2022).

¶48 We disagree that the First Amendment is implicated in this case. The First Amendment to the United States Constitution provides in pertinent part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”¹¹ U.S. CONST. amend. I. First, we note that

¹¹ “The first portion of this provision contains what is called the ‘Establishment Clause,’ and the second portion is called the ‘Free Exercise Clause.’” *Coulee Cath. Schs. v. LIRC*, 2009 WI 88, ¶35, 320 Wis. 2d 275, 768 N.W.2d 868. The First Amendment has been held applicable to the states under the terms of the Fourteenth Amendment. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)).

(continued)

the parties do not argue that the statute itself violates the First Amendment, meaning that CCB does not assert a facial constitutional challenge. Second, neither DWD nor this court dispute that the Catholic Church holds a sincerely held religious belief as its reason for operating CCB and its sub-entities. As we addressed previously, however, we do not look to the church to determine “religious purposes” under the statute; we look to the employing organizations themselves.

¶49 Third, and finally, CCB does not develop a proper First Amendment argument aside from its statements at oral argument that it has a sincerely held religious belief and that it is being denied a benefit as a result of that belief. Our review demonstrates, however, that the religious purposes exemption is not a generally available benefit that is being denied to CCB; CCB is simply being treated like every other employer in the state, including other nonprofit organizations operated by a church. To the extent that CCB is arguing that it is *not* being treated the same as other nonprofit organizations operated by churches that condition the availability of their services on adherence to, or instruction in, religious doctrine, that result is what the statute provides, and, as noted, CCB does not assert a facial challenge.

Our state constitution also provides for religious freedom under article I, section 18 of the Wisconsin Constitution, known as the Freedom of Conscience Clauses. *Coulee*, 320 Wis. 2d 275, ¶¶56, 58. Our supreme court “has stated that Article I, Section 18 serves the same dual purposes as the Establishment Clause and Free Exercise Clause of the U.S. Constitution.” *Id.*, ¶60. The rights provided by the Wisconsin Constitution, however, “are far more specific” and “contain[] extremely strong language, providing expansive protections for religious liberty.” *Id.* Although CCB asserted during oral argument that the Wisconsin Constitution offers more protection than the First Amendment, this argument was undeveloped. Accordingly, we will not address this argument further. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶50 Further, neither the statute itself nor any purported interpretation of the statute seeks to penalize, infringe, or prohibit any conduct of the organizations based on religious motivations, practice, or beliefs. *See Tony & Susan Alamo Found. v. Secretary of Lab.*, 471 U.S. 290, 303 (1985) (“It is virtually self-evident that the Free Exercise Clause does not require an exemption from a governmental program unless, at a minimum, inclusion in the program actually burdens the claimant’s freedom to exercise religious rights.”); *see also Coulee*, 320 Wis. 2d 275, ¶65 (“We do not mean to suggest that anything interfering with a religious organization is totally prohibited. General laws related to building licensing, taxes, social security, and the like are normally acceptable.”). We see no free exercise concern.

¶51 DWD also raises its own First Amendment argument, asserting that the religious purposes exemption must be interpreted to avoid excessive state entanglement with church matters. According to DWD, any interpretation of the religious purposes exemption that “requires the state to interpret religious doctrine and examine religious leaders as to their religious motivations risks excessive unconstitutional entanglement of the state and church,” which would violate the First Amendment’s Establishment Clause. Indeed, “[e]xcessive entanglement occurs ‘if a court is required to interpret church law, policies, or practices.’” *St. Augustine Sch. v. Taylor*, 2021 WI 70, ¶43, 398 Wis. 2d 92, 961 N.W.2d 635 (citation omitted).

¶52 DWD argues that its interpretation of the phrase “operated primarily for religious purposes” avoids this concern because it “focuses on an organization’s activities and does not require the state or the court to examine or interpret church canons or internal church policies.” DWD asserts that “[i]n contrast[,] an interpretation focusing on a religious entity’s religious motivation

requires an examination of church doctrine and an inquiry into the motivations of the church’s religious leaders.” See *Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis. 2d 302, 326, 533 N.W.2d 780 (1995) (“[T]he First Amendment to the United States Constitution prevents the courts of this state from determining what makes one competent to serve as a Catholic priest since such a determination would require interpretation of church canons and internal church policies and practices.”).

¶53 Conversely, CCB argues that DWD’s interpretation of the religious purposes exemption would result in an Establishment Clause violation because “[b]y allowing exemption to those religions which view ‘proselytizing’ and discriminating against non-adherents in the provision of services as part of their mission, [DWD] is favoring those religions over Catholicism.” CCB contends the “easiest way” for a reviewing body to “‘entangle’ itself in religion is to promote one practice (proselytizing, etc.) over another (ecumenical delivery of charity).”

¶54 We conclude that an interpretation considering both the motivations and the activities of the organization appropriately balances an employee’s ability to receive unemployment benefits with a religious organization’s right to be free from state interferences, thereby avoiding excessive entanglement concerns. For support, we again turn to *Dykema*, where the court observed that an analysis considering the activities of an organization was constitutionally appropriate:

Objective criteria for examination of an organization’s activities thus enable the IRS to make the determination required by the statute without entering into any subjective inquiry with respect to religious truth which would be forbidden by the First Amendment. [*United States*] v. *Ballard*, 322 U.S. 78, 86-88 (1944). Likewise there is no “establishment of religion” involved in determining that entitlement to tax exemption has been demonstrated vel non. As well said by Chief Justice Burger in *Walz v. Tax Commission*, 397 U.S. 664, 675 (1970): “There is no genuine nexus between tax exemption and establishment of

religion.” Indeed, it should be emphasized that no real questions regarding “religion” as referred to in the First Amendment are involved in the case at bar at all; the word “religious” concerns us merely in its statutory meaning as a description of a type of organization which Congress chose to exempt from taxation, believing that such relief from the tax burden would be beneficial and desirable in the public interest.

Dykema, 666 F.2d at 1100-01 (footnotes omitted); see also *Wisconsin Evangelical Lutheran Synod v. Prairie Du Chien*, 125 Wis. 2d 541, 553-54, 373 N.W.2d 78 (Ct. App. 1985) (“[T]here is no ‘establishment of religion’ involved in determining that a church or religious organization is entitled to a tax exemption,” and “a determination denying a tax exemption is similarly not a violation of the religion clauses of the federal constitution.” (citation omitted)). Thus, the way for a reviewing body to avoid excessive entanglement under the religious purposes exemption is to conduct a neutral review based on objective criteria.

¶55 Based on the foregoing, we conclude that the only reasonable interpretation of the phrase “operated for religious purposes” requires the reviewing body to consider the motivations as well as the activities of the nonprofit organization to determine whether the religious purposes exemption applies. This interpretation is consistent with the plain language of the statute, case law, and extrinsic sources, and it does not run afoul of constitutional considerations. Further, focusing on the stated motivations and the organization’s activities allows the reviewing body to conduct an objective, neutral review that is “highly fact-sensitive” without examining religious doctrine or tenets. See *Coulee*, 320 Wis. 2d 275, ¶48; *Dykema*, 666 F.2d at 1100.

d. CCB and Its Sub-entities at Issue in this Case Are Not Operated Primarily for Religious Purposes

¶56 Having determined the proper interpretation of the religious purposes exemption, our final responsibility is to apply the statutory language to the facts of this case. In doing so, we conclude that CCB and its sub-entities failed to meet their burden to establish that they are exempt from Wisconsin's unemployment insurance program and that LIRC properly determined that each of the employers was "operated primarily to administer [or provide] social service programs" that are not "primarily for religious purposes." We reiterate that there are no factual disputes in this case, and CCB does not challenge LIRC's factual findings. Furthermore, we conclude that the evidence in the record supports LIRC's determination that CCB and its sub-entities at issue in this case are not operated primarily for religious purposes.

¶57 Our first consideration is whether the nonprofit organizations have a professed religious motivation. In other words, do the nonprofit organizations themselves assert that their reason for existing or acting is motivated by a religious purpose? This first step is not demanding, however, as it based on the organization's own words and statements, including its mission statement. If the organization states that it has a religious motive, then the reviewing body must accept that assertion and move on to the next consideration, which is whether the activities of the nonprofit organization are primarily religious.

¶58 As to the first consideration, we conclude that the nonprofit organizations in this case have a professed religious motivation. We acknowledge that the professed reason that CCB and its sub-entities administer these social service programs is for a religious purpose: to fulfill the Catechism of the Catholic Church. CCB itself is the organization, as the diocese's social ministry

arm, with the most clearly professed religiously purposed motivation: “The mission of Catholic Charities is to provide service to people in need, to advocate for justice in social structures, and to call the entire church and other people of good will to do the same.” We note, however, that when we look to the motivations of the individual sub-entities of CCB, not the mission of CCB or the church, the religious purpose is less evident. As is clear from the mission statements, as well as from the Form 990 that each organization filed with the IRS, the sub-entities’ missions are to provide charitable services to everyone without any reference to religion.¹² While we conclude that the sub-entities do not appear to have an independent professed religious motivation, we acknowledge that there is a professed religious motivation for CCB overseeing and supporting these sub-entities and, in turn but to a lesser degree, in those sub-entities’ own work.

¶59 As to the second consideration—whether the activities of the organizations are primarily religious—we agree with LIRC that the activities of CCB and its sub-entities are the provision of charitable social services that are neither inherently or primarily religious activities. CCB and its sub-entities do not operate to inculcate the Catholic faith; they are not engaged in teaching the Catholic religion, evangelizing, or participating in religious rituals or worship

¹² For example, Headwaters’ mission statement is as follows: “We believe all people deserve the right to achieve their fullest potential. Therefore, we exist for the purpose of providing individualized services that are designed to maximize each person’s daily living and vocational skills in order to be integrated into the community to the fullest extent possible.” Similarly, BCDS’s stated mission “is to provide person-centered services to adults based on the needs of each individual so that they are able to live their lives to the fullest.” BRI states that its mission is to “[i]n partnership with the community, provide people with disabilities opportunities to achieve the highest level of independence.” Finally, DSI’s mission is “[t]o provide a prevocational and vocational program by using real work situations, such as subcontract and other production oriented work, to develop appropriate work behaviors, to maximize earnings and to increase an individual’s potential for community employment. To provide employment opportunities for adults with disabilities.”

services with the social service participants; they do not require their employees, participants, or board members to be of the Catholic faith; participants are not required to attend any religious training, orientation, or services; their funding comes almost entirely from government contracts or private companies, not from the Diocese of Superior; and they do not disseminate any religious material to participants. Nor do CCB and its sub-entities provide program participants with an “education in the doctrine and discipline of the church.” See *Dykema*, 666 F.2d at 1100.

¶60 Instead, the work that CCB and its sub-entities engage in is primarily charitable aid to individuals with developmental and mental health disabilities. As noted previously, the employers provide work training programs, life skills training, in-home support services, transportation services, subsidized housing, and supportive living arrangements. While these activities fulfill the Catechism of the Catholic Church to respond in charity to those in need, the activities themselves are not *primarily* religious in nature. This fact is demonstrated most significantly by one of CCB’s sub-entities, BCDS. LIRC found that BCDS—which was not brought under the CCB umbrella until 2014—had “no previous religious affiliation” and that “[t]he type of services and programming provided by the organization did not change” following its affiliation with CCB. The fact that the manner in which BCDS carried out its mission did not change after it became an affiliate of CCB supports our conclusion that BCDS’ purpose and operations are not primarily religious.

¶61 Regarding CCB itself, as noted above, we acknowledge the clear religious motivation of CCB in supporting and operating its sub-entities. However, the actual activities in which CCB engages involve providing administrative support for its sub-entities which we have determined do not

engage in primarily religious activities. CCB is not separately and directly involved in religiously oriented activities. We are cognizant that the result in this case would likely be different if CCB and its sub-entities were actually run by the church, such that the organizations' employees were employees of the church. *See* WIS. STAT. § 108.02(15)(h)1. Instead, CCB and its sub-entities are structured as separate corporations—and CCB makes no claims to the contrary—so we must view their motives and activities separate from those of the church. The corporate form does make a difference, especially with respect to the statutory scheme we must apply in this case. When considered independent of the church's overarching doctrine and purposes, CCB and its sub-entities are clearly operated to provide services in a manner that is neither inherently nor primarily religious.

¶62 We agree with LIRC's conclusion that the employers here are "akin to 'the religiously-affiliated organization committed to feeding the homeless that has only a nominal tie to religion' recognized by the *Coulee* court." Like the school in *Coulee*, CCB and its sub-entities are affiliated with the Catholic Church and under the control of the bishop; as LIRC recognized, however, unlike the school in *Coulee*, "CCB and its sub-entities are not operated with a focus on the inculcation of the Catholic faith and worldview and do not operate in a worship-filled environment or with a faith-centered approach to fulfilling their mission." Any such spreading of Catholic faith accomplished by the organizations providing such services—while genuine in deriving from and adhering to the Catholic Church's mission—is only indirect and not primarily the service that they provide to individuals. We further observe parallels between CCB and its sub-entities and the example in the House Report of "a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) [that] would not be considered under [the religious purposes

exemption] to be operated primarily for religious purposes.” See H.R. Rep. No. 91-612, at 44.

¶63 We recognize that CCB and its sub-entities perform important and vital work in our communities. Nevertheless, the fact that a church operates, supervises, controls, or supports an organization in charity with a religious motivation does not, by itself, mean that the organization is operated primarily for religious purposes. While the Catholic Church’s tenet of solidarity compels it to engage in charitable acts, the religious motives of CCB and its sub-entities appear to be incidental to their primarily charitable functions. Thus, CCB and its sub-entities have not demonstrated through their activities a primarily religious purpose. Accordingly, we affirm LIRC’s decision and reverse the circuit court’s order reversing that decision.

By the Court.—Order reversed.

Recommended for publication in the official reports.

2022 Unemployment Insurance Public Hearing Comments Summary

Name	Organization	Comments
Jay Glime	President, G&G Lumber Inc.	Low unemployment rate and unemployment benefit payments make it hard to find workers. DWD never calls the employer wondering if they need workers.
Lori Glime	Co-owner, G&G Lumber Inc.	Workers are unemployed too long. Workers ask if they are hiring but then do not apply. UI recipients should be drug tested. The system is broken and not being used for what it was intended. Employers can do the training.
Barbara Santiago		Job Center in Fond du Lac should not have closed.
Kimberly Harrison		The max UI payment should be increased because it does not cover rent. Benefits should last one year instead of six months.
Kim Lamar Pezanoski	PayXperts Inc.	Runs a payroll service. Payroll services should be allowed to download or print the UC101 (quarterly tax forms) without SSNs to ensure privacy.
Harry Richardson		Benefits should be paid more timely. There should be more opportunities for public input about UI. Claimants have to appeal too often to get benefits. There are too many claims questions and the questions are too complex. Claims should be taken in-person. Phone service needs to be improved. The chat bot should not be used to justify less phone service. The use of private banking should be limited to avoid fees. Waivers of overpayments should be used liberally. DWD should not use private contractor workers.
Ashley M Semington	Legal Action of Wisconsin's Farmworker Project	The current work search requirements do not adequately recognize migrant farmworkers' attachment to their jobs in Wisconsin. UI access barriers for MSFWs will not be resolved through computer system upgrades or other "modernization" efforts alone. Wisconsin's UI access crisis disproportionately harms migrant farmworkers. Wisconsin's migrant workers encounter benefits delays due to the lack of meaningful coordination between state UI systems.
Ann McNeary	AFL-CIO	The claims questions are too confusing. Most people are not trying to commit fraud. Four job searches per week is too many, especially for rural workers. No one is getting rich from UI benefits. Getting laid off is traumatic. If someone gets a WARN notice, they should be fast tracked for UI benefits.
Elana Tarwid		On Job Service Registration, change "high school drop out" to "high school diploma not yet complete." On work search form, change "posted resume on employment website" to "registered on an employment website." Older people should be allowed to file claims by phone instead of internet. Repeal the waiting week.

2022 Unemployment Insurance Public Hearing Comments Summary

Name	Organization	Comments
Jenni Schmidt	Greenscapes	If a claimant has to do a job search, they should have to follow through with an interview. Time is wasted with applications for people who do not actually want to work there.
Timothy Zuberbier		Modify Wis. Stat. section 108.04(11)(be) so that all issues of concealment for a particular eligibility issue can be addressed in one, and only one, determination. Repeal Wis. Stat. section 108.04(1)(b). Create a law on "weekly claim withdrawal." It is just a department policy at the moment; there should be a law defining standards for the practice.
Duane DeYoung	State Theaters LLC Victual Inc	People apply for jobs but do not show up for interviews. DWD needs a website where employers can report people who decline interviews or job offers.
Theresa Williams	Basset, Inc.	Seasonal workers should get UI benefits for more weeks. In landscape and construction businesses, staff may be laid off from December to March/April. This would prevent problems of people applying for jobs but not showing up.
Brian Dake	Wisconsin Independent Businesses	DWD should use digital identity verification for claimants to prevent fraud. DWD should conduct more work search audits because 22% of the audits found noncompliance with work search. Claimants should be ineligible for UI for weeks in which they ghost an employer. For the third and subsequent weeks of a benefit year, at least two work searches must be direct contacts with potential employers. If DWD provides potential jobs to a claimant, the claimant must apply to those to meet the work search requirement. If a claimant is likely to exhaust regular UI, they must participate in an employment workshop or training and complete a reemployment counseling session.
Jason Childress	Spaulding Clinical / Foley & Lardner LLP	Bill draft for law change to make clinical trial participants non-employees.
Joe Leibham	Spaulding Clinical	Clinical trial participants - in 2022, they learned that participants in clinical research trials are treated as employees under state law. Legislators introduced AB1060 SB1014 last session. Assembly passed the bill that would clarify that participants are not employees. Bill was held in the Senate. Believes the correct interpretation is that they are ICs, not EEs. Under the contracts that they take on with pharmaceuticals, they can't have employees participate in trials.
Cassie Rato	Spaulding Clinical	Phase 1 research site with 200 beds in a former hospital. Safety testing for pharmaceuticals. They recruit from all over Wisconsin and the United States. About half from Wisconsin.

2022 Unemployment Insurance Public Hearing Comments Summary

Name	Organization	Comments
Christina Kunda	Spaulding Clinical	200 active employees in West Bend, WI covered by UI. In 2021, paid 1250 study participants. 51% paid less than \$1,000. 86% are paid \$10,000 or less.
Kristin Masse	Job Center at Jackson Correctional	Looking for information to provide to job seekers.
Jennifer Kowalczyk	Rhineland Job Center	Has many seasonal workers. For seasonal workers, we should review the work search requirements. Employers want to keep their employees and do not want to lose them. Employers do not want their workers to look for work.
Diane Gertz	DWD Job Service employee	Is asked questions about UI at her job. Can the maximum UI rate be raised from \$370/week? If worker is a seasonal worker, like asphalt work, can we extend the work search waiver from 8 to 12 or 16 weeks?
Michele Freitag		Went through difficulty with the UI Division. Even more difficult under COVID. Adjudicators are not properly trained with the law. For example, disqualifying someone from UI for job they had for short time when worked at another job. Could not speak with supervisor and had to wait from January to end of May for a hearing. Need supervisors for new adjudicators to make sure that the determination is correct. Also, the new work search requirement makes her spend as much or more time filling out forms online as looking for work. Wants automated telephone option back for filing claims. If claim is filed by phone now, it takes 3 weeks for an adjudicator to call and then 3 weeks for a determination. Computation does not include the quarter that immediately precedes the UI claim, which is wrong because it does not include current income. If file new claim and have not filed in a long time, adjudicators will contact the claimant to ask about reasons for leaving older jobs. Does not see a reason to ask about the older jobs. Appreciates that DWD held a public hearing.

From: [Duane Deyoung](#)
To: [DWD MB UI LAW CHANGE](#)
Subject: Comments
Date: Friday, November 18, 2022 8:02:19 AM

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

I am an employer in WI. I cannot hire enough people.

The thing that is most frustrating is there are a lot of people receiving benefits who come in and apply but never show up for an interview. We can tell they are just documenting work searches. Since they are carrying the papers in their hands when they come in.

We have tried doing on the spot job offers to start immediately and still can't get anyone to consistently show up to work. These jobs pay between 15 and 20/hr w/no experience needed.

What would help tremendously is to create a website where employers could report people who decline interviews and/or job offers. It would cut down on the number of people getting benefits by just doing half-hearted job searches. Even a way to verify they actually came and asked for a job would be good.

Ping the employer with an email and simply ask whether the individual asked for a job/were offered a job. It would verify the work search is being done.

Duane DeYoung
State Theatres LLC
Victual Inc

From: [DWD MB Communications Office](#)
To: [DWD DL SO Communications Office](#)
Subject: FW: Open Comment
Date: Friday, November 18, 2022 6:12:52 AM

From: Theresa Williams
Sent: Friday, November 18, 2022 12:12:05 PM (UTC+00:00) Monrovia, Reykjavik
To: DWD MB Communications Office <CommunicationsOffice@dwd.wisconsin.gov>
Subject: Open Comment

**CAUTION: This email originated from outside the organization.
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Hello,

I would like to first thank you for this opportunity. The Unemployment Insurance is so important to many people and making improvements will be welcomed.

The biggest item that I would like to address is seasonal workers. We are a landscape company and we do have to lay off our employees during the winter months. While we do provide snow removal services, those hours are not reliable for our employees who need consistent money.

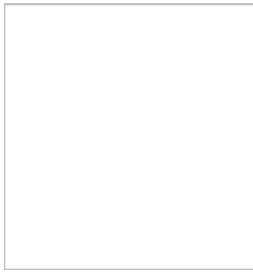
We have had many discussions about how services for seasonal workers could be improved.

We have had the thought that there should be an option for seasonal workers. This way they can have the insurance benefits for longer than the current limited term without doing a job search. Often these workers are laid off from December into March/early April. These workers are in this industry because they are passionate about working outdoors and they should have a better option for winter. It is not just for landscapers, I have heard the same comments from construction workers as well.

This would also save job posters the hassle of replying to job search inquiries that are not going to be fruitful. We are always hiring and I feel so much hope when I see people send me resumes but then they do not respond. In late winter and into spring I probably have an average of 10 per day that I have to reply to.

Again, I thank you for this opportunity and for your time.

Best,
Theresa Williams
ISA Certified Arborist WI-0722A



Office: 608-848-6152

www.srbassett.com

2733 Gust Road

Verona, WI 53593

From: [Ann McNeary](#)
To: [DWD MB UI LAW CHANGE](#)
Subject: Please Make the System Less Cumbersome and Confusing
Date: Friday, November 18, 2022 1:30:47 PM

**CAUTION: This email originated from outside the organization.
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I know you have tried to simplify the system but it still asks questions in a convoluted way that confuses applicants.

And, rather than look for every opportunity to charge people with fraud, how about providing some education and answers?! I am sure that a (VERY SMALL) percentage of people are trying to "scam" the system. But the vast majority - especially those whose place of employment has completely shut down - are just looking for some relief and assistance.

Also, requiring four searches for everyone seems excessive. For many people who live in less populated areas, there just aren't FOUR jobs (per week) available in their area - especially if transportation is a concern.

People are not living "high on the hog" even if they're getting the maximum amount of \$370 per week (which would equate to \$9.25 per hour for a full week). NO ONE is making a house or rent payment and paying for a vehicle or really anything else on that amount - so please stop treating them like vagrants looking for a handout.

Those people who are laid off THRU NO FAULT OF THEIR OWN already have had the shock of losing their employment (and perhaps their circle of friends) so, if you have notice from the Company (a WARN), they shouldn't have to PROVE anything else. There should be a "fast track" or short form or something that could be utilized in those instances. You KNOW where they were working, you KNOW they've been laid off, so why make them jump thru other/more hoops. Again, they should be able to bypass a lot of the process that only seems to be there to confuse folks.

I work closely with those facing downsizing, plant closings, and the like so I'm SUPER sensitive to the "trauma" and life changes they are facing.

Please make the system less cumbersome and confusing!

Thank you,
Ann M. McNeary
AFL-CIO Community Services Liaison
745 South Musket Ridge Drive
Sun Prairie, WI 53590
608-246-4355

From: [Kim Lamar Pezanoski](#)
To: [DWD MB UI LAW CHANGE](#)
Subject: Privacy
Date: Thursday, November 17, 2022 12:49:26 PM

**CAUTION: This email originated from outside the organization.
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Hello,

I've been running a small payroll service for almost 35 yrs. I've had a lot of experience submitting, downloading and storing the quarterly forms UC101.

In the early days of COVID when almost all of my clients were applying for PPO loans, the banks and accountants were requesting copies of the quarterly unemployment forms to submit with their apps. There was no way of controlling how many hands those forms passed through and where they are now. There must be millions of SSNs floating around on the internet due to that one program.

Sometimes worker's comp auditors request those forms as well.

At any rate, my suggestion would be to allow us to download and/or print the UC101 with no, or with masked, SSNs. There's no reason for those to be given to outsiders.

Thank you,

Kim Lamar Pezanoski

PayXperts Inc.
p.o. box 085215
racine, wi, 53408.5215
p. [262.633.8523](tel:262.633.8523)
fax [262.633.6333](tel:262.633.6333)
www.payxperts.com

From: Harry Richardson
Sent: Friday, November 18, 2022 2:20 PM
To: DWD MB UI LAW CHANGE
Subject: Public comment

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Unemployment Insurance

Public Comment – 11/18/22

To: UILawChange@dwd.wisconsin.gov

1.

Wisconsin's Unemployment Insurance Program should be thoroughly reviewed and overhauled with the aim of getting benefits out in a more timely way. There should also be more opportunities for constructive public input into the program.

2.

Too often applicants are forced to appeal (enter adjudication) to get UI benefits that the program allows.

3.

There are far too many questions as part of the UI application. This makes the application process difficult and complex. Questions are confusing, leading applicants to make inadvertent mistakes. Other states do not require as many questions to be answered to apply. Wisconsin should adapt our process to make it simpler and more streamlined to apply, and to reduce the risk that an applicant makes a mistake, exposing them to legal risk.

4.

In-person application options should be restored. Phone service should be improved greatly. Applicants need to be able to get through on the phone to apply and to ask questions. While electronic features such as a portal and chatbot are okay, they should not be used to justify further reduction in phone service. The new chatbot called "Mattie Moo" has an irritating name. Expectations of how much this chatbot will improve service are exaggerated and I hope the public money sent to an out-of-state company for it was not excessive (why not develop these tools in house?).

5.

Use of private banking services should be limited. For example, prepaid debit cards as an option for providing UI payments is a concern if these cards do not use “best practices” for such bank cards and have hidden fees or provide poor customer service. For example, checking the balance on the card should not cost the user any money. Here are some recent stories highlighting concerns with use of prepaid debit cards in unemployment insurance.

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https://secure-web.cisco.com/1zeh8GOFelmdgzQ18tVsnTYBXbeJxljpbgAfX7xEZrrGm_Zx73sMU8x-c_KtETu81djHZWGQx8vOkp-YSiLZPTvxpx1sfTE5Jw24jVLVK_MqsyPEsBvP4In-iu_UiWml64AsccbqiabupCEmeX3MblIKeCa6RBI4Zj9DZtdJVaHliy0ABB-sknuy-_E9lszpVQ3NmenHri2c4XchEzi3g9aXtj3GJuuk6X6R6h2CR-IBRjcTixeJC-bXUt9uKg3DsfNsnS6zZMV8kye7GmAgmpN0FGildNKVzFpWeBhGW1d2MYSyiX0PZqsuGNLHgmXE7/https%3A%2F%2Fwww.roi-nj.com%2F2022%2F05%2F12%2Ffinance%2Fn-j-to-issue-new-debit-cards-for-those-receiving-unemployment-disability-family-leave-benefits%2F

https://secure-web.cisco.com/1qvT15fszMgso0FV9eFSGO5K0xvwiS5dypMlnYztqhbvber1rE5_Dd1FS4qTJ5zh1XkGSs8nJpOW-G3b3ioFvlf30uQ_-fDa7Ta0EKgSBzHAxkvMz2-bzCUXZYR00totY3A3jKEVMTsP33sBYq-ICFeXVn3yIcoX8FzflVOL24uu4VIKZMeTwSlm2ErKwb9ksqQEeBiacRWcXrpfzHO1rAyTahXGG8Cmvjsna3Ta10OPEyl3b55-E7tpzVNYuhZc_YPe_WSW54EJKqxnHe2pzb2tryN1KiuUjYf_kxpP75DCAubmFjobLcPKn5httYz/https%3A%2F%2Fnewjerseymonitor.com%2F2022%2F07%2F18%2Fbank-of-america-fined-for-mishandling-unemployment-debit-cards-during-pandemic%2F

Use of private banking services to help claimants repay the state for overpayments may be costing both the formerly unemployed, and the State of Wisconsin, too much. Any type of financing on repayments should be handled in house or by another public agency to minimize excessive interest charges.

6.

Overpayments

When the program has overpaid claimants, waivers and forgiveness of repayments should be used liberally where the law allows. Forbearance and leniency are justified in order to give unemployed persons time to stabilize and rebuild their economic situation prior to being obligated to repay the state. Apparently DWD’s internal written guidelines are being ignored to the detriment of the claimant, even though these guidelines allow some leniency to formerly unemployed claimants who are back to work with less than one year of continuous employment.

7.

DWD's use of private workers in the program should be ended. Often this wastes public funds. Also, the work could be done better in house. State agencies' heavy reliance on private IT (computer) workers is a longstanding problem, and a problem in the UI program as well.

And with the pandemic, DWD greatly expanded private service contracts for the UI program. This included at least 893 new private contract workers (page 30 of DWD's letter of Dec. 10, 2020 to the state auditor in response to Legislative Audit Bureau Report (LAB) Report 20-28 <https://legis.wisconsin.gov/lab/media/3143/20-28full.pdf>). Also, since state contracts do not restrict where in the U.S. the work can be done (it appears), these contracts frequently create jobs in other states (indirectly destroying Wisconsin jobs). This increases unemployment in Wisconsin and undermines the program's purpose.

State agencies' private contracts are often identified as "partnerships" with private companies. But this puts our state agencies in league with corporations with bad records.

DWD hired call center Alorica instead of hiring Wisconsin workers. That was a missed opportunity to employ Wisconsinites. Also, Alorica has a mixed record. The state of Nevada's unemployment insurance program ended their relationship with Alorica in 2020 under a cloud of allegations of poor performance:

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https://secure-web.cisco.com/1dSCLuyIAwtynNp8iPyGnxE1B5RExjY58IAcJPm9JZUACfk--0I4XFgP9YNuQ_RoK-gXK25CS8cAuHEWLMsz0gN6mDaKWutwvzbzE5hprI85vWY1es38t6PGjDSoOBEKJpa_KVj0-3wOMsYfVZP-PdFXPpYNhhszZqZMXN9IhtidCn8bIWrxlgN6RPhxm2cJMYaY86xSD-0z0IhX76_dRn7c48QlvlylrgtxWblAxZ_G6X02_zEDgP2mjeJSMNYeAMWAtju9s1EarbAU6nS-UrwVd59LdD6JLqHMX2ifSyBDf_AcOobgMsQ-cwagKtXclWG/https%3A%2F%2Fwww.reviewjournal.com%2Fnews%2Fpolitics-and-government%2Fnevada%2Fnew-detr-head-says-call-center-has-serious-customer-service-questions-2099662%2F

DWD also states it has "partnered with" Google Cloud for predictive analytics and an electronic portal for applicants to send and receive documents. Why not create an e-portal for UI in-house? The capability should be there since state agencies already run electronic portals for other programs.

Google has violated the privacy of Americans as described in this story from a few days ago.

https://secure-web.cisco.com/1vzIWf-Tf-5O7AQWk0b2AI9EC9Lmeo7ETH-qtz3Z1WpB6-xTpc-Z9F-RcMiwwV5UnU13qkfM6t_WRzRxUTetQsehaNtWwnlZrsCD-slcWdvWIFEC0m0LWkYPPsA4vEQx8z5Ute_8VbH9F1xnj97uJgf2X2Uuojtr155aMJ9w7kvuY5s_YdvQ56mDIXGBMSr72vFcq_2oeNam5jnPV1kczyaqi_NyMFYAia3BKpC8KeGh2DTe0oW9KuYS8AkQhv-RLBmnkc7G6rzIXFkaXMYbeUGSWyv1MigxibiI72m9gm-nvniAHjcf7tbzAzuDjtIOo/https%3A%2F%2Fwww.npr.org%2F2022%2F11%2F14%2F1136521305%2Fgoogle-settlement-location-tracking-data-privacy

Also, Google profits from us while not paying a fair share of taxes.
Google pays less than 15% in tax:

<https://www.washingtonpost.com/business/2022/08/11/minimum-corporate-tax/>
(Washington Post: "The corporate minimum tax could hit these ultra-profitable companies," 7/12/22)

https://secure-web.cisco.com/1-fsk0j52PiJpUWYui9MgbZQACox-c6YBswF0-CnJNHIYGGEnBn_Q64uS94CBoKk4uaWjakUeyaiMHpDYijlwsh480MCKSM0mJOza1OjaWszV_FWWfGsyPnhwK6GWUBgRRy5RT5ALjqWESsM8SBOQp_xQggRhq76CuMYKz8ceGd3PPEelox8qr4zYRQbxHpoelssQdfJOuo9noTzwpOdNRQKCEA0bNBT7leUi6R9QRyUwVhzeXqVbiifignrKsRgn5UEJ7xvKpt0wNbztfrnRybQMAEHy-mtLLbtTROvdV5J-wcGOztMwI0BsXktlzzdm/https%3A%2F%2Fitep.org%2Fcorporations-saved-billions-under-trump-tax-law-bonus-depreciation-that-lawmakers-want-to-extend%2F

Another example cited in LAB report 20-28:

"On May 14, 2020, DWD contracted with Nelnet, a firm, to provide at least 100 staff to work as adjudicators. The number of contracted staff working as adjudicators increased from 118 during the week of May 31, 2020, to 185 during the week of September 20, 2020. Documentation provided by DWD indicated that Nelnet billed \$3.6 million for services it provided from June 2020 through September 2020, including services related to adjudication, training, and language translation and interpretation."

Thank you for your consideration of these important issues.

Sincerely Yours,

-Harry Richardson

456 N Few St

Madison WI53703

From: barb santiago
Sent: Thursday, November 17, 2022 9:27 AM
To: DWD MB UI LAW CHANGE
Subject: Public Hearing UIAC
Attachments: November 17 Letter UIAC.pdf; December 4 Advisory Council.pdf; 2_14 Letter UIAC.pdf

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Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Good morning,

Enclosed are my recommendations for changing the Unemployment Chapter 108 statues. Thank you for providing this opportunity. My hope is that the UIAC truly listens to suggestions of the public and our voices can and do make a difference.

Sincerely,
Barbara Santiago

Barbara Santiago
25 Barrington Ct.
Fond du Lac, WI 54935

Unemployment Advisory Council
201 East Washington Avenue
Madison, WI 53707

February 14, 2022

Dear Unemployment Advisory Council,

I am following up on the letter I wrote on December 4, 2021 asking questions and expressing concern for the loss of job services to the city of Fond du Lac. By reaching out to the WDA4 District Director, Debra Warga, I found out in order to provide services they have placed employment and training specialists in the Fond du Lac Public Library. **My question is why?**

I am aware that there was a recent press release detailing the partnership with the Beloit Library and DWD providing job services via the Beloit Library. I want to preface that by expressing my concerns I am in no way opposed to the partnership(s) being created, especially in cities that do not have a Job Center. However, I do have concerns if this is the direction DWD has chosen to go to provide job services (e.g., job search efforts, RESEA and unemployment assistance) that foresight be used to develop this into a stable, lasting relationship. In addition, that these services remain free of cost to the individuals they serve.

My first question and concern is that **Fond du Lac has a comprehensive Job Center that is open and actively serving multiple programs** such as employment services to veterans, dislocated workers, persons with disabilities, and workers who lose their jobs due to production moving to foreign countries. These services are provided through programs such as Trade Adjustment Assistance (TAA), Veterans Employment Services (VES), the Division of Vocational Rehabilitation (DWD-DVR) and other programs under the Workforce Innovation and Opportunity Act (WIOA). **Why close its doors to the general population? Why not have employees who are stationed in the Fond du Lac Job Center already providing other services or answering the phone also provide job services? Why have staff travel from the Fond du Lac and Menasha Job Centers to the Fond du lac Public Library to provide services when the Job Center has an extensively renovated spacious resource center they could be using? In addition, it is a paid-for-State-owned facility with no taxes due.**

I recently spoke with Alana, coordinator for *Information and Outreach Services* at the Fond du Lac Public Library. She said the reason given to her by Debra Warga, was maintenance costs of \$20,000 for the Fond du Lac Job Center was too much for them to maintain. However, Alana added she was not aware that the Job Center was open and housing multiple other programs.

In our conversation, Alana also shared that one of the reasons she was open to creating the partnership was due to the strain on the library staff who have been providing job seeking services (and trying to provide unemployment assistance) to Fond du Lac residents since they reopened last year. She saw this as an opportunity to relieve staff of that stress. I asked Alana several other questions such as...

- **Do you anticipate this being a long-term, permanent partnership commitment?**
Her response was, *“As with any partnership we would re-evaluate periodically.”*
- **Does the library receive funding for the partnership? If so, what is the source?**
“There is no funding.”
- **What are the library’s responsibilities and Job Service’s responsibilities (e.g., advertisement, scheduling appointments, providing computers, printing, FAX machines, tech support, etc.).**

Alana said that they purposefully did not advertise so they could *“work out the kinks”* and also because they wanted the press release to include the Oshkosh Library which will not begin until sometime in March. She said her staff were scheduling appointments, but wasn’t sure how this would coordinate with Job Center staff also setting up appointments.

Our discussion segued into whether the library or Job Services will provide free printing and free faxing and whether they would have a permanent room available with Job Services providing equipment so there is no cost to job seekers. I also asked if the demand increased was there provision for expanding hours. Alana said these were all things she hadn’t considered and would put some thought into. She said a MOU has not been signed yet. She added that the library was also looking for *“job coach volunteers”* to assist, as well.

The last thing Alana and I discussed was the LAWDS program and training that was made available to staff. She said it was not mandated. I had previously asked a staff member and she stated, *“I saw an email about this but didn’t complete the training.”*

In short, and in an effort to cut their own operating costs, I have concerns that DWD is taking advantage of libraries and have the following questions...

- **If Job Service isn’t set up as a separate, self-sufficient entity housed within the public library wouldn’t this be considered a “commingling of funds and/or assets?”**
- **In order to make the services free and accessible to all, wouldn’t DWD be required to provide the staff and equipment to perform these services?**
- **Should library staff be responsible for scheduling appointments or any other tasks they might be performing for Job Service?**
- **Is library staff expected to provide services when Job Service staff are not available? In addition, is it appropriate for volunteers to perform Job Service duties when Job Center staff are not available?**
- **If staff and volunteers are providing services, will DWD provide training and on-going Professional Development?**
- **Will Job Services to the public increase if demand increases?**
- **What happens if the library decides to discontinue the partnership?**

When I wrote to Debra Warga, in her response she included Anthony Snyder, CEO of the Fox Valley Workforce Development Board, to address funding for services. This was his response...

Each workforce board in the State of Wisconsin are provided Workforce Innovation and Opportunity Act (WIOA) funding on an annual basis. These are federal dollars from the US Department of Labor, which come to the boards through the Wisconsin Department of Workforce Development (DWD) in Madison. These dollars are used to hire career planners, pay for training and support and pay the rent/utilities/insurance/supplies/internet/phone for the job center(s) in our 6 county region. The Fox Valley Workforce Development Board creates a budget each year to determine the best way to provide service delivery to our area residents.

My last questions is...

- **If the board is receiving federal dollars to fund the cost of the Job Center and the programs it is offering, why would the maintenance cost of \$20,000 be an issue and the reason to move Job Services from the Job Center into the Fond du Lac Public Library?**

At this time I'd like to share that when I addressed my concerns to Debra Warga, I also expressed gratitude stating... *"The Fond du Lac Job Center is dear to my heart because of the many hours spent there for personal job searching, I was continually amazed by the number of people served and had the benefit of receiving personal services and career counseling. Your review of my resume and the job lead you passed on directly impacted my life! I am so grateful for the investment in my life and countless other job center customers. Finding work changes people's lives!"* I thanked her for the work being done on behalf of job seekers and businesses throughout Wisconsin.

In her reply, Debra talked about all the ways DWD has worked to develop methods to meet the needs of job seekers during the pandemic. These included new offerings on the Job Center of WI website such as "virtual" appointments and workshops, as well as drive-thru job fairs, and the soon return of an in-person job fair in Fond du Lac. These are all fantastic additions that have sustained us during the pandemic. However, many people need to connect with resources in person.

Several FdL librarians commented that the unemployed often have transportation issues, are computer illiterate, do not have internet access and some may not have homes. **My purpose for writing is to ensure that employment centers remain open, accessible, and free to the public. Another concern is whether the partnerships will be long-lasting.** In reference to the LAWDS Program, I spoke with Melissa, a librarian at Mt. Horeb Library, who shared they had embraced the partnership for a couple years before the pandemic hit and sadly served very few people the entire time. Even though they had advertised well, their services were not utilized and she could not explain why the public did not come. Melissa added that the library staff *"did not have the training and know-how to navigate some of the websites and was limited in the ways they could assist patrons."* I called expecting to hear a wonderful report and was disappointed to hear this and expressed I hoped Fond du Lac has better results. Please respond to my questions, concerns, and appeal that you give advisement to DWD in this matter. Thank you for your time and consideration.

Sincerely,



Barbara Santiago

Enclosures: FdL Comprehensive Job Center on Careeronestop, FdL Job Center website information, copy of first letter to UIAC, DWD press release of partnership, FdL Job Center property information

[Explore Careers](#) ▼

[Find Training](#) ▼

[Job Search](#) ▼

[Find Local Help](#) ▼

[Toolkit](#) ▼

[Resources For](#) ▼

American Job Center Finder


[◀ New Search](#)


Your Search

Location

Within

 ▼

[+ Add a new location](#)
 

Nearly 2,400 AJCs nationwide help people search for jobs, find training, and answer other employment related questions.

Below is a list of the American Job Centers closest to your location.

Use the phone numbers or websites listed to contact any center; learn more by clicking on a center name. **COVID-19 update: A few AJCs are temporarily closed or have moved to virtual services. You may see updates for individual centers below. Please call or email a center for the latest information on their current services.**

Search in a different area by typing a new location into the box and clicking "Search."

We found **1** American Job Center in **54935** within **25** miles.

Name	Location	Center Information
Fond du Lac Area Job and Career Center Comprehensive Center <input type="checkbox"/> Email this center	349 North Peters Avenue Fond Du Lac, WI 54935 Map Directions Distance: 0.2	Phone: 920-404-6850 Hours: M-F 8am-4:30pm; Scheduled Appointments and Self Service Computer Access only on Fridays Business Rep: Yes Veterans Rep: Yes Youth Services Contact: Yes Last Updated: 09/01/2021

Find More Local Help

[American Job Centers](#) ▲

[American Job Center Finder](#)
[Employment and Training Programs](#) ▲

[Apprenticeship Office Finder](#)
[Employment Network Finder](#)


FOND DU LAC

HOME / LOCATIONS / FOND DU LAC



Upcoming Events

There are no upcoming events to display at this time.

 [Subscribe to filtered calendar ▾](#)

6/1/21: Fond du Lac Job Center staff are meeting with customers via phone and virtually until further notice. Schedule your appointment by calling the phone number or filling out the form below.

Hours:

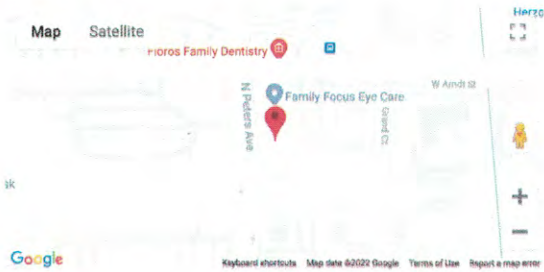
In most cases, calls will be answered 9:00 am – 4:00 pm Monday–Thursday. Messages left at other times will be returned the next business day.

Address:

349 N. Peters Ave, Fond du Lac, WI 54935

Phone:

920.404.8850



Your Name* Company Email Address*

Phone* County of Residence:*

Your Message*

Fond du Lac

349 N. Peters Ave
Fond du Lac, WI 54935
[View Map](#)
P: 920.404.8850
F: 920.929.3924

Menasha

1802 Appleton Rd
Menasha, WI 54952
[View Map](#)
P: 920.987.3272
F: 920.968.0991

Berlin

Permanently Closed

Oshkosh

Permanently Closed

Wautoma

Permanently Closed

Waupaca

Permanently Closed

If your local Job Center has closed, please contact one of our other centers for assistance.





Department of Workforce Development

Search DWD's Website



News Room

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

STATE OF WISCONSIN



Department of Workforce Development

Tony Evers, Governor
Amy Pechacek, Secretary-designee

FOR IMMEDIATE RELEASE

Feb. 9, 2022

CONTACT: DWD Communications

CommunicationsOffice@dwd.wisconsin.gov

Share



New In-Person Job Services and Resources from DWD Now Offered at Beloit Public Library

MADISON – New in-person services and resources from the Department of Workforce Development (DWD) are now being offered at the Beloit Public Library (605 Eclipse Blvd, Beloit, WI 53511).

These services are open to anyone in the public interested in receiving job services, information, and assistance, including:

- Basic job assessment services;
- On-site in-person job fairs;
- Assistance with identifying area job opportunities;
- Resume building and assessment; and
- Referrals to programs or other agencies for additional support to job seekers.

An additional service that will be available beginning the week of March 14, 2022, is the Reemployment Services and Eligibility Assessment (RESEA). Those who are applying for Unemployment Insurance benefits will now be able to access RESEA and attend the required Job Center 101 classes at this location to help them get back into the workforce.



Approximately two to three DWD employment and training staff are available for 20 hours weekly at the library to assist people with job service resources, with more staff to come in March.

"We are very excited to have this wonderful partnership with the Beloit Public Library," DWD Secretary-designee Amy Pechacek said. "Working together with community partners allows us to make job service resources more accessible to the people of Wisconsin."

In-person job fairs will also be conducted at the Beloit Public Library. The first hiring event is scheduled for Tuesday, March 15, 2022, from 1 - 3 p.m. The event is free for both employers and job seekers.

"The in-person, on-site job fair at the library will be a great opportunity for job seekers and employers to meet and connect," Dave Shaw, DWD job services area director, said. "We currently have 20 businesses participating."

"Wisconsin's public libraries will always have resources dedicated to literacy and early learning, but it's growth area is in providing services that lift all community members to thrive and grow across a lifetime," Nick DiMassis, director of the Beloit Public Library, said. "Beloit Public Library's partnership with DWD to bring its expertise on-site for those navigating the complex and anxious world of unemployment will open up life-changing opportunities to even more of Beloit's residents. We will continue to build on these successful efforts thanks to Dave and his team at the DWD."

Employers interested in participating in future job fairs or would like to connect with DWD's Rock County Job Center can contact Business Services Staff Lesley Luna at (608) 901-5694 or Michele Eggers at (608) 901-5693.

Job seekers interested in attending can find more information on the [Job Center of Wisconsin Events page](#).

ABOUT DWD

Wisconsin's Department of Workforce Development efficiently delivers effective and inclusive services to meet Wisconsin's diverse workforce needs now and for the future. The department advocates for and invests in the protection and economic advancement of all Wisconsin workers, employers and job seekers through six divisions – Employment and Training, Vocational Rehabilitation, Unemployment Insurance, Equal Rights, Worker's Compensation and Administrative Services. To keep up with DWD announcements and information, [sign up for news releases](#) and follow us on [Facebook](#), [Twitter](#), [LinkedIn](#) and [Instagram](#).

DWD Contact Information

201 E. Washington Ave
P.O. Box 7946
Madison, WI 53707
(608) 266-3131

[Contact Us](#)
[Administrative Rules](#)
[Jobs at DWD](#)
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[Staff & Partners](#)
[State Employee Directory](#)
[Topic Index \(Sitemap\)](#)
[Website Support](#)


Fond du Lac County RealEstate Tax Record Detail

Property Record for Parcel Number: FDL-15-17-09-24-751-00

Page 1 of 2

Location Information



Municipality: CITY OF FOND DU LAC

Site Address: 349 NORTH PETERS AVE

Owner Name(s): STATE OF WISCONSIN DILHR

Mailing Address: 201 E WASHINGTON AVE PO BOX
7946

City State Zip: MADISON WI 53707-7946

[Return to search results](#)

[Property Summary](#)

Owner (s): STATE OF WISCONSIN DILHR		Location:	
Mailing Address: STATE OF WISCONSIN DILHR 201 E WASHINGTON AVE PO BOX 7946 MADISON, WI 53707-7946		School District: 1862 - FOND DU LAC SCHOOL	
Request Mailing Address Change			
Tax Parcel ID Number: FDL-15-17-09-24-751-00	Tax District: 20226-CITY OF FOND DU LAC	Status: Active	
Alternate Tax Parcel Number:	Government Owned:	Acres: 0	
Description - Comments (Please see Documents tab below for related documents. For a complete legal description, see recorded document.): HUTTER ADD TH PT OF LT 2 DESC AS BEG AT NW COR LOT 2 TH S 06D54M E ON W LI OF SD LT 154.64FT TH N83D06M E 186FT TO THE E LI OF SD LT TH N 06D35MW ON E LI 158.53FT TO NE COR SD LOT 2 TH W IN N LI LT 2 186.26FT TO PT OF BEG			
Site Address (es): <i>(Site address may not be verified and could be incorrect. DO NOT use the site address in lieu of legal description.)</i> 349 N PETERS AVE FOND DU LAC, WI 54935			

[Printer Friendly Page](#)

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[View Interactive Map](#)

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▸ [Districts](#)

▸ [Documents](#)

▸ [Notes](#)

▸ [Parcel History](#)

▸ [Permits](#)

▸ [Sales History](#)

▼ Taxes

0 Lottery credits claimed

Print tax bills:

2021 2020 2019 2018 2017 2016 2015 2014 2013 2012
 2011 2010

Tax History

* Click on a Tax Year for detailed payment information.

Tax Year*	Omitted	Tax Bill	Taxes Paid	Taxes Due	Interest	Penalty	Total Payoff
2021	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2020	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2019	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2018	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2017	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2016	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2015	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2014	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2013	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2012	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2011	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2010	<input type="checkbox"/>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total							\$0.00

If taxes are 3 years or more delinquent, please contact the Treasurer's office for additional fees due. (920) 929-3010

NOTE: Current year tax bills may not be processed by the county.

[Pay Taxes](#)

Interest and penalty on delinquent taxes are calculated to February 28, 2022.

Payoff Month: February ▼ Payoff Year: 2022 ▼ [Submit](#)

December 4, 2021

Dear Unemployment Advisory Council,

I'm writing to ask about the closed Job Center in Fond du Lac. This was a robust and actively engaged Job Center which used to service many job seekers in Fond du lac and the surrounding area. Despite other Job Centers reopening throughout the state, Fond du Lac remains open virtually and via the phone only. Staff at the Fond du Lac Public library have stated that when a customer calls the job center he or she is directed to visit the library for assistance.

I am aware the Job Center WI website posts a partnership with the library (see enclosed LAWDS pdf.), however, staff are not trained as employment and training specialists. Fond du Lac Public Library has a nice display set up for job seekers, nevertheless, trying to meet the needs of individuals looking for jobs should not fall onto the shoulders of library staff. Also, several other job centers in the area closed down permanently including Berlin, Oshkosh, Wautoma and Waupaca centers. Is there a plan in place to meet job seekers in Fond du Lac and these other communities?

Chapter 108.14(4) gives the Department the responsibility to establish and maintain "free public employment offices" allowing for job seekers access to employment assistance. Many job seeking individuals do not have transportation access to neighboring area job centers. Fond du Lac's closest job centers are in Menasha, West Bend and Sheboygan.

Chapter 108.14 Administration

(4) The department may create as many employment districts and district appeal boards and may establish and maintain as many free public employment offices as it deems necessary to carry out the provisions of this chapter. The department shall have power to finance either partly or completely such public employment offices as it deems necessary under this chapter, from the funds appropriated to the department for its expenses under this chapter, whether or not the political subdivision in which such office is located agrees to pay or does pay any part of the expenses of such office.

(5)(a) The council on unemployment insurance shall advise the department in carrying out the purposes of this chapter. The council shall submit its recommendations with respect to amendments of this chapter to each regular session of the legislature, and shall report its views on any pending bill relating to this chapter to the proper legislative committee.

Sheboygan has a population of 49,929 and Fond du Lac has a comparable population of 42,951 (2020 Census). West Bend has a population of 31,590. According to Chapter 108.14(5)(a) one of the Advisory Council's responsibilities is to advise the Department in carrying out the purposes of this chapter. I appeal you recommend the Fond du Lac Job Center be opened to the public for adequate and accessible job seeking purposes and to relieve the library staff of the duties that this center has imposed on them. If there is another plan to meet needs, please make this available to the public.

Sincerely,

Barbara Santiago

November 17, 2022

Dear Unemployment Advisory Council,

Thank you for extending the opportunity to help change the law. It is my hope that the council truly listens to the voice of its constituents. I have three recommendations.

My first recommendation pertains to the issue of misclassification. I am making the very same recommendation I did two years ago. In addition, the governor had also made the same recommendation.

Previous request...

“Following are the Departments factors used to determine whether an employer is knowingly and intentionally misclassifying individuals in the construction trades. My suggestion is that this be expanded to include **all employers who misclassify employees, not just those involved in the construction trades**. Why should one sector of employers be singled out and not all employers who are misclassifying? Shouldn't all employers be held to the same accountability? Misclassification is misclassification and should be treated as such.”

108.221 Misclassification; administrative assessments.

(1)

(a) 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 in the amount of \$500 for each employee who is misclassified, but not to exceed \$7,500 per incident.

(b) The department shall consider the following nonexclusive factors in determining whether an employer described under par. (a) knowingly and intentionally provided 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:

1. Whether the employer was previously found to have misclassified an employee in the same or a substantially similar position.

2. Whether the employer was the subject of litigation or a governmental investigation relating to worker misclassification and the employer, as a result of that litigation or investigation, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee.

(2) 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 in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year

My current recommendation is that Wisconsin Chapter 108 statutes remove **all references to employers engaged in construction** used in both Chapter 108.18 (2) (c) and all references in Chapter 108.221 **and be rewritten to include all employers** who are misclassifying employees for the following reasons:

1. If there is anything our nation learned going through the recent pandemic is that bias exists in our country. To codify blatant bias into Wisconsin Unemployment Statutes is an embarrassment. DWD is the state agency designed to protect employers and employees from discrimination and to treat all parties equally.
2. If the Department is aware that misclassification exists with other employers, including state agencies, it is the Department's duty to represent all parties equally. Not doing so would be considered manipulation of the law and self-serving.

My second recommendation pertains to issues addressed in the hearing notice/hearing. These issues are written vaguely. I am requesting that the issues include all of the information addressed in the adjudicator's determination. The department is not including this information in hearing notices and the **administrative law judges are denying the right to fully address "any matter in that determination."** This is an act of omission and both parties are being denied the right to address any and all issues.

108.09 Settlement of benefit claims.

*(2r) HEARING REQUEST. Any party to a determination may request a hearing as to **any matter in that determination** if the request is made in accordance with the procedure prescribed by the department and is received by an appeal tribunal or postmarked within 14 days after a copy of the determination was delivered electronically, mailed, or given to the party, whichever first occurs.*

(3) APPEAL TRIBUNALS.

(b) Consistently with applicable state and federal law, the appeal tribunal may affirm, reverse or modify the initial determination of the department or set aside the determination and remand the matter to the department for further proceedings, or may remand to the department for consideration of any issue not previously investigated by the department.

My third recommendation is that the Advisory Council stop denying residents of WI the right to submit letters to the Council. Last year I submitted a letter to the council and it was addressed in the January meeting. After extensive research, I submitted a 2nd letter to the council and was denied the right to have it viewed. Ms. Knutson stated she would bring the matter to the Department instead. I requested follow up information and never received a response. My guess is Ms. Knutson, as a member of the Department, "fulfilled her word" by presenting it to herself. In other words, my voice was denied and she buried the letter. I am including the letter with accompanying documents (along with my first letter) that was addressed to the council and denied reception.

The issue addressed in each letter **pertains to the establishment of free employment offices**. By moving the Job Center into public libraries, the Department has deferred, in part, the financing to employment offices to the public library system and is no longer maintaining that the employment office is “free” since patrons must pay for printing and faxes. In addition, the Job Center has done little advertisement to the public to make them aware that the Job Center is open but has been relocated to the public library. Since Fond du Lac still has a Job Center that services other programs (although it is not open to the public) job seekers and persons applying for unemployment continue to go there only to find that the doors are locked. Whether the council chooses to act on or ignore my recommendations, I should not be denied the right to present it to the council.

108.14 Administration.

- (1) This chapter shall be administered by the department.
- (4) The department may create as many employment districts and district appeal boards and may establish and maintain as many **free public employment offices** as it deems necessary to carry out the provisions of this chapter. **The department shall have power to finance either partly or completely such public employment offices as it deems necessary under this chapter, from the funds appropriated to the department for its expenses under this chapter**, whether or not the political subdivision in which such office is located agrees to pay or does pay any part of the expenses of such office.
- (5)
 - (a) **The council on unemployment insurance shall advise the department in carrying out the purposes of this chapter.** The council shall submit its recommendations with respect to amendments of this chapter to each regular session of the legislature, and shall report its views on any pending bill relating to this chapter to the proper legislative committee.

In closing, it is my hope that the Advisory Council will truly listen to recommendations for changes to the Wisconsin Chapter 108 statutes by myself, as well as other citizens who submit their suggestions. It would be interesting to know if any of our suggestions have ever influenced law change recommendations. Thank you.

Sincerely,
Barbara Santiago

From: Childress, Jason M.
Sent: Thursday, November 17, 2022 2:06 PM
To: DWD MB UI LAW CHANGE
Cc: Leibham, Joe
Subject: Spaulding draft
Attachments: Spaulding Clinical - Proposed Legislative Language (9.12.2022).docx

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Janell: Attached is the draft of a bill for this session that our attorneys feel would address the unintended consequence problems DWD identified from last session because of how quickly it was drafted. This is the bill from last session with red lines noting the changes.

Our hope is that UIAC and DWD can be neutral or supportive of this bill this session.

The information contained in this message, including but not limited to any attachments, may be confidential or protected by the attorney-client or work-product privileges. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message and any attachments or copies. Any disclosure, copying, distribution or reliance on the contents of this message or its attachments is strictly prohibited, and may be unlawful. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.

February 18, 2022 - Introduced by Representative GUNDRUM, cosponsored by
Senator STROEBEL. Referred to Committee on Small Business Development.

1 **AN ACT** *to amend* 102.07 (8) (a); and *to create* 102.07 (8) (bw), 104.01 (2) (b) 6.
2 and 108.02 (15) (j) 8. of the statutes; **relating to:** participants in clinical
3 research trials.

Analysis by the Legislative Reference Bureau

This bill provides that for the purposes of the minimum wage law and worker's compensation law an individual who is a participant in a clinical research trial and receives remuneration, a stipend, or compensation for participating in the trial is not an employee of the entity that conducts the trial. The bill also provides that such services are not considered covered employment under the unemployment insurance (UI) law. As a consequence, amounts paid by employers for those services are not subject to UI contribution requirements and those wages are not counted as base period wages for purposes of determining eligibility for UI benefits.

For further information see the state 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:

4 **SECTION 1.** 102.07 (8) (a) of the statutes is amended to read:
5 102.07 (8) (a) Except as provided in pars. (b) ~~and~~, (bm), and (bw), every
6 independent contractor is, for the purpose of this chapter, an employee of any

1 employer under this chapter for whom he or she is performing service in the course
2 of the trade, business, profession or occupation of such employer at the time of the
3 injury.

4 **SECTION 2.** 102.07 (8) (bw) of the statutes is created to read:

5 102.07 (8) (bw) An individual who receives remuneration, a stipend, or
6 compensation for being a participant in a clinical research trial is not an employee
7 of the entity, other than an entity described in Section 501(c)(3) of the Internal Revenue Code or
any governmental entity, conducting the clinical research trial.

8 **SECTION 3.** 104.01 (2) (b) 6. of the statutes is created to read:

9 104.01 (2) (b) 6. Any individual who receives remuneration, a stipend, or
10 compensation for being a participant in a clinical research trial.

11 **SECTION 4.** 108.02 (15) (j) 8. of the statutes is created to read:

12 108.02 (15) (j) 8. By an individual who receives remuneration, a stipend, or
13 compensation for being a participant in a clinical research trial, unless for entity described in
14 Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

14 **SECTION 5. Initial applicability.**

15 (1) The treatment of s. 108.02 (15) (j) 8. first applies to services performed on
16 the effective date of this subsection.

17 **SECTION 6. Effective date.**

18 (1) This act takes effect the Sunday after publication.

19 **(END)**

From: Jenni Schmidt
To: DWD MB UI LAW CHANGE
Subject: Suggestion
Date: Friday, November 18, 2022 10:43:37 AM=
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

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I guess the whole job search that people need to do is great but when it comes to us actually needing workers then it gets to be a waste of time for us. I feel that if they have to do a job search they should have to follow through with an interview and meeting with someone. As a small company it has been hard to find people to work as it is and really don't have time to waste time reaching out to people that are not actually needing or wanting the work. So if there is a different way this could be done that would be great for the companies that actually need workers.

Thank you,

Jenni Schmidt

Office Manager



Office 608.835.1777 Fax 608.835.1779

From: [Zuberbier, Timothy - DWD](#)
To: [DWD MB UI LAW CHANGE](#)=Suggestions
Subject: for UI Changes
Date: Friday, November 18, 2022 11:31:34 AM

1/ Modify Wis. Stat. section 108.04(11)(be) so that all issues of concealment for a particular eligibility issue can be addressed in one, and only one, determination.

Under the statutes, a claimant can conceal a material fact (e.g., a separation from employment, not being able to work) or wages earned or hours worked. Currently, multiple determinations are issued to address that concealment.

-
Example:

Claimant is discharged from an employing unit and conceals the discharge on the initial claim.

Claimant works and earns wages from an employing unit and conceals the work and wages on a weekly certification.

Claimant is not able to work and conceals this fact on a weekly certification.

One determination addresses the discharge, concealment of discharge, and overpayment penalty (as applicable).

One determination addresses the work and wages, concealment of work and wages, and overpayment penalty (as applicable).

One determination address the "able to work" issue, concealment of the "able to work" issue, and overpayment penalty (as applicable).

One determination addresses the "fraud" issue: Concealment of discharge, work and wages, "able to work" issue, and future benefit amount reduction (BAR).

-
Here's the problem:

Maybe the claimant only appeals the discharge determination. The ALJ finds "no concealment" of the discharge and the overpayment penalty is wiped out. But, we still have a fraud determination in place finding "concealment" of the discharge and an associated BAR. We now have inconsistent findings of concealment.

Maybe the claimant only appeals the "fraud" determination. The ALJ finds "no concealment" on all of the eligibility issues (i.e., discharge, work and wages, able to work). But, the other determinations are in place finding "concealment" and an overpayment penalty (as applicable). We now have inconsistent findings of concealment.

Maybe the claimant appeals the discharge determination and, later, appeals the work and wages determination and, later, appeals the "fraud" issue. Because the determinations were appealed at different times, the cases get scheduled before different ALJs. The ALJs make different findings on the "concealment" issue *based on the evidence in their hearing record* and we have inconsistent findings of concealment.

Variations of the scenarios noted above happen frequently. This is a real problem that has a simple solution.

Solution (using the example noted above):

One determination addresses the discharge, concealment of discharge, overpayment penalty (as applicable), **and BAR**.

One determination addresses the work and wages, concealment of work and wages, overpayment penalty (as applicable), **and BAR**.

One determination address the "able to work" issue, concealment of the "able to work" issue, overpayment penalty (as applicable), **and BAR**.

The stand-alone "fraud" determination disappears so there is no longer any risk of inconsistent findings on concealment.

The new law will have to get rid of the "escalator" language (2 times, 4 times, 8 times) for subsequent acts of concealment, which is fine. Just pick a number for the BAR with which everyone is comfortable – a number that sends a message to the claimant but is not necessarily an onerous one (e.g., 3 times the claimant's WBR).

Current law:

(11) Fraudulent claims .

(be) a claimant is ineligible for benefits for acts of concealment described in pars. [\(a\)](#) and [\(b\)](#) as follows:

1. For each single act of concealment occurring before the date of the first determination of concealment under par. [\(a\)](#) or [\(b\)](#), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to **2 times** the claimant's weekly benefit rate under s. [108.05 \(1\)](#) for the week in which the claim is made.
2. For each single act of concealment occurring after the date of the first determination of concealment under par. [\(a\)](#) or [\(b\)](#), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to **4 times** the claimant's weekly benefit rate under s. [108.05 \(1\)](#) for the week in which the claim is made.
3. For each single act of concealment occurring after the date of a 2nd or subsequent determination of concealment under par. [\(a\)](#) or [\(b\)](#), the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to **8 times** the claimant's weekly benefit rate under s. [108.05 \(1\)](#) for the week in which the claim is made.

Proposed law:

(11) Fraudulent claims .

(be) a claimant is ineligible for benefits for acts of concealment described in pars. [\(a\)](#) and [\(b\)](#) as follows:

For each single act of concealment the claimant is ineligible for benefits for which he or she would otherwise be eligible in an amount equivalent to **(number)** times the claimant's weekly benefit rate under s. [108.05 \(1\)](#) for the week in which the claim is made.

2/ Repeal Wis. Stat. section 108.04(1)(b).

Reason: The statute is an anachronism and is unnecessary.

[The former statute had subsections (b)1. and (b)2. and, when (b)1. was repealed, (b)2. could have been repealed, also.]

Key points:

If an individual is on a leave of absence or suspended because he/she is unable to work or unavailable for work, this eligibility issue can be addressed by "able and available" law.

If an individual is terminated because he/she is unable to work or unavailable for work, this eligibility issue can be addressed by "discharge" law (i.e., misconduct or substantial fault).

If an individual is absent from work for 16 hours or less in a given week, this eligibility issue can be addressed by "work available" law.

Current law:

(b) e xcept as provided in s. [108.062 \(10\)](#), if an employee is absent from work for 16 hours or less in the first week of his or her leave of absence or in the week in which his or her employment is suspended or terminated due to the employee's unavailability for work with the employer or inability to perform suitable work otherwise available with the employer, the employee's eligibility for benefits for that week shall be determined under par. [\(bm\)](#).

Former law:

(b) 1. e xcept as provided in subd. [2.](#) and s. [108.062 \(10\)](#), if an employee's employment is suspended by the employee or the employee's employer or an employee is terminated by the employee's employer, due to the employee's unavailability for work or inability to perform suitable work otherwise available with the employee's employer, or if the employee is on a leave of absence, the employee is ineligible for benefits while the employee is unable to work or unavailable for work.

2. if an employee is absent from work for 16 hours or less in the first week of a leave taken under subd. [1.](#) or in the week in which a suspension or termination under subd. [1.](#) occurs, the employee's eligibility for benefits for that week shall be determined under par. [\(bm\)](#).

3/ Create a law on "weekly claim withdrawal." It is just a department policy at the moment; there should be a law defining standards for the practice.

From: Wisconsin DWD <widwd@public.govdelivery.com>
Sent: Wednesday, November 2, 2022 10:09 AM
To: Zuberbier, Timothy - DWD
Subject: Public Comment Period Open on Suggestions for UI Changes

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DWD News Release



FOR IMMEDIATE RELEASE

Nov. 2, 2022

CommunicationsOffice@DWD.Wisconsin.gov

Public Comment Period Open on Suggestions for UI Changes

Attend Public hearing Nov. 17, 2022, or submit written comments Nov. 9-18, 2022

MADISON –The Unemployment Insurance Advisory Council (UIAC) is welcoming suggestions to improve Wisconsin's Unemployment Insurance (UI) program during two public hearings and a public comment period.

The Council represents employee and employer interests and submits recommendations for improving unemployment law to the Legislature.

The Council will hold two public hearings on Nov. 17, 2022. The hearings will be virtual, conducted by teleconference and WebEx web conferencing technology. The first hearing is from 2 to 4 p.m.; the second is from 5 to 6 p.m.

"The public hearing is a great opportunity for members of the public to provide input on the laws that govern Wisconsin's UI system," Department of Workforce Development (DWD) Secretary-designee Amy Pechacek said. "I encourage interested individuals to attend one of the two public hearings scheduled for Nov. 17 or submit written comments through the

avenues outlined below."

Advanced registration is required. Find the details at: <https://dwd.wisconsin.gov/uibola/uiac/pubhearings/2022.htm>

Following registration for the public hearing, a confirmation email will be sent with instructions on how to join the event.

If unable to attend a hearing, the council is taking public comments on suggested changes to the state's UI laws from Nov. 9 to 18, 2022. The comments will help inform the council's legislative agenda during the following year.

Submit written comments and suggestions to:

- **Email:** UILawChange@dwd.wisconsin.gov
(Note: Emails will only be accepted from Nov. 9 to 18, 2022)
- **Mail to:** Janell Knutson, Chair
Unemployment Insurance Advisory Council
P.O. Box 8942
Madison, WI 53708

Important: Do not submit a social security number, date of birth, street address, or issues involving personal claims when submitting written comments on Wisconsin's UI program. To contact DWD about issues with personal claims, please call the Claimant Assistance Line at (414) 435-7069 or toll-free (844) 910-3661 during business hours.

ABOUT DWD

[Wisconsin's Department of Workforce Development](#) efficiently delivers effective and inclusive services to meet Wisconsin's diverse workforce needs now and for the future. The department advocates for and invests in the protection and economic advancement of all Wisconsin workers, employers and job seekers through six divisions – Employment and Training, Vocational Rehabilitation, Unemployment Insurance, Equal Rights, Worker's Compensation and Administrative Services. To keep up with DWD announcements and information, [sign up for news releases](#) and follow us on [Facebook](#), [Twitter](#), [LinkedIn](#) and [Instagram](#).

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LEGAL ACTION OF WISCONSIN

Providing free legal services to low-income Wisconsin clients since 1968 • Proporcionando servicios legales gratuitos a clientes de bajos ingresos en Wisconsin desde 1968

November 18, 2022

Unemployment Insurance Advisory Council
Chair Janell Knutson
P.O. Box 8942
Madison, WI 53708

Submitted via email only to: UILawChange@dwd.wisconsin.gov

Dear Chair Knutson and UI Advisory Council Members:

On behalf of Legal Action of Wisconsin's Farmworker Project, we offer these comments on Wisconsin's Unemployment Insurance (UI) Program in response to the Council's call for comments ahead of its November 17 public hearings. Thank you for the opportunity to provide feedback regarding the UI concerns of our Migrant and Seasonal Farmworker (MSFW) clients.

Legal Action of Wisconsin (Legal Action) is the largest provider of free, high-quality, civil legal aid to low-income individuals in Wisconsin. Through our statewide Farmworker Project, our advocates represent seasonal and year-round farmworkers facing civil legal concerns, including Unemployment Insurance matters.

Wisconsin's MSFWs are among the hardest working members of Wisconsin's workforce¹ and are essential to the Nation's food supply. Wisconsin's migrant farmworkers² go to great lengths to obtain work. Many of Legal Action's clients have migrated to Wisconsin from communities ranging from Eagle Pass, Texas, to Arroyo, Puerto Rico for decades.³ Legal Action's MSFW clients work long hours. Shifts up to 12 hours and 6 to 7 day work weeks are the norm during the harvest and food processing seasons.

Despite their strong attachment to Wisconsin's workforce, Legal Action's migrant farmworker clients are disproportionately harmed by barriers to accessing unemployment benefits. Legal Action has several farmworker clients who worked through the height of the pandemic and were eligible for UI benefits; but, did not receive any of the benefits they were due for months or even years, with some of these cases still

¹ Because of factors including length of the season and the exclusions of some agricultural employers from coverage under Wis. Stat. § 108.02(13)(c)1, Wisconsin's migrant and seasonal food processing workers are more likely to be eligible for UI benefits than other MSFWs. These comments primarily address problems encountered by migrant and seasonal food processing workers.

² Wisconsin Department of Workforce Development estimates that Wisconsin's MSFW workforce is over 4000 strong. *2021 Migrant and H-2A Population Report*. available at <https://dwd.wisconsin.gov/jobservice/msfw/pdf/migrantpoprep2021.pdf>

³ See, e.g. Tiggs, Leann. *Needs of Wisconsin's Migrant and Seasonal Farmworkers 20172*

unresolved.⁴ We continue to represent clients who have been waiting on the resolution of a prolonged adjudication process, which often involves multiple hearings and appeals. While benefit determinations are pending, our clients experience increased financial stress. Many of Legal Action's MSFW clients who bring food to our tables and grocery stores must sleep in their cars after completing 12-hour work shifts, and many rely on food pantries for their own sustenance.

Thank you in advance for considering the following comments on the importance of ensuring that Wisconsin's MSFWs have timely access to the UI benefits to which they are legally entitled.

I. The current work search requirements do not adequately recognize migrant farmworkers' attachment to their jobs in Wisconsin

Many migrant farmworker families have returned to Wisconsin to work for the same employer for decades. They keep in contact with their employers and often have contracts or fixed start dates for reemployment. While the United States Department of Labor (USDOL) recognizes that states have discretion to develop a reasonable definition to meet the requirement that a UI beneficiary be "actively seeking work," the USDOL has found, and recently re-affirmed, that an individual with a definitive recall date is "job attached" and can meet the work search requirement by maintaining contact with the recalling employer.⁵

Wisconsin's current work search requirements ignore the needs of Wisconsin's seasonal agricultural employers and are burdensome for workers.⁶ For a food processing worker, the date of employer recall will typically vary from season to season. For example, in some cases, a portion of an employer's workforce may be recalled as early as March; while, in other years, the bulk of the workforce may be recalled in early July. Wisconsin employers depend on a flexible workforce to meet fluctuating demands. The

⁴ WP: application for UI filed in January 2021; ALJ hearing found benefit due in September 2021; first payment received November 2021; JF: initial determination on claim filed in April of 2021 and difficulty because of earnings in multiple states, no benefits paid until December of 2021. MRR: issues with earnings in multiple states. Benefit application filed in early 2021, did not receive any of the benefits he was due until late fall 2021. (Identifying information regarding LAW's clients is currently redacted though Several LAW clients expressed interest in sharing their experiences if it could prevent problems for other workers in the future).

⁵ UI Program Letter No. 5-13. January 10, 2013 page 3 available at https://wdr.doleta.gov/directives/attach/UIPL/UIPL_No_5_13.pdf; UI Program Letter 13-20, Change 3. July 1, 2020. Page 5. Available at https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20_Change_3.pdf

⁶ Ad Hoc Committee on Migrant and Seasonal Farmworker. December 8, 2021. Comments of John Bauknecht and Erica Kunze.

current work search requirements do not recognize the essential role migrant seasonal farmworkers play in meeting this demand.

Legal Action's migrant farmworker clients often express frustration that Wisconsin's work search requirements do not recognize their ongoing attachment to their jobs, emphasizing, "I already have a job," or "I have a signed contract for next season." MSFWs have also shared that many South Texas employers will not take applications from workers who will be leaving the state in a few months.

Additionally, as workers and advocates have emphasized, MSFWs come to Wisconsin for employment precisely because there are limited opportunities in their home communities.⁷ As a Texas job service outreach worker with nearly three decades of experience testified:

Because of the lack of job opportunities in Laredo, during the summer and early fall months, many workers leave the Laredo area in search of food processing and agricultural work in other states –including Wisconsin, Minnesota, and Georgia. These workers all return to the Laredo, Texas area at the same time during the fall. The returning workers are thus competing for the small pool of available jobs in the Laredo area⁸.

Though USDOL guidance allows states to determine that an employee with a recall date is actively looking for work, states are not required to adopt this interpretation. Currently, Wis. Stat. § 108.04(2)(a)3 requires four work search actions per week, and the work search requirement must be waived only for employees who expect to be recalled within 8 weeks, for a total period not to exceed twelve weeks. Wis. Stat. § 108.04(2)(b)(1). MSFW advocates have observed that the requirement of four work search actions per week, combined with the prohibition of multiple applications to the same employer,⁹ are particularly burdensome for MSFWs in home communities with little or no job opportunities.¹⁰

Other aspects of Wisconsin's work search requirements can delay timely payment of benefits for MSFWs. For example, workers find it difficult to provide acceptable proof of job searches¹¹ and thus are often initially found ineligible for receipt of benefits. MSFWs who relocate many times per year in search of work find it particularly difficult to produce adequate proof of searches because paperwork can be difficult to maintain while traveling. If a migrant farmworker lacks access to a personal computer or lacks

⁷ Ad Hoc Committee on Migrant and Seasonal Farmworker. December 8, 2021.; Comments of John Bauknecht.

⁸ April 19, 2019. GS hearing. LAW client information is currently redacted available upon request.

⁹ Wis. Admin Code § DWD 127.01(2)(a).

¹⁰ E.g. Governor's Council on Migrant Labor Meeting. January 19, 2022 comments of Jose Martinez.

¹¹ Proof of work search requirements in Wis. Stat. § 108.04(2)(bm).

relevant technical skills to use one, keeping documentation of the work search presents an additional burden. Since at least 2016, MSFW and employers throughout the state have expressed frustration with the rigidity of the work search requirements.¹²

Notably, Wis. Admin Code § DWD 127.01 echoes the requirements of Wis. Stat. § 108.04(2), but also provides the Department of Workforce Development with discretion to identify other actions as reasonable work search actions, and notes that the Department shall provide examples of such actions in its Handbook for Claimants. Wis. Admin Code § DWD 127.01(2)(j). Few of the current examples in the UI Division's Handbook for Claimants are job search methods that could be successfully used by Wisconsin's MSFWs in their home communities.

Under the Department of Workforce Development's current interpretation, a worker's verbal inquiry regarding the availability of work is never a valid work search action¹³, even though a significant number of MSFWs, especially those with extensive hands-on experience and less formal education, and obtain employment through in-person requests. The Department of Workforce decision not to recognize verbal inquiries ignores the culturally significant methods that migrant farmworkers use to search for jobs and obtain work. For example, agricultural employers in Wisconsin and in other states continue to utilize migrant labor contractors who personally travel to South Texas to recruit and hire migrant and seasonal farmworkers¹⁴ because online recruitment alone is not a reliable means of locating workers for seasonal agricultural employment. Similarly, short term day labor jobs are almost exclusively obtained through verbal inquiry and negotiations.

II. Migrant and Seasonal Farm Workers experience UI access barriers

A. UI access barriers for MSFWs will not be resolved through computer system upgrades or other “modernization” efforts alone.

According to the last available National Survey of Agricultural Workers (NAWS), nearly 80% of agricultural workers in the United States identify as Hispanic and over half feel most comfortable conversing in Spanish (though agricultural workers reported greater ability to speak Spanish than to read Spanish). Additionally, nearly a third of the agricultural workers surveyed indicated they could not read English “at all,” and an additional third indicated they could only read English “a little” or “somewhat.” The

¹² See, e.g. UI Public Hearing November 17, 2017 with 246 comments pertaining to waiver of the work search requirements. <https://dwd.wisconsin.gov/uibola/uiac/materials/2017/20170216meeting.pdf>.

¹³ See, e.g. DWD. Work Search Requirements: Examples of Valid Work Search Actions and Acceptable Proof. <https://dwd.wisconsin.gov/uiben/worksearch-requirements.htm>

¹⁴ See e.g. the National Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Registered Farm Labor Contractor Listing. <https://www.dol.gov/agencies/whd/agriculture/mspa/farm-labor-contractors> (noting 8427 migrant labor contractors as of November 18, 2022).

average level of education for farmworkers was 9th grade, with 35% of agricultural workers reporting an education level of 7th grade or less.¹⁵

Many of Legal Action's MSFW clients also report that they do not know how to use computers. Because of language barriers,¹⁶ lack of computer access, and lack of familiarity with the legal system, MSFWs based in South Texas often seek help from "notarios"¹⁷ in filing online applications and weekly claims for UI benefits.¹⁸ As one migrant farmworker reported in his 2019 administrative complaint against a notaria:

I hired...a notaria because I didn't understand Wisconsin unemployment law and wanted to do everything correctly. I trusted the notaria because she spoke my language and lived in my community. Everyone in the community said she was the person to go to for help with completing UI paperwork and with doing the job searches. I had questions about what I needed to do to file for unemployment insurance benefits in Wisconsin, and the notaria answered these questions...I relied on her legal advice and now have an unemployment insurance overpayment. I paid the notaria \$25 so that she could file weekly unemployment insurance claims...When I learned I may have been filing my work searches incorrectly, the notaria charged me an additional \$50 to file an appeal. She also helped other workers with filing unemployment benefit claims in Wisconsin and other states.¹⁹

Without access to adequate claims filing assistance, and/or accurate Spanish language information regarding Wisconsin's UI system, many MSFWs feel forced to turn to the services of notarios, who do not provide reliable assistance. The lack of critical

¹⁵ Findings from the National Agricultural Workers Survey (NAWS) 2017–2018. March 2021. 13-17. Available at:

<https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS%20Research%20Report%202014.pdf>

¹⁶ The Workforce Innovation and Opportunity Act (WIOA) signed into law on July 22, 2014, provides that recipients of WIOA funding cannot discriminate based on national origin, including limited English proficiency. 29 CFR § 38.9. See also, *Sarosh*. UI Hearing Number 20017805MD. LIRC March 26, 2021.

¹⁷ American Bar Association. *About Notario Fraud*. "The literal translation of "notario publico" is "notary public." While a notary public in the United States is authorized only to witness the signature of forms, a notary public in many Latin American (and European) countries refers to an individual who has received the equivalent of a law license and who is authorized to represent others before the government. The problem arises when individuals obtain a notary public license in the United States, and use that license to substantiate representations that they are a "notario publico" to immigrant populations that ascribe a vastly different meaning to the term."

https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud/ November 11, 2020. Last accessed November 14th, 2022.

¹⁸ See also Strebels, Erika "Migrant workers tripped up with new work search rules, slapped with fraud." Wisconsin Law Journal. November 22, 2017.

¹⁹ GS complaint to the Department of Agriculture Trade and Consumer Protection. LAW client info currently redacted, but additional information upon request.

assistance that the DWD could provide to support MSFW UI access is a significant barrier for many MSFWs.

For Wisconsin's MSFW workforce, meaningful access to the UI program cannot be provided simply through a translation of an online benefit application. Rather, access depends on professionals trained by the DWD with the capacity to provide language access. If all the DWD UI Division's language access efforts focus solely on improvements to the online portal, MSFWs will continue to experience barriers and MSFWs will seek assistance where it can be located including through unreliable sources such as notarios.

The UI Navigator Program being developed in partnership between the DWD and United Migrant Opportunity Services (UMOS) is an important first step in increasing access to UI benefits to the MSFW community, but ongoing evaluation of MSFW access to the UI system is essential.

B. Wisconsin's UI access crisis disproportionately harms migrant farmworkers. Wisconsin's migrant workers encounter benefits delays due to the lack of meaningful coordination between state UI systems.

Since migrant agricultural workers are more likely to have earnings in multiple states, lack of coordination between state UI systems and between state and federal systems disproportionately harms farmworkers. Wisconsin's migrant agricultural workers, along with other workers who work in multiple states, have experienced extensive hold times, dropped calls, technology, and language access barriers when trying to reach UI customer service representatives in multiple states.

For example, federal benefit programs such as Pandemic Emergency Unemployment Compensation (PEUC) or Pandemic Unemployment Assistance (PUA) were only available to claimants who are not eligible for regular state UI compensation benefits. In one recent case, Legal Action represented a farmworker who faces an overpayment and a denial of benefits because of the possibility that he *may* have been eligible for benefits in four states other than Wisconsin. Although these federal benefits programs have ended, the lack of coordination between states has caused benefits for some of Legal Action of Wisconsin's UI eligible MSFW clients to be delayed for nearly two years.

In another case, a Legal Action client was caught in a limbo between advice provided by the Wisconsin DWD UI Help Center and the UI Division of another state. Wisconsin's call center staff repeatedly advised our client that he was eligible for benefits in another state, but that state's own call center staff informed client that he

was not eligible. This MSFW client, who already faced the difficulty of a language access barrier, was made to act as a messenger between two states' UI programs.²⁰

UI Program Letter No. 20-21 published by the USDOL's Employment and Training Administration outlines the parameters by which states can determine "eligibility criteria for waving recovery of an overpayment" of federal pandemic benefits, as well as circumstances in which "blanket waivers" may be applicable. Despite the ETA's guidance, Legal Action has observed the continued denial of Federal Pandemic Benefit Overpayment Waiver applications, even when there are indications that the overpayment was not the claimant's fault.

Thank you, in advance, for your consideration of these comments. Please do not hesitate to contact us if you have any additional questions. Migrant and Seasonal Farmworkers have always been essential to the Wisconsin's stability and success. We hope that our comments will inform future efforts in enhancing the UI system's accessibility for Wisconsin's MSFW workforce.

Respectfully submitted,

Legal Action of Wisconsin

s/
Ashley Semington
Farmworker Project Paralegal

s/
Erica Sweitzer-Beckman
Farmworker Project Attorney
Member of the Governor's Council on Migrant Labor

²⁰ Thankfully, the Wisconsin UI Division was ultimately able to resolve this problem after communication from LAW—but LAW is concerned that other MSFWs continue to remain in the same situation and not aware of how to access help.

From: [Elana Tarwid](#)
To: [DWD MB UI LAW CHANGE](#)
Subject: Unemployment comments
Date: Thursday, November 17, 2022 8:40:02 PM

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Suggestion

regarding UI/Job Service Registration. Customer selection of Education levels when establishing the UI claim

Please consider changing *High School Drop Out* as an education level option.

As an example, alternately this level option could be High School Diploma Not Yet Complete. This would be thought evoking and dignified.

Suggestion

regarding work search entries when filing weekly claims.

Please consider changing the work search option

Posted resume on Employment Website (i.e Monster.com)

To Registered on an employment website (i.e. Monster.com)

Many customers interpret this as applying for a position through Monster or another employment site.

Comment

There is a percentage of older Americans and individuals with low reading levels or lack of computer ability that need much support when filing unemployment claims or searching for work in American Job Service resource rooms. Due to the policy that Job Service resource room staff cannot navigate the keyboard or mouse, filling by phone should remain an option for these individuals.

Comment

Please consider eliminating the UI wait week. For low income families and individuals the wait week can result in hunger and homelessness.

Elana Tarwid

From: [Kimberly Harrison](#)
To: [DWD MB UI LAW CHANGE](#)
Subject: unemployment compensation pay
Date: Thursday, November 17, 2022 12:38:32 PM

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I believe the the max payment for unemployment needs to be increased, It should have been increased 30 years ago. 300 and something a week is not enough. You can't even pay rent with that weekly benefit. The 600 that you were giving out during the pandemic was ok but it needs to be more than that if rents are increasing and they are asking for extra security deposits. Unfortunately you have had many individuals across the country taking advantage during the pandemic by not paying their rent on time or business owners price gouging, however; those who are being good citizens and doing the right thing by paying their bills and continue to go to work you are affecting them as well by not increasing the benefit payments. The saying is " one rotten apple spoils the bunch" but there is many rotten apples in this world and in Wisconsin but there are those who need this increased to continue to provide for their families while they are looking for work. Also 6 months is not enough as well it needs to go back to a year to receive benefits. Thank you

 KKH

From: [G&G Lumber](#)
To: [DWD MB UI LAW CHANGE](#)
Subject: Unemployment Input
Date: Wednesday, November 16, 2022 3:06:57 PM

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To Whom It May Concern,

I am the co-owner/wife of Jay Glime, owner of G&G Lumber for over 20 years. Wisconsin needs to get people working. Workers are unemployed for too long. You need to shorten how much time they can be on unemployment and you also need to track who is abusing the system. I have people stopping by all the time asking if we are hiring and I say yes we are and they run like the wind. They are just following up on your requirements to receive another week of benefits. They should also be drug tested. If you're on drugs you should not be receiving unemployment benefits. As my husband stated, everyone is hiring. Look around. And employers are paying wages above what is required just to get someone to work and retain them. The system is broken and is not being used for what it was intended. We need to get tough on people to work. It gives them purpose. We have seen first hand what a job can do for someone that has been down in out whether it be from drugs and alcohol or just getting out of prison. Employers are willing to help individuals but you have to quit enabling them to live off the government. There are too many programs at the state and federal government that are allowing individuals not to contribute to society. No wonder there is a problem with anxiety and depression. We need your help in making the changes. Please stop making it so easy for someone to be unemployed. For example, we had an employee drink on the job and we had to let him go. He should not receive benefits. He should learn from his mistakes. If an individual has to hit rock bottom to make a change then that's what should happen. I've had questionnaires from the state about how they could help to train/educate employees. Stop worrying about that, we as employers can do that ourselves because every place of employment is different in training the way they expect something done. Not you! You do not work in our line of work. You do what you do best and we do what we do best. We have a great retention at our business because we know how to treat each unique individual that works for us.

Thank you for your time and I hope to hear back from you.

Sincerely,

Lori Glime

G&G Lumber Inc.
Jay and Lori Glime
5971 Sawmill Road
PO Box 587
Florence, WI 54121-0587
906-458-3452 Jay

906-221-3526 Lori

From: [G&G Lumber](#)
To: [DWD MB UI LAW CHANGE](#)
Subject: Unemployment Input
Date: Wednesday, November 16, 2022 2:42:17 PM

**CAUTION: This email originated from outside the organization.
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To Whom It May Concern,

I am the owner of G&G Lumber in Florence County. I have fifteen employees and have been in business for over 20 years. We are almost always looking for people. We are NEVER called by your department wondering if we need people to work. In September the unemployment rate was 3.2%, it should be zero. When you give people money not to work they won't. If you people on the council wouldn't give people money not to work we wouldn't be begging to find workers. You make being in business a lot harder. When I got out of the military there was an employment agency that told you where they were hiring and you put in an application. Today it's not necessary, everyone needs workers, just open your eyes. There are signs everywhere.

Wish I was on the board, I would love to hear your excuses. Call me anytime!

Sincerely,

Jay Glime
President

G&G Lumber Inc.
Jay and Lori Glime
5971 Sawmill Road
PO Box 587
Florence, WI 54121-0587
906-458-3452 Jay
906-221-3526 Lori



**THE LEADING VOICE
FOR WISCONSIN SMALL
AND INDEPENDENT BUSINESSES**

November 17, 2022

Janell Knutson
Chair
Unemployment Insurance Advisory Council
P.O. Box 8942
Madison, WI 53708

Dear Ms. Knutson:

Wisconsin Independent Businesses (WIB) strives to provide small, independent business owners with an effective voice in the legislative and regulatory activities of state government.

We proudly represent thousands of small, independent business owners throughout Wisconsin. Most of our members own and operate businesses that have fewer than 25 employees and/or annual gross revenues of less than \$5 million. Our membership includes local service sector providers, hometown manufacturers, and Main Street retailers.

For the 2023-2024 legislative session, we respectfully request the Unemployment Insurance Advisory Council (UIAC) support statutory and programmatic changes that we believe will reduce UI benefit fraud and transition UI claimants to gainful employment quickly.

UI benefit fraud has grown at an alarming rate since the onset of the pandemic. In June 2022, the Government Accountability Office (GAO) estimated improper UI benefits payments rose from approximately \$8.0 billion in 2020 to more than \$78 billion in 2021. To combat this growing problem at the state level, WIB respectfully requests:

➤ **Digital Identity Verification and Authentication of UI Claimants**

The National Institute of Standards and Technology (NIST) develops digital security standards and guidelines for federal government information systems. NIST uses Identity Assurance Level (IAL) and Authenticator Assurance Level (AAL) standards to assess the security of information systems. Information systems compliant with IAL 2 standards for identity verification and AAL 2 standards for authentication are deemed highly secure.

In its report, the GAO suggested states consider adopting IAL 2 and AAL 2 compliance standards for their UI program information systems to prevent criminals from accessing UI benefits with stolen identity information. We believe Wisconsin's UI program information system should be compliant with the IAL 2 and AAL 2 standards.

WIB...Helping you where you need it.

PO Box 2135 | Madison, Wisconsin 53701 | 800-362-9644 | www.wibiz.org

➤ Additional Work Search Audits of UI Claimants

State law requires the Wisconsin Department of Workforce Development (DWD) to conduct random work search audits and report annually to the UIAC on the number and the results of work search audits conducted. Over the six-year period beginning in 2016, nearly 22% of work search audits conducted by DWD resulted in a determination that a UI claimant failed to comply with their weekly work search requirement. This non-compliance rate justifies the need for additional work search audits.

➤ UI Benefit Ineligibility for "Ghosting" by UI Claimants

"Ghosting" is an increasingly common unethical practice in which an employer schedules a job interview or makes a job offer to a prospective employee and the prospective employee does not sit for the job interview or reply to the job offer. While employers cannot compel a prospective employee to respond to their requests, ghosting by a UI claimant could be a fraudulent act.

WIB supports legislation that would allow Wisconsin employers to voluntarily report ghosting to DWD. In turn, DWD would be required to investigate the employer report. If the report is found to be credible by DWD and the prospective employee is claiming UI benefits, the claimant would be ineligible for UI benefits for the week during which the ghosting occurred.

Transitioning UI claimants back into the workforce quickly is a beneficial outcome for employers and unemployed workers. To expedite this transition, WIB respectfully requests that UI claimants be subject to additional UI benefit qualifying requirements. More specifically:

- for the third and subsequent weeks of a claimant's benefit year, at least two weekly work search actions must be direct contacts with potential employers;
- if DWD provides a claimant with a list of potential job opportunities, the claimant must apply for those jobs to satisfy their weekly work search requirement; and
- if a claimant is likely to exhaust regular UI benefits, the claimant must participate in a public employment office workshop or training program and complete a reemployment counseling session.

Thank you in advance for your consideration.

Respectfully,



Brian Dake
President
Wisconsin Independent Businesses

Unemployment Insurance Advisory Council

Tentative Schedule

2023-2024

January 19, 2023	Scheduled Meeting of UIAC Discuss Public Hearing Comments
February 16, 2023	Scheduled Meeting of UIAC Introduce Department Law Change Proposals
March 16, 2023	Scheduled Meeting of UIAC Discuss Department Proposals Fraud Report
April 20, 2023	Scheduled Meeting of UIAC Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
May 18, 2023	Scheduled Meeting of UIAC Discuss Department Proposals Discuss Labor & Management Proposals
June 15, 2023	Scheduled Meeting of UIAC Discuss Department Proposals Discuss Labor & Management Proposals
July 20, 2023	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
August 17, 2023	Scheduled Meeting of UIAC Review and Approval of Department Draft of Agreed Upon Bill
September 21, 2023	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
October 19, 2023	Scheduled Meeting of UIAC Final Review and Approval of LRB Draft of Agreed Upon Bill
November 16, 2023	Scheduled Meeting of UIAC Agreed Upon Bill Sent to the Legislature for Introduction UIAC Activities Report (due by January 2024)
December 2023	Tentative Meeting of UIAC
January 2024	Tentative Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2020 Legislative Session