



Unemployment Insurance Advisory Council

Meeting Agenda

April 20, 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): 2593 832 1083 Password: DWD1

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

1. Call to order and introductions
2. Approval of minutes of the January 19, 2023 UIAC meeting
3. Department update
4. Quarterly report on UI information technology systems ([10/1/22-12/31/22](#))
5. Trust Fund update – Shashank Partha
6. [2023 Fraud Report to the UI Advisory Council](#)
7. Correspondence
8. Judicial Update
 - [Khazai v. Dep't of Workforce Dev.](#)
 - [Amazon Logistics v. Lab. & Indus. Rev. Comm'n.](#)
9. Department proposals to amend the unemployment insurance law
 - D23-01 – Amend Social Security Disability Insurance Disqualification
 - D23-02 – Worker Misclassification Penalties
 - D23-03 – Discharge for use of Marijuana
 - D23-04 – Imposter Penalty
 - D23-05 – Electronic Communication and Filing
 - D23-06 – Unemployment Administration Fund

10. Legislation Update

- Various changes to the unemployment insurance law and requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits (misconduct; work registration; work search audits - [AB 147](#) / [SB 237 fiscal](#))
- Various changes to the unemployment insurance law (suitable work, work search; recovery of overpayments - [AB 149](#) / [SB 231 fiscal](#))
- Various changes to the unemployment insurance law, federal Reemployment Services and Eligibility Assessment grants, and granting rule-making authority (reemployment assistance; work search; drug testing; RESEA grants – [AB 150](#) / [SB 232 fiscal](#))
- Various changes to the unemployment insurance law and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes (identity proofing; educational materials; assistance call center; database comparisons; transfer of employees to DWD - [AB 152](#) / [SB 235 fiscal](#))
- The amount of benefits received under the unemployment insurance law ([AB 153](#) / [SB 233 fiscal](#))

11. Rulemaking Update

- Wis. Admin. Code DWD § 113.03(3) correction
- Proposed scope statement for UI hearings - DWD 140

12. Labor and Management proposals to amend the unemployment insurance law

13. Research requests

14. 2023-2024 UIAC timeline

15. Future meeting dates: May 18, June 15, July 20, Aug. 17, Sept. 21, Oct. 19

16. 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 members may attend the meeting by teleconference or videoconference.
- ❖ 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

January 19, 2023
Held Via Teleconference

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

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

Department Staff: Amy Pechacek (DWD Secretary-Designee), Jim Chiolino, Jim Moe, Andy Rubsam, Jason Schunk, Shashank Partha, Linda Hendrickson, Jeff Laesch, Kinen Fleming, Robert Usarek, Mike Myszewski, Mary Jan Rosenak, Jennifer Wakerhauser (Chief Legal Counsel), Caitlin Madden, Arielle Exner, Cara Connors, Michael Mosher, Dennis Winters, and Joe Brockman

Members of the Public: Victor Forberger (Attorney, Wisconsin UI Clinic), Brenda Lewison, and Keri Ware

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:09 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

Secretary Designee Pechacek then addressed the Council. Secretary Designee Pechacek thanked the Council members for their service. Secretary Designee Pechacek stated that in 2022, unemployment hit a record low of 2.8% and there was record high employment. There were record low weekly UI claims. In 2022, there were also a record number of youth apprentices. There are two job openings for every job applicant.

Secretary Designee Pechacek stated there are worker quantity challenges. The job market is challenged by low birth rates and the retirements of Baby Boomers. Secretary Designee Pechacek stated that the state received a grant for overcoming barriers to reentering the job market.

Secretary Designee Pechacek stated that the mainframe modernization effort continues, and that it is being paid for through federal funding. She described the features of the new system and described the modernized UI Call Centers.

2. Wisconsin Workforce

Mr. Dennis Winters, the Chief Economist for DWD, gave a presentation on the Wisconsin workforce. Mr. Winters used PowerPoint and displayed slides on current employment, seasonally adjusted employment, UI claims, unemployment statistics, and the labor quantity challenge the state faces.

Mr. Winters discussed the Great Recession and the Covid-19 Pandemic. Mr. Winters stated that the period between the end of the Great Recession and the beginning of the Covid-19 Pandemic was the longest economic expansion in U.S. history. Mr. Winters stated that for the last 10 to 12 years, the workforce line has been flat. Initial UI rates are at historic lows, and continued UI claims are also at historic lows. Mr. Winters stated that lots of people are working, and wages are good.

Mr. Winters stated that, even though Wisconsin's population is growing, the number of people in the workforce has remained flat. The number of people in the workforce may begin to decrease by 2035. Mr. Winters stated that employers in Wisconsin need to increase productivity to make up for a flat or decreasing workforce.

Ms. Thornton-Bias asked how much productivity has to do with maintaining prosperity.

Mr. Winters stated that as long as productivity increases, prosperity can be maintained. Mr. Winters stated that DWD helps to increase skills and training through its programs. Mr. Winters stated that because there will not be enough workers in the future, customer service levels at businesses may drop and customers may be on their own for service.

Mr. Manley asked if the young male cohort has dropped out the job market.

Mr. Winters stated not to a great extent. The 16-19 age cohort labor force participation rate is greater than the national rate.

Mr. Winters stated that there has been a drop in the number of people working two jobs or part time jobs. Mr. Winters stated that full time jobs are paying better and there is no need for a second or part time job.

3. Department Update

Mr. Chiolino stated that the Department has issued 1099-Gs for claimants.

Mr. Chiolino stated that both adjudication and appeals are meeting USDOL performance standards. The Department is exceeding USDOL goals for case aging of appeals (60% of appeals decided within 30 days, and 80% of appeals decided within 45 days). The low average age of pending appeals is near the top nationally. Mr. Chiolino stated that 35,400 appeals were disposed of in 2022.

Mr. Chiolino stated that between July and December of 2022, 90.5% of adjudication interviews were scheduled within 7 to 10 days. This ranks Wisconsin fifth among the states. Mr. Chiolino stated that the department paid 87.2% of claims on a timely basis.

4. Quarterly Report on UI Information Technology Systems (7/1/22 – 9/30/22)

Ms. Knutson stated that the quarterly report can be found in members' packets. Ms. Knutson stated that another report will be available at the next Council meeting.

5. Trust Fund Update

Mr. Partha stated that UI benefits paid are down \$231 million, or 46%, from last year. Tax receipts are down by 2.7% from last year. The UI Trust Fund balance increased by 25% to \$1.273 billion. There was a slight decrease in interest from last year. Tax Schedule D has been in effect for the past two years.

Mr. Partha stated that the full report is included in members' packets.

6. Public Records and Open Meetings Training

Jennifer Wakerhauser, DWD Chief Legal Counsel, presented annual training on open meetings and open records to members of the Council. A copy of Ms. Wakerhauser's PowerPoint is included in members' packets. A link was also included to the Wisconsin Department of Justice Office of Open Government training site.

7. Approval of Minutes

Motion by Mr. Gotzler, second by Mr. Griesbach, to approve the minutes of the September 15, 2022, meeting. The vote was taken by roll call and passed unanimously.

8. Judicial Update

Mr. Rubsam stated that the three court of appeals decisions are included in members' packets.

Neisler v. Lab. Indus. Rev. Comm'n

Mr. Rubsam stated that this was an appeal of a benefits case. The appellant, who was incarcerated, was not available for work and received benefits. The appellant appealed the LIRC decision that required him to repay the benefits he received. The court of appeals affirmed LIRC. There will be no further litigation in this case. This is an unpublished case.

Legacy Assurance Plan of Am., v. Lab. & Indus. Rev. Comm'n

Mr. Rubsam stated that this was a tax case. The employer appealed a LIRC decision that found a sales representative to be an employee and not an independent contractor. The court of appeals affirmed LIRC and found that the worker was not free of the employer's direction and control and met only three of the nine required factors to be an independently established business. The decision is final and there will be no further litigation. This is an unpublished case.

Catholic Charities Bureau, Inc. v. Lab & Indus. Rev. Comm'n

Mr. Rubsam stated that this was a tax case and was published. The case involved five corporate entities that claimed they operated for religious purposes. LIRC found that the five businesses

did not operate for primarily religious purposes. The court of appeals affirmed LIRC and found that the five entities did not operate for primarily religious purposes. The Catholic Charities Bureau has filed a petition for review with the Wisconsin Supreme Court.

9. Unemployment Insurance Public Hearing Summary

Ms. Knutson stated that the Public Hearing was held by WebEx on November 17, 2022, in afternoon and evening sessions. An email box was available for comments. Comments could also be sent by US mail.

Ms. Knutson stated that 40 people attended the WebEx meeting. Ms. Knutson stated that a summary of attendees' comments can be found in members' packets.

Mr. Gotzler asked if there were common themes.

Ms. Knutson stated common themes included UI benefit increases, the decrease of the duration of benefits, what constitutes a valid work search, and benefits for migrant workers.

10. Labor and Management Proposals to Amend the UI Law

Ms. Knutson stated that this item was placed on the agenda as an opportunity for Labor and Management to caucus to discuss their proposals

11. Research Requests

Ms. Knutson stated there were no outstanding research requests.

Ms. Thornton-Bias asked if there were any tools developed by the Department to measure user satisfaction

Mr. Schunk responded that he was not aware of any surveys.

Ms. Thornton-Bias stated that the Department needs to know what users think about the changes it has made.

Mr. Chiolino responded that the Department has done surveys in the past, including focus groups.

12. 2023-2024 UIAC Timeline

Ms. Knutson stated that a copy of the UIAC timeline can be found on Page 168 of members' packets. Ms. Knutson stated that Department's law change proposals will be introduced at the February 16 meeting. Ms. Knutson stated the goal of the process will be to have the agreed upon bill completed by late summer or early fall.

13. Future Meeting Dates

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

February 16, 2023

March 16, 2023

April 20, 2023

May 18, 2023

June 15, 2023

14. Adjourn

Mr. Griesbach moved that Labor and Management go into closed caucus session to deliberate any of the items on the agenda and adjourn from closed caucus. The motion was seconded by Mr. Manley. The vote was taken by roll call and passed unanimously.

The public portion of the meeting closed at 11:26 am. Management and Labor went into closed caucus session and adjourned from caucus.



State of Wisconsin

Date: January 30, 2023

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

From: Department of Administration Secretary-designee Kathy Blumenfeld

Handwritten signature of Kathy Blumenfeld in cursive.

Department of Workforce Development Secretary-designee Amy Pechacek

Handwritten signature of Amy Pechacek in cursive, enclosed in a rectangular box.

Subject: 2021 Wisconsin Act 4 Quarterly Report – Fourth 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 October 1 through December 31, 2022. We are pleased to share in this report that DWD has continued to make good progress in its UI modernization efforts.

Unemployment Insurance System Modernization

The 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 adapt 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, adaptable system to meet 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. The department is working with Flexion to:

- Establish a cloud-based infrastructure that is modern, secure, and flexible enough to meet the changing demands.
- Transfer claims processing 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 UI programs, while allowing the current UI system to continue to operate.

Throughout the first phase of this project, DWD has prioritized eliminating manual processes, including the determination of whether a claimant meets the criteria for benefits, the amount of benefits, and the charging associated with benefits. This provides the foundation for future phases.

During this reporting period, development focused on the Benefit Estimator, the benefit calculation engine foundation, and system infrastructure.

Benefit Estimator

User feedback is a core principle DWD adopted for the modernization effort. By consulting users throughout the development process, the goal is to address any issues as quickly as possible.

Quarter 4 included obtaining staff feedback on the Benefit Estimator that was implemented at the end of Quarter 3.

A small group of staff used and tested the Benefit Estimator. Their experience and feedback resulted in updates to the Benefit Estimator screens to make them as intuitive and efficient as possible.

In addition to refining the user display, testing continued to ensure the accuracy of the Benefit Estimator. The testing involved comparing results from the legacy system with calculations by the Benefit Estimator. This method of testing ensures that the calculations are accurate, reliable, and duplicable.

Benefit Calculation Engine Foundation

The Benefit Estimator uses some key claimant information to estimate the claimant's benefit amount. These calculations are the foundation for performing all the calculations to obtain a complete and accurate benefit amount.

In Quarter 4, DWD continued building the calculation engine, including identifying a method for using the needed data from the legacy system to perform the unemployment calculation and establishing the framework to automatically assign the claim liability to the correct employer. The initial calculation work included determining the wages that will be used in the calculation, determining the initial weekly benefit rate and the maximum benefit amount, and identifying the UI base period.

Work on the benefit calculation engine will continue over the coming quarters by adding increasing complexity to these types of calculations.

Infrastructure

The work during Q4 focused on implementing and planning the infrastructure to improve the overall security of the applications in the new system. DWD contracted for a third-party security review of its utilization of the cloud platform to identify risks and industry best practices. No critical issues were identified and DWD implemented recommendations. DWD also worked on:

- Planning and initial prototyping of some recommended cloud infrastructure enhancements.
- Identifying a process for securely moving data needed for the new benefit calculation engine.
- Making foundational improvements to the infrastructure so, as development continues in the Benefit Estimator, the applications can be implemented quickly and efficiently and tested to ensure confidence.

Significant work remains to build out the cloud environment. This work is critical to establish a secure and efficient cloud environment to support the applications developed. A secure and reliable cloud environment is a required major step in the path to leave the legacy main frame application.

Future efforts will build on the success of the estimation screen to include more and more complex benefit calculations as well as steps to ensure benefits are charged to the appropriate employers. Work will continue to focus on these calculations. DWD will continue to build upon the core

functionality of the benefit calculation engines. This functionality will continue to be built to provide flexible, real-time services to DWD customers. This will be done by reducing manual processing, reducing training time by using current technology, and improving 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 April 2023. In the meantime, please do not hesitate to contact us with questions.

UI Reserve Fund Highlights

April 20, 2023

- Benefit payments through March 2023 increased by \$3.7 million or 3.2% when compared to benefits paid through March 2022.

Benefits Paid	2023 YTD* <i>(in millions)</i>	2022 YTD* <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Total Regular UI Paid	\$119.5	\$115.8	\$3.7	3.2%

- Tax receipts through March 2023 declined by \$6.7 million or 12.3% when compared to tax receipts through March 2022. Since both tax years were rated in Schedule D, any change reflects the improvement of individual employers' tax rates.

Tax Receipts	2023 YTD* <i>(in millions)</i>	2022 YTD* <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Total Tax Receipts	\$47.7	\$54.4	(\$6.7)	(12.3%)

- The March 2023 Trust Fund ending balance was over \$1.2 billion, an increase of 26.3% when compared to the same time last year. A balance of \$1.2 billion on June 30 will mean that Schedule D will continue for next year.

UI Trust Fund Balance	March 2023 <i>(in millions)</i>	March 2022 <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Trust Fund Balance	\$1,210.1	\$958.1	\$252.0	26.3%

- Interest earned on the Trust Fund is received quarterly. Interest for the first quarter of 2023 was \$5.9 million compared to \$4.4 million for the same period last year.

UI Trust Fund Interest	2023 YTD* <i>(in millions)</i>	2022 YTD* <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Total Interest Earned	\$5.9	\$4.4	\$1.5	34.1%

*All calendar year-to-date (YTD) numbers are based on the March 31, 2023, Financial Statements.

FINANCIAL STATEMENTS

For the Month Ended March 31, 2023



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED March 31, 2023

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
CASH:		
U.I. CONTRIBUTION ACCOUNT	(403,823.80)	(441,396.94)
U.I. BENEFIT ACCOUNTS	(216,113.51)	(378,241.48)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,281,402,849.70</u>	<u>1,068,337,843.97</u>
TOTAL CASH	<u>1,280,782,912.39</u>	<u>1,067,518,205.55</u>
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	201,322,200.95	201,526,689.58
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(58,557,960.23)</u>	<u>(40,792,028.36)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	142,764,240.72	160,734,661.22
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	31,976,528.21	32,701,796.70
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(15,359,799.00)</u>	<u>(14,597,752.52)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	16,616,729.21	18,104,044.18
OTHER EMPLOYER RECEIVABLES	22,093,701.87	22,486,809.86
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(7,675,756.20)</u>	<u>(7,623,998.00)</u>
NET OTHER EMPLOYER RECEIVABLES	14,417,945.67	14,862,811.86
TOTAL ACCOUNTS RECEIVABLE	<u>173,798,915.60</u>	<u>193,701,517.26</u>
TOTAL ASSETS	<u><u>1,454,581,827.99</u></u>	<u><u>1,261,219,722.81</u></u>
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	115,704,270.69	131,560,153.80
OTHER LIABILITIES	47,123,224.41	77,039,442.63
FEDERAL BENEFIT PROGRAMS	766,277.38	409,811.78
CHILD SUPPORT HOLDING ACCOUNT	15,449.00	18,220.00
FEDERAL WITHHOLDING TAXES DUE	32,351.00	65,634.00
STATE WITHHOLDING TAXES DUE	2,825,039.54	3,432,322.27
DUE TO OTHER GOVERNMENTS (8)	<u>1,313,890.50</u>	<u>753,938.84</u>
TOTAL LIABILITIES	167,780,502.52	213,279,523.32
EQUITY:		
RESERVE FUND BALANCE	2,637,799,407.79	2,534,581,138.98
BALANCING ACCOUNT	<u>(1,350,998,082.32)</u>	<u>(1,486,640,939.49)</u>
TOTAL EQUITY	<u>1,286,801,325.47</u>	<u>1,047,940,199.49</u>
TOTAL LIABILITIES AND EQUITY	<u><u>1,454,581,827.99</u></u>	<u><u>1,261,219,722.81</u></u>

1. \$9,494,534 of this balance is for administration purposes and is not available to pay benefits.
2. \$1,272,997 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$11,585,018 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 \$0. Deferrals for the prior year were \$0.
6. \$15,674,457, or 49.0%, of this balance is estimated.
7. \$93,753,150 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$21,951,121 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.
8. This balance includes SAFI Payable of \$2,907. The 03/31/2023 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$72,471. 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 March 31, 2023

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	3,116,462,189.52	3,152,504,720.62	3,025,371,200.23
BALANCING ACCOUNT	<u>(1,803,129,859.28)</u>	<u>(1,792,807,841.51)</u>	<u>(1,920,053,262.30)</u>
TOTAL BALANCE	1,313,332,330.24	1,359,696,879.11	1,105,317,937.93
INCREASES:			
TAX RECEIPTS/RFB PAID	1,451,888.74	34,258,288.21	39,301,896.90
ACCRUED REVENUES	675,282.61	1,679,624.75	2,370,058.60
SOLVENCY PAID	393,652.80	13,427,121.01	15,092,755.12
FORFEITURES	0.00	0.00	286.00
BENEFIT CONCEALMENT INCOME	572,145.95	893,448.64	566,125.93
INTEREST EARNED ON TRUST FUND	5,855,606.03	5,855,606.03	4,430,818.37
FUTA TAX CREDITS	0.00	0.00	147.00
OTHER CHANGES	<u>57,009.08</u>	<u>200,860.22</u>	<u>(143,376.58)</u>
TOTAL INCREASES	9,005,585.21	56,314,948.86	61,618,711.34
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	29,760,537.07	99,478,618.88	80,386,980.62
QUIT NONCHARGE BENEFITS	3,976,266.03	13,975,944.44	6,392,565.71
OTHER DECREASES	(59,178.62)	9,884,363.35	3,290,297.17
OTHER NONCHARGE BENEFITS	<u>1,858,965.50</u>	<u>5,871,575.83</u>	<u>28,926,606.28</u>
TOTAL DECREASES	35,536,589.98	129,210,502.50	118,996,449.78
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,637,799,407.79	2,637,799,407.79	2,534,581,138.98
BALANCING ACCOUNT	<u>(1,350,998,082.32)</u>	<u>(1,350,998,082.32)</u>	<u>(1,486,640,939.49)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,286,801,325.47</u></u>	<u><u>1,286,801,325.47</u></u>	<u><u>1,047,940,199.49</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,231,174,420 because of non-cash accrual items.

10. \$9,494,534 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. \$1,272,997 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$11,585,018 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 03/31/2023**

RECEIPTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	\$1,451,888.74	\$34,258,288.21	\$39,301,896.90
SOLVENCY	393,652.80	13,427,121.01	15,092,755.12
ADMINISTRATIVE FEE	59.83	113.03	89.24
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	8,792.50	341,588.60	370,875.12
UNUSED CREDITS	(17,815.91)	930,545.03	(2,547,847.56)
GOVERNMENTAL UNITS	763,392.55	2,410,885.19	2,651,009.78
NONPROFITS	656,723.52	2,063,208.92	2,739,171.98
INTERSTATE CLAIMS (CWC)	161,368.24	766,389.97	696,138.31
ERROR SUSPENSE	(4,556.62)	14,460.06	3,897.01
FEDERAL PROGRAMS RECEIPTS	(3,230,362.22)	(7,383,116.44)	23,384,409.34
OVERPAYMENT COLLECTIONS	6,494,956.71	11,604,746.07	13,238,295.01
FORFEITURES	0.00	0.00	286.00
BENEFIT CONCEALMENT INCOME	572,145.95	893,448.64	566,125.93
EMPLOYER REFUNDS	(1,856,474.60)	(5,069,315.23)	(69,145,543.02)
COURT COSTS	96,878.40	199,143.07	103,579.28
INTEREST & PENALTY	276,567.40	735,607.44	690,427.51
CARD PAYMENT SERVICE FEE	2,253.42	7,335.87	6,773.92
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	906,014.51	1,341,186.11	824,788.98
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	2,900.00	10,200.00	0.00
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	1,044.92	6,455.29	1,992.72
SPECIAL ASSESSMENT FOR INTEREST	1,889.71	2,907.11	3,072.31
LOST WAGES ASSISTANCE (LWA) ADMIN	0.00	0.00	29,188.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	5,855,606.03	5,855,606.03	4,430,818.37
MISCELLANEOUS	28,296.24	71,399.04	20,911.47
TOTAL RECEIPTS	\$12,565,222.12	\$62,488,203.02	\$32,463,111.72
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	\$34,444,399.08	\$109,164,464.56	\$93,119,690.96
NONPROFIT CLAIMANTS	509,362.05	1,693,735.67	369,328.03
GOVERNMENTAL CLAIMANTS	651,196.11	2,231,878.30	(371,490.09)
INTERSTATE CLAIMS (CWC)	401,307.37	1,252,083.31	1,029,576.94
QUITS	3,976,266.03	13,975,944.44	6,392,565.71
OTHER NON-CHARGE BENEFITS	1,767,367.83	5,888,168.48	(38,685,370.21)
CLOSED EMPLOYERS	(3,271.04)	(1,320.06)	1,813.57
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	137,146.76	447,863.36	576,412.84
EX-MILITARY (UCX)	8,393.31	61,300.22	126,820.38
TRADE ALLOWANCE (TRA/TRA-NAFTA)	60,096.00	183,299.00	449,486.86
WORK-SHARE (STC)	(606,359.28)	(2,476,394.91)	974,943.73
FEDERAL PANDEMIC UC (FPUC)	(1,743,002.73)	(3,211,097.34)	6,681,838.03
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	(98,004.04)	(229,578.64)	3,518,599.58
MIXED EARNERS UC (MEUC)	1,100.00	1,100.00	25,100.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	(399,261.39)	(536,732.00)	2,429,209.47
PANDEMIC EMERGENCY UC (PEUC)	(525,227.30)	(903,610.34)	5,253,553.20
PANDEMIC FIRST WEEK (PFW)	12,041.57	84,237.26	717,520.53
EMER UC RELIEF REIMB EMPL (EUR)	(57,483.49)	(23,626.32)	2,204,085.62
2003 TEMPORARY EMERGENCY UI (TEUC)	(4,020.51)	(6,526.83)	(4,525.20)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(26,417.49)	(45,542.86)	(49,488.15)
FEDERAL EMERGENCY UI (EUC)	(175,815.57)	(339,741.11)	(423,278.01)
FEDERAL EXTENDED BENEFITS (EB)	(13,546.10)	(24,633.81)	(232.16)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	0.00	0.00	0.00
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	0.00	0.00	(147.52)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(2,068.35)	(2,090.41)	1,885.16
INTEREST & PENALTY	173,367.22	706,113.00	888,037.59
CARD PAYMENT SERVICE FEE TRANSFER	2,005.63	7,128.12	6,405.07
PROGRAM INTEGRITY	226,479.94	975,175.12	613,400.26
SPECIAL ASSESSMENT FOR INTEREST	0.00	4,693.66	3,960.65
COURT COSTS	51,194.13	152,982.90	69,450.04
ADMINISTRATIVE FEE TRANSFER	16.86	113.81	78.90
LOST WAGES ASSISTANCE (LWA) ADMIN TRANSFER	0.00	0.00	29,188.00
FEDERAL WITHHOLDING	163,876.00	(32,036.82)	8,776.00
STATE WITHHOLDING	(859,939.00)	(1,358,565.98)	(500,240.79)
REED ACT & ARRA SPECIAL ADMIN EXPENDITURES	0.00	0.00	1,021,900.43
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	9,704,822.76	0.00
FEDERAL LOAN REPAYMENTS	0.00	0.00	(147.00)
TOTAL DISBURSEMENTS	\$38,071,199.60	\$137,343,606.54	\$86,478,708.42
NET INCREASE(DECREASE)	(25,505,977.48)	(74,855,403.52)	(54,015,596.70)
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,306,288,889.87	\$1,355,638,315.91	\$1,121,533,802.25
BALANCE AT END OF MONTH/YEAR	\$1,280,782,912.39	\$1,280,782,912.39	\$1,067,518,205.55

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED March 31, 2023

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,256,509,276.04	\$1,303,839,732.39	\$1,048,002,601.08
INCREASES:			
TAX RECEIPTS/RFB PAID	1,451,888.74	34,258,288.21	39,301,896.90
U.I. PAYMENTS CREDITED TO SURPLUS	2,894,239.35	16,431,296.05	16,008,111.38
INTEREST EARNED ON TRUST FUND	5,855,606.03	5,855,606.03	4,430,818.37
FUTA TAX CREDITS	0.00	0.00	147.00
TOTAL INCREASE IN CASH	<u>10,201,734.12</u>	<u>56,545,190.29</u>	<u>59,740,973.65</u>
TOTAL CASH AVAILABLE	<u>1,266,711,010.16</u>	<u>1,360,384,922.68</u>	<u>1,107,743,574.73</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	29,760,537.07	99,478,618.88	80,386,980.62
BENEFITS CHARGED TO SURPLUS	5,833,536.40	20,050,687.18	35,383,483.11
TOTAL BENEFITS PAID DURING PERIOD	<u>35,594,073.47</u>	<u>119,529,306.06</u>	<u>115,770,463.73</u>
REED ACT EXPENDITURES	0.00	0.00	1,021,900.43
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	9,704,822.76	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	(57,483.49)	(23,626.32)	2,204,085.62
ENDING U.I. CASH BALANCE (13) (14) (15) (16)	<u><u>1,231,174,420.18</u></u>	<u><u>1,231,174,420.18</u></u>	<u><u>988,747,124.95</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. \$9,209,949 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.

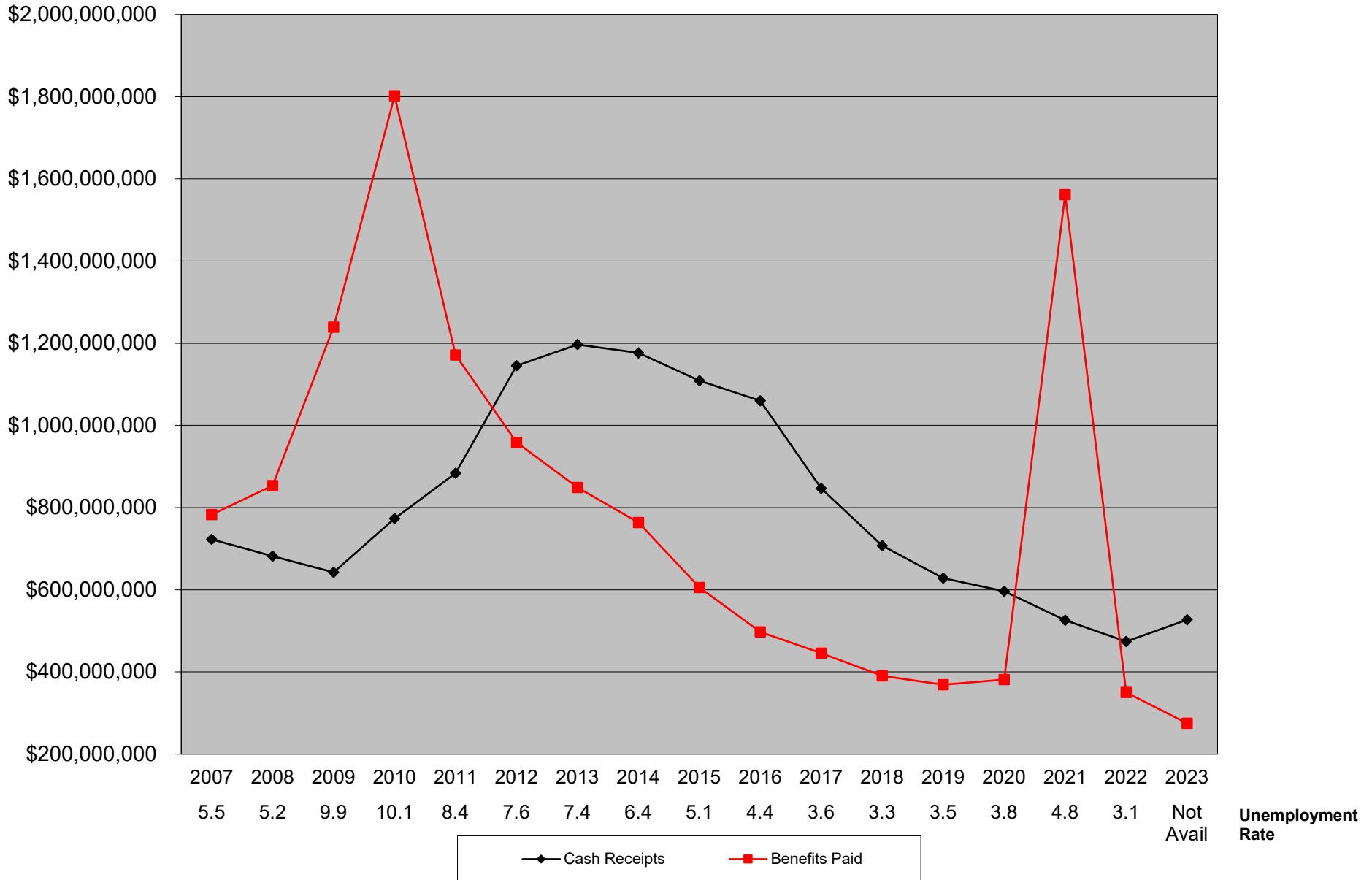
15. \$1,272,997 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

16. \$11,585,018 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.

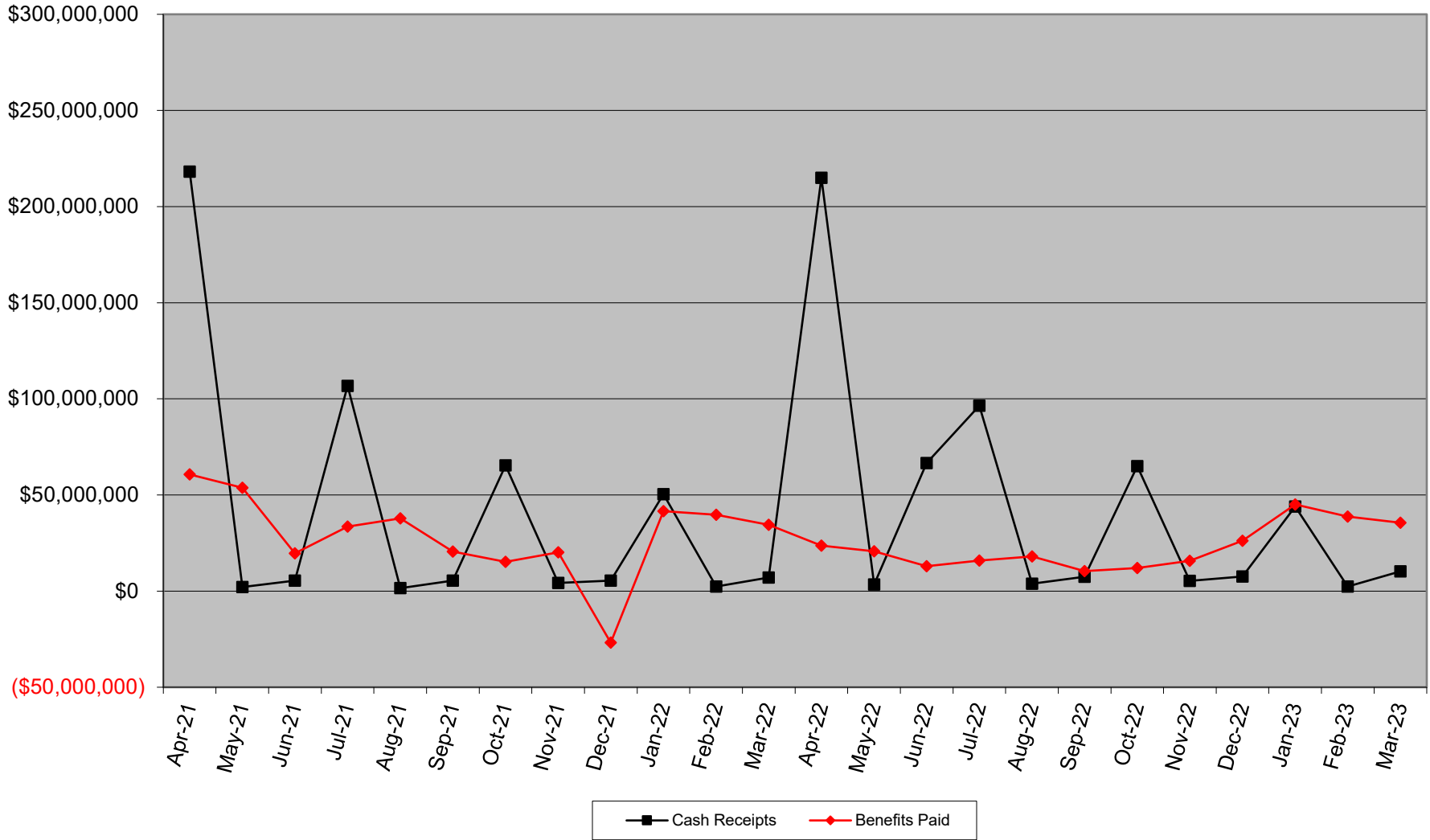
BUREAU OF TAX AND ACCOUNTING
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED March 31, 2023

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$1,409,608,743.78)	(\$1,399,163,452.19)	(\$1,527,719,203.28)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	393,652.80	13,427,121.01	15,092,755.12
FORFEITURES	0.00	0.00	286.00
OTHER INCREASES	2,500,586.55	3,004,175.04	915,070.26
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	<u>2,894,239.35</u>	<u>16,431,296.05</u>	<u>16,008,111.38</u>
TRANSFERS BETWEEN SURPLUS ACCTS	9,963.70	(16,553.88)	55,581.66
INTEREST EARNED ON TRUST FUND	5,855,606.03	5,855,606.03	4,430,818.37
FUTA TAX CREDITS	0.00	0.00	147.00
TOTAL INCREASES	<u>8,759,809.08</u>	<u>22,270,348.20</u>	<u>20,494,658.41</u>
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	3,976,266.03	13,975,944.44	6,392,565.71
OTHER NON-CHARGE BENEFITS	1,857,270.37	6,074,742.74	28,990,917.40
BENEFITS CHARGED TO SURPLUS SUBTOTAL	<u>5,833,536.40</u>	<u>20,050,687.18</u>	<u>35,383,483.11</u>
REED ACT EXPENDITURES	0.00	0.00	1,021,900.43
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	9,704,822.76	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	(57,483.49)	(23,626.32)	2,204,085.62
BALANCE AT THE END OF THE MONTH/YEAR	<u>(1,406,624,987.61)</u>	<u>(1,406,624,987.61)</u>	<u>(1,545,834,014.03)</u>

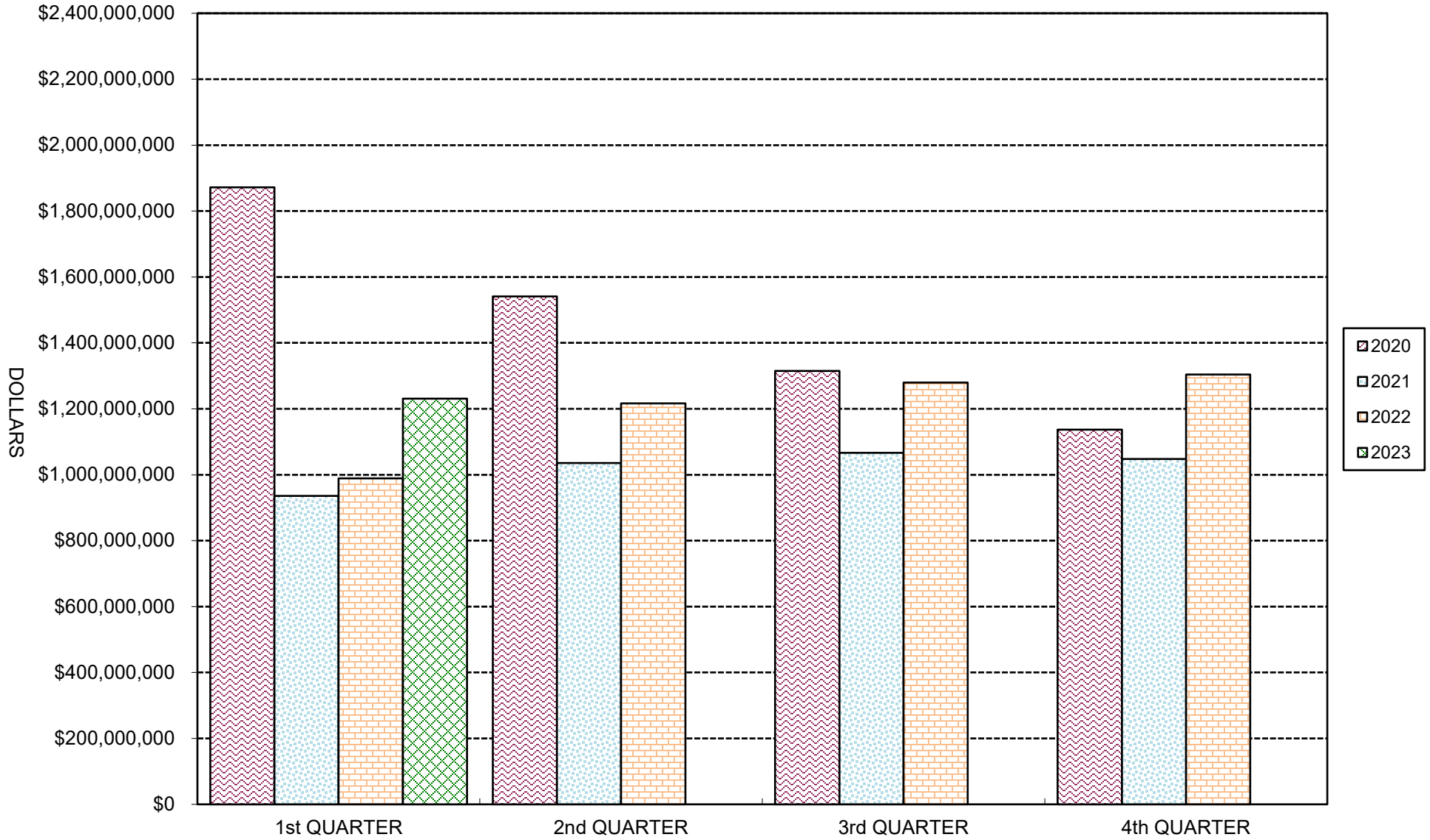
Cash Activity Related to Taxable Employers with WI Unemployment Rate (for all years from April to March)



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

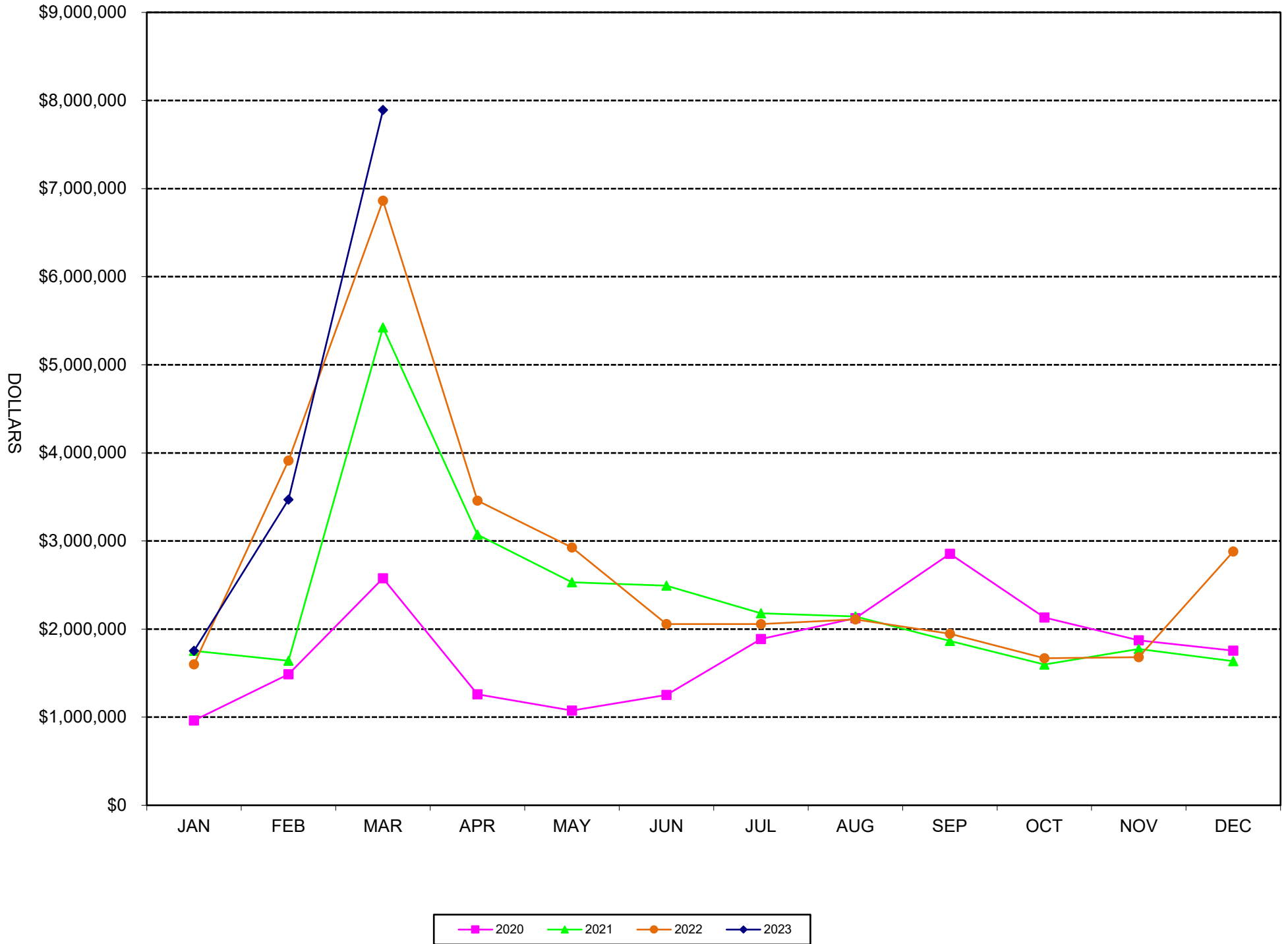


CASH BALANCE RELATED TO TAXABLE EMPLOYERS



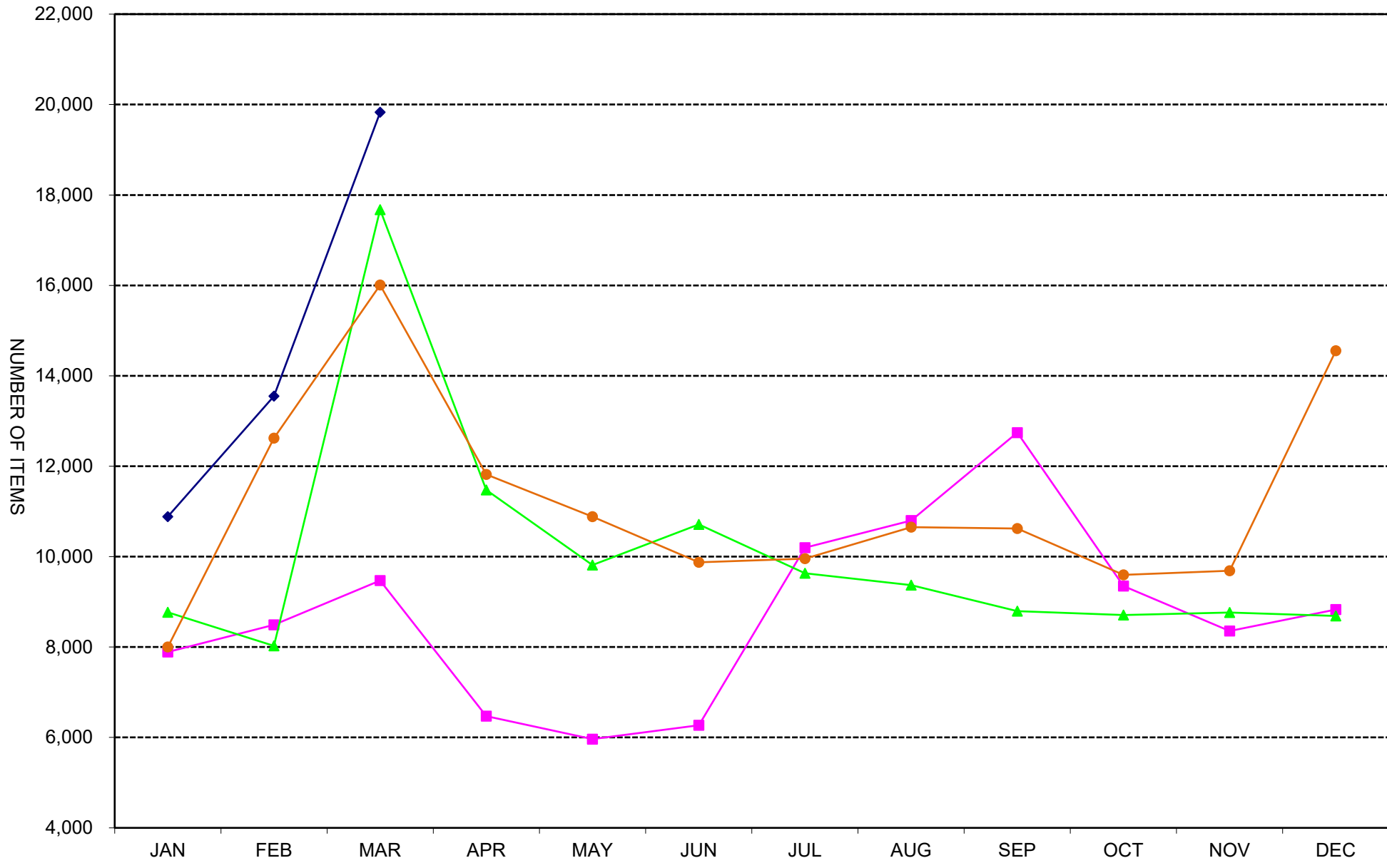
MONTHLY OVERPAYMENT CASH RECEIPTS

(by dollar amount)



MONTHLY OVERPAYMENT CASH RECEIPTS

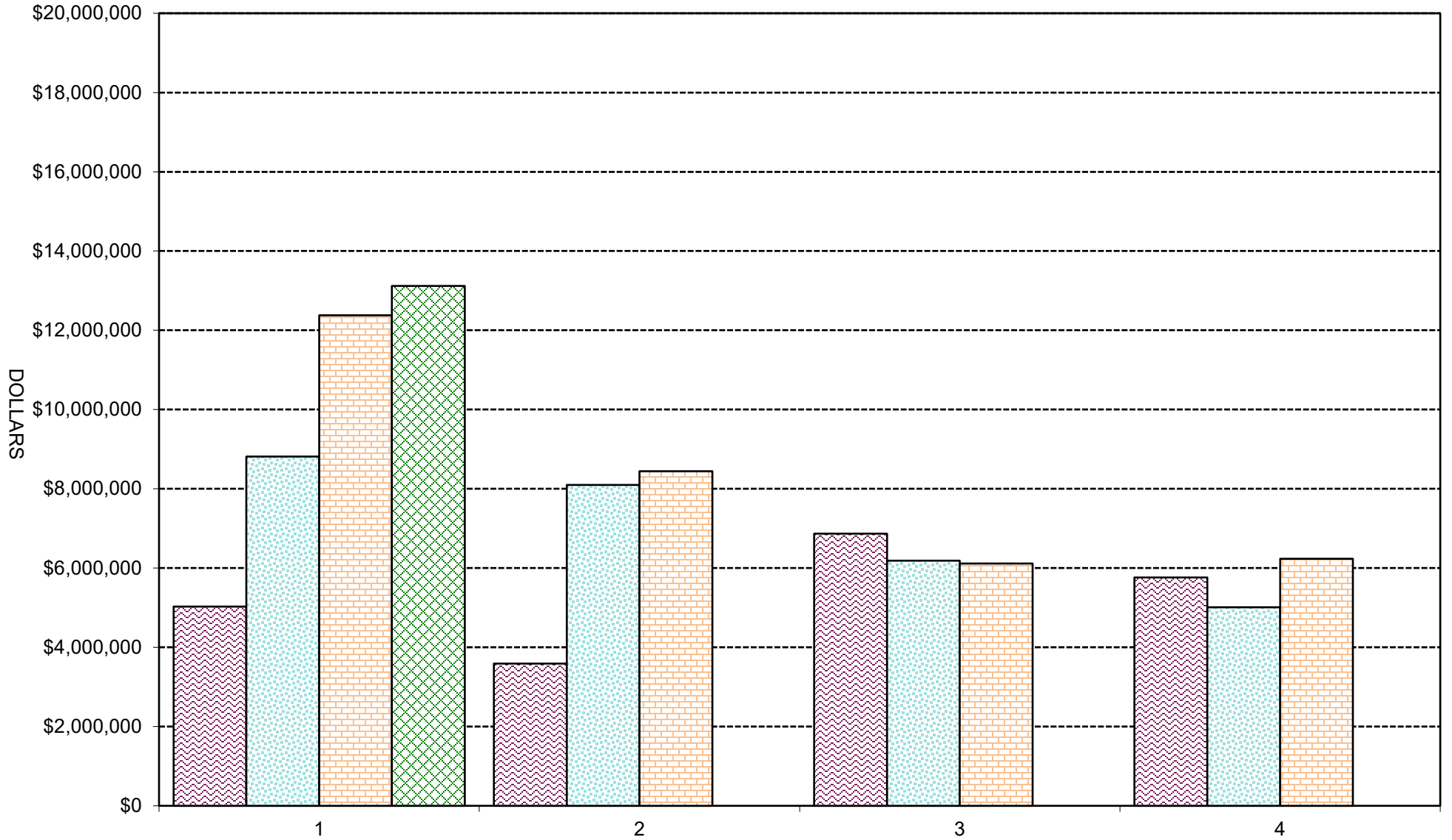
(by number of items)



■ 2020 ▲ 2021 ● 2022 ◆ 2023

QUARTERLY OVERPAYMENT CASH RECEIPTS

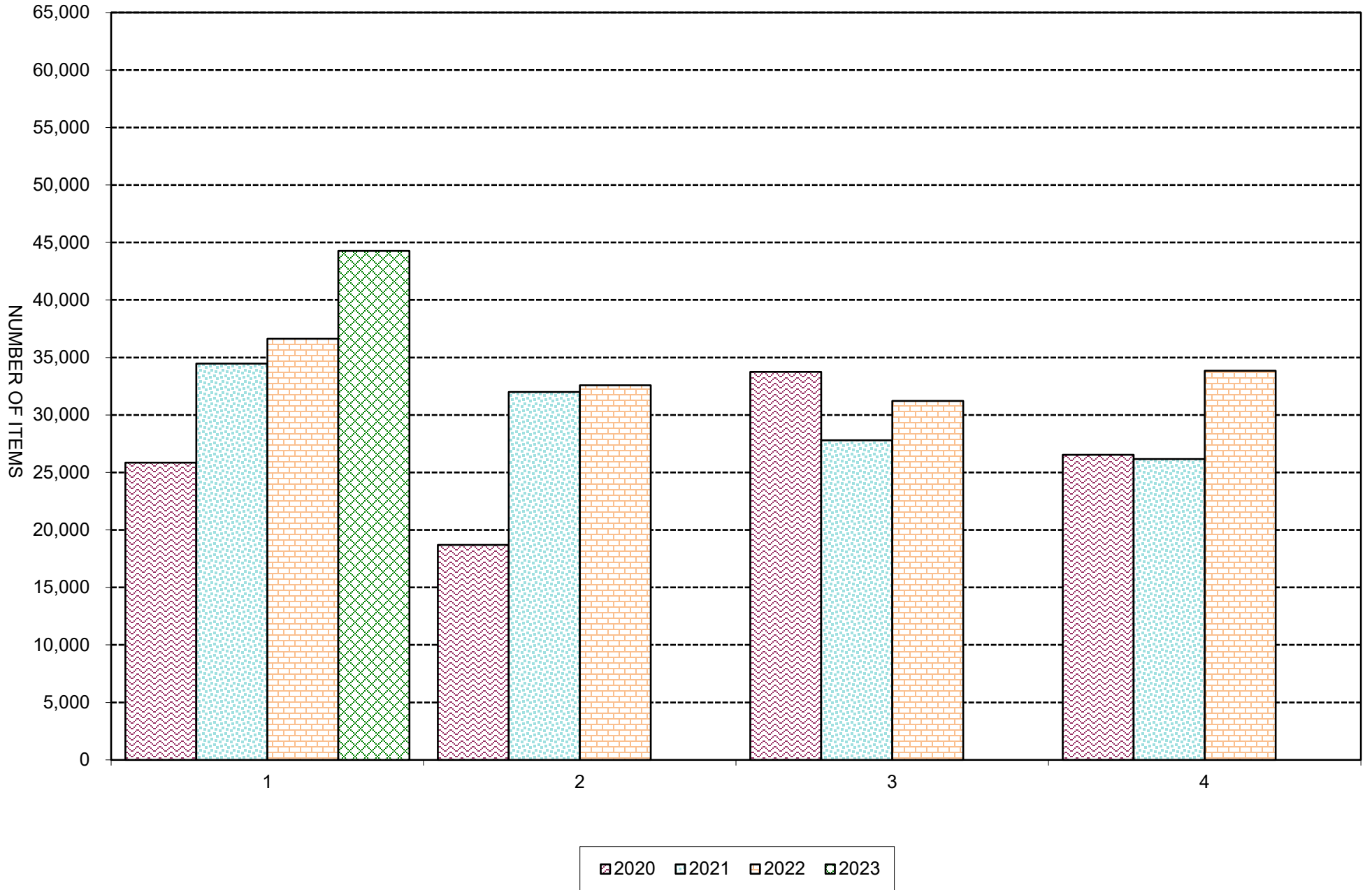
(by dollar amount)



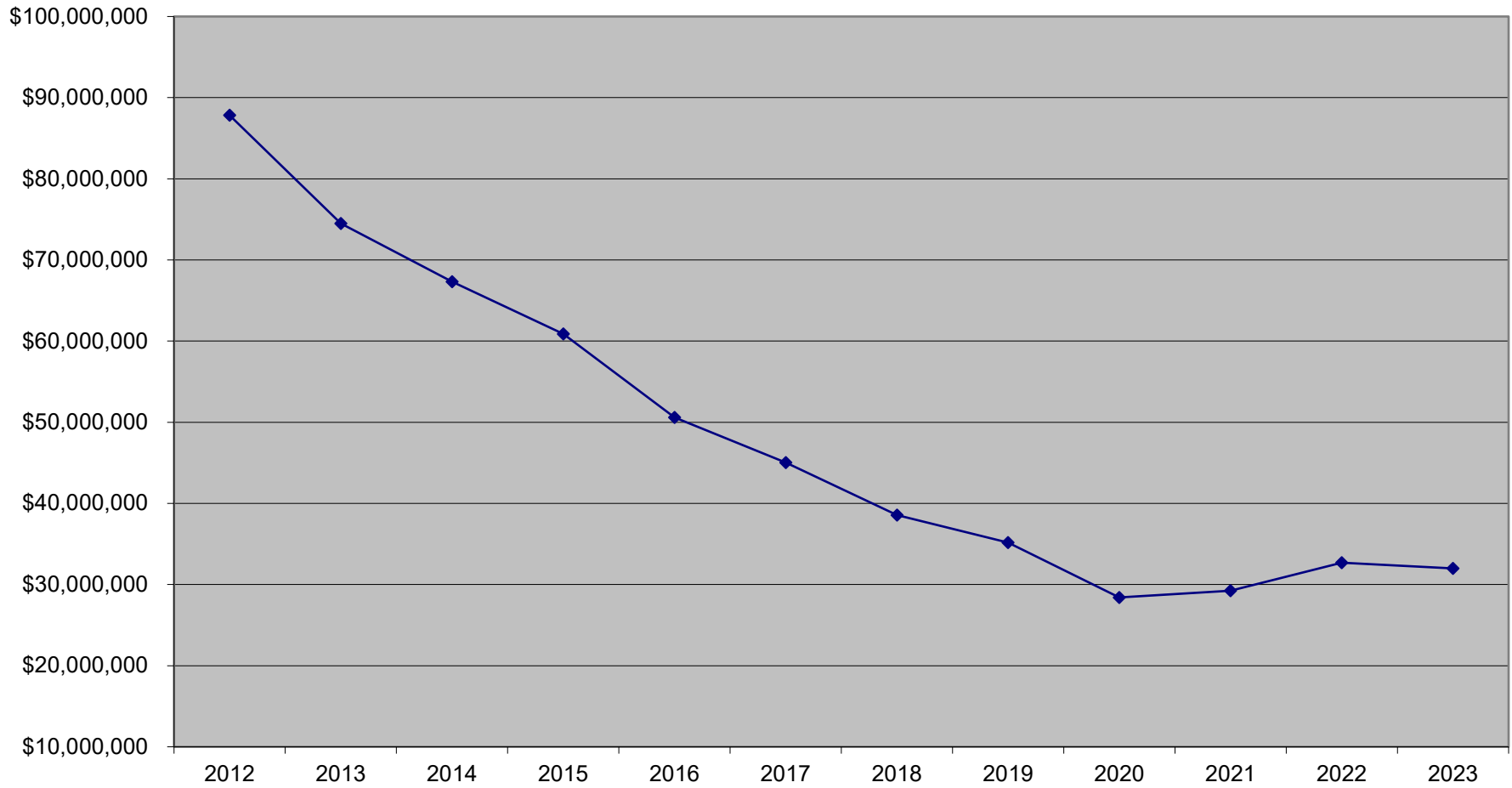
2020 2021 2022 2023

QUARTERLY OVERPAYMENT CASH RECEIPTS

(by number of items)

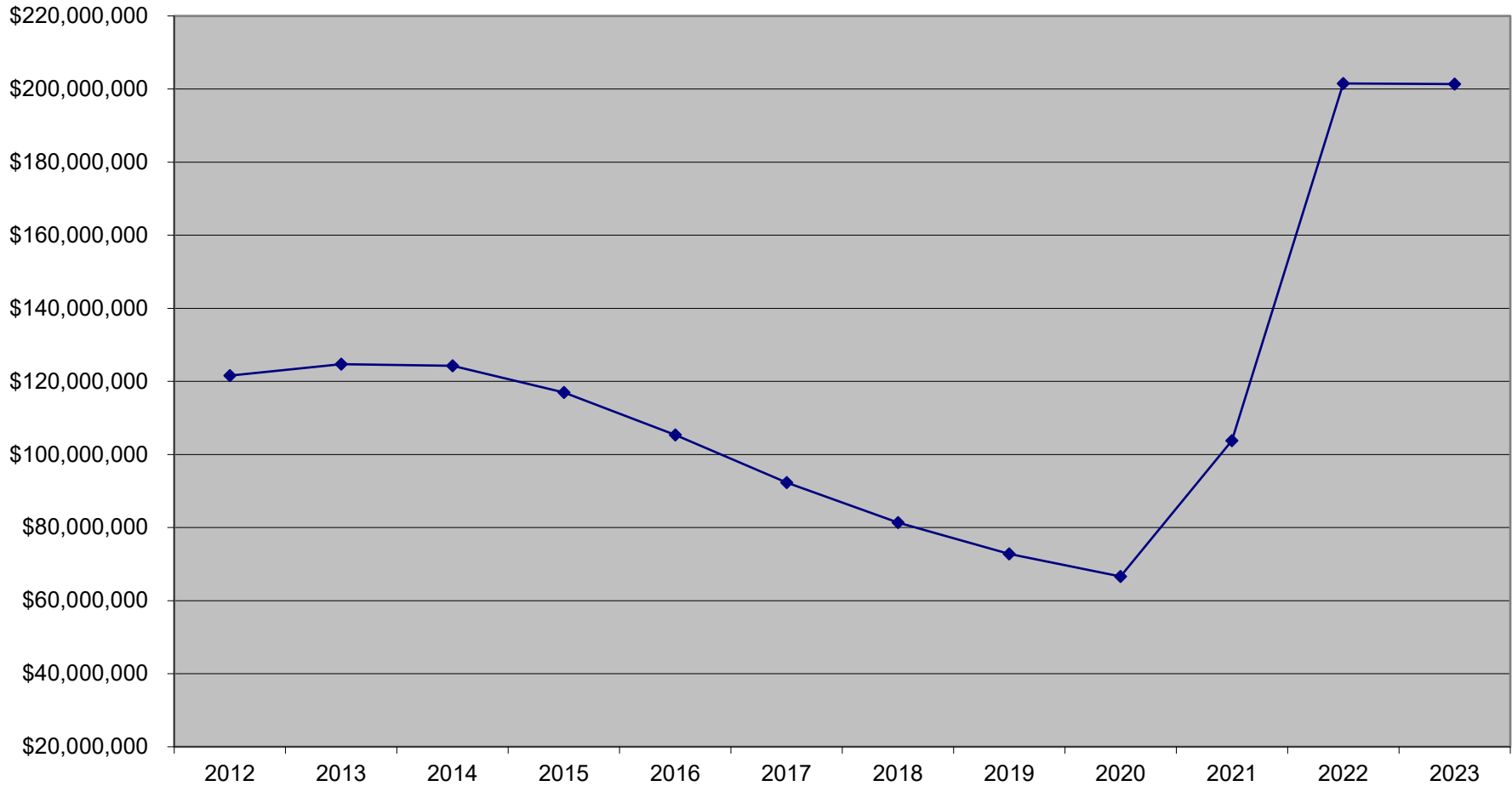


TOTAL TAXABLE EMPLOYER RFB & SOLVENCY RECEIVABLES
(for all years as of March)



Source: Monthly Balance Sheet

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



Source: Monthly Balance Sheet

STATE OF WISCONSIN



Department of Workforce Development

WISCONSIN UNEMPLOYMENT INSURANCE

2023

✓ Integrity

✓ Customer Service

✓ Accountability

FRAUD REPORT TO THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

This report is presented to the Wisconsin Unemployment Insurance Advisory Council pursuant to Wis. Stat. § 108.14(19). The report contains information relating to the detection and prosecution of unemployment insurance fraud in the preceding year.

March 15, 2023

Dear Members of the Unemployment Insurance Advisory Council:

On behalf of the Department of Workforce Development (DWD), Unemployment Insurance Division Administrator Jim Chiolino and I are pleased to present the 2023 Unemployment Insurance (UI) Fraud Report, outlining the division's activities related to detection and prosecution of unemployment insurance fraud in 2022.

In 2022, average initial unemployment claims and average weekly claims have dropped to historic lows. Wisconsin's economy set numerous records in 2022, with a record low unemployment rate of 2.8% reached in March and April, and a record high number of 3,059,000 people employed in May. December's Labor Force Participation Rate reached 64.7%, which is 2.4% higher than the national rate. Wisconsin's workforce productivity drove real gross domestic product to a record high of \$312.4 billion in the first quarter of 2022. In this record-setting year of 2022, Wisconsin paid nearly \$345 million in federal and state benefits compared to the nearly \$2.5 billion paid in 2021.

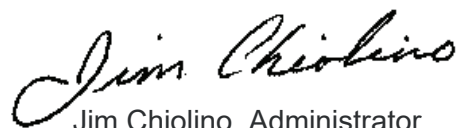
As the agency had the opportunity to look into the unprecedented payments made during the pandemic years, fraud overpayments were detected through tools such as the NASWA's Integrity Data Hub, which UI implemented in 2022. As reported below, of the \$344.5 million UI payments made in 2022, 0.4% were found to be fraud overpayments. In 2021, of the \$2.48 billion UI payments, 1.19% were found to be fraud overpayments. In 2020, of the \$4.84 billion UI payments, 0.53% were found to be fraud overpayments.

This low percentage of fraud overpayments underscores the commitment of Gov. Tony Evers and DWD leadership to combat UI fraud with modern technology. Modernization will allow UI to efficiently evaluate claims and accelerate response times, as well as perform effective fraudulent claim screening. Our dedicated staff and these system upgrades are essential to protecting the integrity of the unemployment insurance program, while ensuring workers receive essential payments in a timely and fair manner and employers are assessed the proper tax rate.

Sincerely,



Amy Pechacek, Secretary-designee
Department of Workforce Development



Jim Chiolino, Administrator
Unemployment Insurance Division

DETECTION TOOLS

Dedicated UI Workers

One of the best tools for fraud detection is a vigilant UI staff. The Benefit Operations Bureau's Integrity and Quality Section consists of experienced investigators who handle the most complex and organized efforts to defraud the unemployment insurance system. Integrity and Quality Section investigators provide training to other UI staff on methods for detecting and reporting fraud.

Wage Verification

Each week, UI sends wage verification notices to employers when claimants report wages in a week as well as when claimants report no wages in a week. This allows employers the opportunity to report wages and other eligibility issues in a timely manner. Employers and their representatives can report by paper (mail or fax), or online through the UI State Information Data Exchange System (SIDES), a convenient electronic resource developed in collaboration with the U.S. Department of Labor (USDOL).

Participation in NASWA's Integrity Data Hub to Detect and Prevent Fraud

Building on its multifaceted, modernized approach to detect and prevent fraud, DWD now participates in the National Association of State Workforce Agencies' Integrity Data Hub, which provides states with cross-matching verification options for identifying potential unemployment fraud and improper payments.

The additional fraud identification tools available through the data hub include:

- ▶ The Suspicious Actor Repository, which allows states to compare UI claims against a list of suspicious claims from other states.
- ▶ A database of suspicious email domains.
- ▶ A database of foreign IP addresses.
- ▶ Data analysis tools that allow states to compare claims to national data and conduct cross-state validation checks.
- ▶ A multistate database of UI claims data.
- ▶ A centralized identity verification service.
- ▶ The Fraud Alert System, which allows states to share information about new fraud schemes.
- ▶ Bank account verification, which enables states to validate bank account ownership and status.

These modernized tools add to DWD's existing fraud prevention and detection technology. These tools include the wage records cross-match, state and national new hire cross-matches, work search audits, interstate cross-match, and deceased citizen cross-match, to name a few.

Cross-Matches

The division uses numerous cross-matches to detect UI fraud:

- ▶ **Quarterly Wage Cross-Match** – This cross-match compares benefit payment records with quarterly wage records submitted by employers covered under Wisconsin's UI program. This helps to verify that wages are properly reported on unemployment claims.
- ▶ **Interstate Wage Record Cross-Match** – This cross-match compares benefit payment records with quarterly wage records submitted by employers from other states. This helps to verify wages are properly reported on unemployment claims.

- ▶ **Inmate Cross-Match** – Claimants may be ineligible for UI benefits if incarcerated. This tool consists of two cross-match programs: one that compares benefit payment records to incarceration records for all of Wisconsin's county jails and prisons, and a second that compares benefit payment records to incarceration records for facilities nationwide.
- ▶ **Wisconsin and National New Hire Cross-Match** – Employers must report basic information about employees who are newly hired, rehired, or have returned to work after a separation from employment. Division staff cross-match UI payment records with new hire information. Wisconsin cross-matches quarterly federal wage data from the National Directory of New Hires reports for claimants who are former federal government employees.
- ▶ **Vital Statistics (Death Records) Cross-Match** – The Wisconsin Department of Health Services provides a record of deaths in Wisconsin that is cross-matched with UI data to detect if UI claims continue to be filed after a claimant is deceased.
- ▶ **Social Security Disability Insurance (SSDI) Cross-Match** – This cross-match compares individuals currently listed as receiving SSDI with claimants filing initial and weekly unemployment claims.

Other Detection Approaches

Additional detection approaches used to preserve and protect the integrity of the UI Trust Fund include:

- ▶ Employer audits, which resulted in \$1,061,639 additional employer contributions in 2022.
- ▶ Employer complaints and public tips concerning suspected fraudulent claims.
- ▶ Contacts from local, state, and federal law enforcement officers regarding suspicious activities.
- ▶ Analyzing IRS 1099 Form data provided by the Internal Revenue Service to identify and investigate employers who may be misclassifying employees as independent contractors.
- ▶ U.S. Bank's sophisticated fraud monitoring tools, which allow the department to monitor, predict, and respond quickly to suspected fraudulent activity.
- ▶ Quarterly meetings with other state agencies to discuss fraud trends and cases of mutual interest. Agencies share information to detect, investigate, and prevent fraud from occurring across agencies.

WORKER CLASSIFICATION

Worker misclassification occurs when an employer treats individuals as independent contractors when they are actually employees. Under the law, workers are presumed to be employees unless the employer proves that workers meet the legal criteria to be independent contractors. Employers who misclassify workers avoid UI taxes, state and federal income tax withholding, worker's compensation coverage, and Social Security and Medicare taxes. Employers who misclassify workers as independent contractors gain an unfair competitive advantage over other employers. Worker misclassification also denies workers, who are out of work through no fault of their own, access to the UI benefits they may have been eligible for had they been properly classified.

In 2022, the UI Division conducted 1,836 audits and identified 6,295 misclassified workers. As a result, \$1,061,639 was assessed in UI taxes and \$128,045 in interest.

In addition to audits, investigators, many of whom have white collar and economic crime law enforcement backgrounds, also conduct worksite investigations. The division conducted 604 worker classification field investigations in 2022, resulting in 191 audit referrals.

FRAUD OVERPAYMENTS

The UI Division remains committed to ensuring the integrity of the UI program. The COVID-19 pandemic resulted in a record number of claims filed and benefits paid. The federal CARES Act programs, including Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), Lost Wages Assistance (LWA), and Federal Pandemic Unemployment Compensation (FPUC) ended in 2021.

Whereas 2020 and 2021 had historically high benefit payments due to the COVID-19 pandemic, 2022 had historically low benefit payments — the lowest since the late 1980s. DWD paid a historically low total of \$344.5 million in federal and state benefits in 2022, following historically high benefits paid of \$7.32 billion in 2020 and 2021.

Due to the high benefit payment years and the time required to complete fraud investigations, the vast majority of fraud overpayments detected in 2022 occurred during 2020 and 2021. In some cases, investigations to determine whether fraud has occurred involve cooperation of multiple public and/or private entities. However, DWD Unemployment Insurance Division's efforts over the past year resolved a myriad of complex claims investigations filed during the COVID-19 pandemic.

Of the total \$27.3 million fraud overpayments detected in 2022, 94% of those overpayments first occurred in 2020 or 2021, and only 5% of the fraud overpayments first occurred in 2022. Below is the distribution of fraud overpayments detected in 2022 by the year the first fraud overpayment occurred. Note that benefit payments may have continued over more than one calendar year.

FRAUD OVERPAYMENTS DETECTED IN 2022 – STATE AND FEDERAL PROGRAMS

Year Fraud First Occurred	Fraud Overpayment Amount	Percent of Total Fraud Overpayments Detected in 2022
2020	\$9,820,756	36%
2021	\$15,842,108	58%
2022	\$1,364,341	5%
Other	\$273,764	1%
Total	\$27,300,969	100%

FRAUD OVERPAYMENTS AS A PERCENTAGE OF TOTAL UI PAYMENTS

The chart below shows the adjusted total fraud overpayments by the year fraud first occurred. To summarize: in 2022, of the \$344.5 million UI payments, 0.4% were found to be fraud overpayments. In 2021, of the \$2.48 billion UI payments, 1.19% were found to be fraud overpayments. In 2020, of the \$4.84 billion UI payments, 0.53% were found to be fraud overpayments.

	2022 Amount	2021 Amount	2020 Amount
Total UI Payments Administered (State and Federal)	\$344,545,768	\$2,481,203,431	\$4,839,149,601
Adjusted Total Fraud Overpayments (By Year of First Occurrence) ¹	\$1,364,341	\$29,637,714	\$25,814,307
Percentage of Total Payments	0.40%	1.19%	0.53%

¹ In previous annual fraud reports (see [Fraud Report to the UI Advisory Council Report History \(https://dwd.wisconsin.gov/uibola/uiac/reports/fraud.htm\)](https://dwd.wisconsin.gov/uibola/uiac/reports/fraud.htm)), the rate of fraud was calculated by the amount of fraud overpayments detected that calendar year versus the total UI payments made that calendar year. Given the unprecedented circumstances of the COVID-19 pandemic, record high benefits paid in 2020 and 2021, and that 94% of the fraud overpayments detected in 2022 first occurred in 2020 and 2021, this chart combines fraud investigation data and reporting from the past three years to reflect the rate of fraud detection more accurately during this exceptional period of high benefit payments.

DWD uses an array of tools and techniques to detect fraud overpayments. The fraud overpayment amounts and detection methods follow.

FRAUD OVERPAYMENT DETECTION AMOUNTS AND DECISIONS BY SOURCE FOR 2021-2022

Detection Method	2022		2021	
	Amount	Decisions	Amount	Decisions
Wage Record Cross-Match	\$5,963,477	2,278	\$2,859,563	1,008
Post Verification of Wages	\$664,074	312	\$488,962	219
Liabe Employer Protests Benefit Charges	\$2,003,136	885	\$3,903,589	1,546
Tips and Leads from Other than Liabe Employer	\$1,133,813	580	\$2,244,111	1,006
State New Hire Cross-Match	\$1,347,630	1,057	\$2,502,943	1,791
National New Hire Cross-Match	\$111,303	52	\$149,712	116
Quality Control	\$35,519	18	\$154,706	40
Reversals	\$19,618	6	\$0	0
Inmate Cross-Match	\$4,335	5	\$140,135	144
Appriss Inmate Cross-Match	\$41,660	95	\$243,228	535
Post Verification - No Wages Reported	\$564,193	286	\$983,876	451
SSDI Cross-Match	\$244,908	55	\$1,606,888	265
Audit of Work Search	\$21,504	15	\$30,614	12
Field Audit Discoveries	\$64,127	44	\$6,120	3
Interstate Cross-Match	\$9,660	4	\$89,073	19
Deceased Citizen Cross-Match	\$0	0	\$0	0
Agency Detection - Not Covered by Other Codes	\$14,548,886	5,277	\$10,905,194	3,987
Fictitious Employer Cases	\$18,820	3		
Claimant Initiated	\$504,306	241	\$863,259	332
Total	\$27,300,969	11,213	\$27,171,973	11,474

Wisconsin law provides administrative penalties and potential criminal prosecution for fraudulent UI claims. A claimant who intentionally conceals information affecting benefit eligibility is assessed a benefit amount reduction, which is a withholding of future payable benefits, for the intentional concealment of information affecting benefit eligibility. Claimants who have filed fraudulent claims receive a benefit amount reduction of two, four, or eight times the weekly benefit rate for each week of fraud or concealment. This is in addition to any overpayment which must be repaid. Benefit amount reductions remain in effect for six years or until satisfied, whichever occurs first. In addition, the claimant will be assessed a penalty of 40% of the overpayment amount resulting from the fraud or concealment.

BENEFIT AMOUNT REDUCTION AND PENALTY ASSESSMENT 2018-2022

Other Fraud-Related Activity	2022	2021	2020	2019	2018
Benefit Amount Reduction	\$23,971,068	\$20,719,813	\$8,384,948	\$13,221,457	\$13,183,450
Penalties Assessed	\$10,902,766	\$10,048,170	\$1,088,758	\$1,883,649	\$1,899,471

WORK SEARCH

The division has a well-established work search auditing program. UI claimants who are required to search for work must submit their work search record each week a claim is filed. These records are subject to random or targeted audits for program integrity purposes. These audits can uncover mistakes made by claimants or instances of intentional fraud, as well as provide an opportunity to educate claimants on what constitutes a valid work search action and what information is needed by the division to verify work searches.

In 2022, DWD completed 22,012 work search audits. The audits resulted in 9,045 adverse decisions with benefits denied, including when claimants failed to conduct four valid work search actions. An additional 27,404 adverse determinations were issued for failure to answer the work search question or failure to provide required information on the weekly claim before the claim paid.

COMPLIANCE TOOLS

Wisconsin is very successful at recovering overpayments when they do occur. According to an internal UI longitudinal state study spanning a 10-year period, 83% of fraud and 80% of non-fraud overpayments are collected. In 2022, the division recovered \$37.9 million in state and federal fraud and non-fraud overpayments, including \$3.4 million in debts older than five years.

OVERPAYMENT RECOVERIES IN 2022 BY YEAR OF THE DECISION

Year Identified	Fraud	Non-Fraud	Total
2022	\$958,211	\$9,981,928	\$10,940,139
2021	\$3,523,009	\$14,797,741	\$18,320,750
2020	\$544,106	\$3,816,350	\$4,360,456
2019	\$339,043	\$145,119	\$484,162
2018	\$193,921	\$56,981	\$250,902
2017	\$133,936	\$54,752	\$188,688
Older Than Five Years	\$2,717,695	\$639,043	\$3,356,738
Total collected in 2022	\$8,409,921	\$29,491,914	\$37,901,835

This was achieved by utilizing the various mechanisms outlined below:

- ▶ **Tax Refund Intercept** – The division can intercept claimant state and federal tax refunds. The division participates in the Treasury Offset Program (TOP) to intercept federal tax refunds. By utilizing the tools available through TOP, the division recovered almost \$6.9 million in overpayments, penalties, and collection costs in 2022. Another \$4.5 million was collected from a similar program with Wisconsin Department of Revenue, the State Tax Offset program.
- ▶ **Benefit Offset** – Benefits are withheld from a claimant as an offset for an overpayment. The claimant does not receive UI benefit payments until the overpayment has been repaid.
- ▶ **Out of State Offset** – Wisconsin UI can request another state withhold claimant unemployment benefits in that state to repay a Wisconsin overpayment.
- ▶ **Bankruptcy** – Fraud debts are not dischargeable in bankruptcy. Division attorneys file adversary petitions to dispute discharge of the debt. A claim is also filed against the assets of the debtor.
- ▶ **Warrants** – A lien is placed on the debtor’s personal property to secure repayment of a delinquent debt.
- ▶ **Levy Against Wages and Bank Accounts** – A levy is issued against wages, bank accounts, or any property belonging to the debtor.
- ▶ **Financial Record Matching Program** – A financial record matching program is used by UI debt collectors to identify the bank accounts of delinquent UI debtors.

CRIMINAL PROSECUTION FOR UI FRAUD

The division pursues criminal prosecution in cases of egregious fraudulent benefit activity, and works cooperatively with county district attorneys, the Wisconsin Department of Justice (DOJ), and federal prosecutors.

Division staff investigate complex fraud cases. Many of these professionals have previous law enforcement experience. Criminal investigations completed by benefit fraud investigators are referred to either DOJ or a county district attorney.

DWD works collaboratively with DOJ and county district attorneys to determine which cases should be referred for prosecution. Although there were no new benefit cases in 2022, seven ongoing cases closed in 2022. In five of these cases, guilty verdicts were obtained, and the remaining were dismissed. Five unresolved cases remain from 2020.

Ultimately, it is DOJ and the district attorneys who make the decision to file criminal charges. DOJ evaluates several factors in determining whether a case will be prosecuted, including:

- ▶ Whether evidence exists to prove intent to defraud;
- ▶ An individual's criminal history/history of defrauding government programs; and
- ▶ In cases involving employers, the employer's enforcement and compliance history.

Additionally, the UI division works with the USDOL Office of Inspector General on complex fraud cases.



Department of Workforce Development

201 E. Washington Ave.

Madison, WI 53703

608-266-3131 | dwd.wisconsin.gov

From: Michelle Anderson <michelle@reesmans.com>
Sent: Monday, February 6, 2023 10:21 AM
To: ETA, Webportal - ETA <ETA.Webportal@dol.gov>
Subject: Unemployment

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

It was suggested that I reach out to the DOL with concerns about WI Unemployment. Please forward on if necessary.

I am working on behalf of the Employer in Payroll and Human Resources. What I would like to try to get accomplished is a change to the unemployment system to allow for workers who are laid off due to winter weather in Wisconsin to be able to waive work searches. I work for a construction company, and most winters we do have some layoffs but this year we have many more layoffs than normal. What I would like to see is that employees who are seasonally laid off can waive the work search since they will be coming back to work asap, weather and workload permitting.

I have spent hours on the phone with the employees and with the Unemployment Office trying to get the work search waived. We put much money into training our employees and we hold them to a high standard and we want to have them back! We do not want them forced to look for another job. They work long, hard days when they are here and I do not think it should be so hard for them to collect money for an occasional layoff. Unemployment insists on a return to work date and we cannot provide that since we cannot predict the weather. Some of our employees work doing snowplowing during the winter but are told that is not acceptable to use since that is weather permitting and an exact date cannot be given.

As I am writing this the Operations Manager just came in and asked me to call another employee who needs his Unemployment straightened out. In short, we are in a state that has winters. We have great employees. We want to retain them. Why would you want these employees to be doing work searches when they have jobs to come back to?

I truly hope there can be change to how Unemployment works in Wisconsin.

Thank you,

MICHELLE ANDERSON
PAYROLL / HUMAN RESOURCES



28815 Bushnell Road
Burlington, WI 53105
262.539-2124 Office
262.716.1204 Cell

Email: michelle@reesmans.com

Website: www.reesmans.com



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

February 2, 2023

To:

Hon. Josann M. Reynolds
Circuit Court Judge
Electronic Notice

Andrew John Rubsam
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Jeffrey J. Shampo
Electronic Notice

Amir Khazai
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2022AP8

Amir Khazai v. Department of Workforce Development
(L.C. # 2021CV1009)

Before Fitzpatrick, Graham, and Nashold, JJ.

Summary disposition orders 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).

Amir Khazai appeals a circuit court order upholding a decision of the Labor and Industry Review Commission. The Commission concluded in its decision that Khazai was ineligible for unemployment benefits in weeks 12 to 20 of 2020. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).¹ We dismiss the appeal as moot.

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

The court is “entitled to find moot and dismiss appeals where its ruling is no longer needed or makes no difference as to the resolution of the controversy.” *Appel v. Halverson*, 50 Wis. 2d 230, 233, 184 N.W.2d 99 (1971); *see also Portage Cnty. v. J.W.K.*, 2019 WI 54, ¶12, 386 Wis. 2d 672, 927 N.W.2d 509 (“Appellate courts generally decline to reach moot issues, and if all issues on appeal are moot, the appeal should be dismissed.”).

The Commission’s decision in which it concluded that Khazai was ineligible for employment benefits during weeks 12 to 20 of 2020 was issued in March 2021. The Commission now contends that Khazai’s appeal seeking review of that decision is moot based on a subsequent decision the Commission issued in July 2022. In the July 2022 decision, the Commission concluded that Khazai “is *not* required to repay” the benefits he received for weeks 12 to 20 of 2020. The Commission explained in the July 2022 decision that it was waiving repayment based on a determination that the benefits were paid to Khazai due to an error by the Department of Workforce Development, not due to any wrongdoing on Khazai’s part. The Commission stated that the Department “erred in paying [Khazai] benefits after [the Department] had already determined that he was ineligible for them and that the erroneous payment was not due to [Khazai]’s failure to provide accurate information.”

We agree with the Commission that Khazai’s appeal is moot based on the Commission’s July 2022 decision. Regardless of the Commission’s earlier March 2021 decision, the Commission’s July 2022 decision makes clear that Khazai may keep the unemployment benefits he received for weeks 12 to 20 of 2020, regardless of his eligibility for the benefits. Accordingly, any further review of the Commission’s March 2021 decision would make no difference in Khazai’s benefits.

Khazai argues that there are multiple reasons why we should decide the merits of this appeal. Those reasons, as we understand Khazai’s briefing, include all of the following: (1) the Commission should not have taken so long to determine that Khazai did not need to repay the benefits; (2) the Commission and the Department of Workforce Development “made the Circuit Court unintentionally complicit in fraud”; (3) the agencies “rubber-stamp[ed]” an ALJ or other agency employee decision “in a fraudulent fashion”; (4) the case should be remanded to the circuit court for Khazai to present relevant information relating to his ordeal in challenging the agencies’ decisions; (5) the agencies’ decisions made Khazai appear to be “conniving and parasitic” for receiving benefits that he did not deserve; (6) the agencies disrespected and devalued Khazai as a human being; and (7) the agencies might do something similar to someone else.

We acknowledge that Khazai feels that the agencies treated him unfairly and subjected him to a prolonged and frustrating ordeal. Nonetheless, Khazai’s arguments do not persuade us that his appeal is not moot under the applicable legal standards in Wisconsin. In other words, Khazai’s arguments do not persuade us that a decision in this appeal would have any practical effect on the underlying controversy relating to Khazai’s unemployment benefits for weeks 12 to 20 of 2020.

Therefore,

IT IS ORDERED that this appeal is dismissed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 6, 2023

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. 2022AP13
STATE OF WISCONSIN**

Cir. Ct. No. 2020CV579

**IN COURT OF APPEALS
DISTRICT IV**

AMAZON LOGISTICS, INC.,

PLAINTIFF-RESPONDENT,

v.

LABOR AND INDUSTRY REVIEW COMMISSION,

DEFENDANT-APPELLANT,

**DEPARTMENT OF WORKFORCE DEVELOPMENT
UI DIV. BUREAU OF LEGAL AFFAIRS,**

DEFENDANT-CO-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
MICHAEL O. BOHREN, Judge. *Reversed and cause remanded with directions.*

Before Kloppenburg, Fitzpatrick, and Nashold, JJ.

¶1 FITZPATRICK, J. This appeal concerns whether individuals who performed package delivery services for Amazon Logistics, Inc. (“Amazon Logistics”) qualify as “employees” under WIS. STAT. § 108.02(12) (2021-22)¹ for unemployment insurance taxation purposes. Pursuant to that statutory subpart, these individuals—referred to by Amazon Logistics as “delivery partners”—qualify as employees unless Amazon Logistics proved, as pertinent here, that the delivery partners met at least six of nine factors. *See* § 108.02(12)(bm)2.a.-i.

¶2 The Department of Workforce Development (“the Department”) conducted an audit of the services performed by more than 1,000 Amazon Logistics delivery partners during portions of 2016, 2017, and 2018. The Department determined that nearly all of these delivery partners qualified as employees under WIS. STAT. § 108.02(12) during that time although Amazon Logistics did not consider those persons to be its employees. As a result, the Department assessed Amazon Logistics over \$200,000 in delinquent unemployment insurance taxes, with related penalties and interest.

¶3 The Labor and Industry Review Commission (“LIRC”) upheld the Department’s determination and concluded that Amazon Logistics proved only one of the nine factors under WIS. STAT. § 108.02(12)(bm)2. Amazon Logistics appealed LIRC’s decision to the Waukesha County Circuit Court. That court set aside LIRC’s decision and concluded that Amazon Logistics proved all nine statutory factors. The Department and LIRC each appeal the circuit court’s order.

¹ The text of WIS. STAT. § 108.02(12) is reproduced in pertinent part later in this opinion. The 2017-18 version of the Wisconsin Statutes applies to this dispute, and the relevant language of that version of the statutes is identical to the language in the 2021-22 version. Thus, for ease of reference, all references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

¶4 We conclude that Amazon Logistics has satisfied its burden as to five of the nine factors under WIS. STAT. § 108.02(12)(bm)2. Accordingly, we also conclude that LIRC correctly determined that these delivery partners qualified as employees for unemployment insurance taxation purposes. Therefore, we reverse the order of the circuit court and remand to the court with directions to enter an order consistent with this opinion confirming LIRC’s decision.²

BACKGROUND

¶5 The following facts are largely taken from LIRC’s findings of fact, which we generally accept as conclusive. *See* WIS. STAT. § 108.09(7)(c)1.³

¶6 Amazon Logistics coordinates the delivery of products purchased by customers of Amazon.com. Amazon Logistics contracts with entities to move and deliver packages, including UPS, the United States Postal Service, and FedEx.

¶7 In addition, Amazon Logistics created a program called “Amazon Flex” that utilized a smartphone application to coordinate package deliveries made

² We emphasize that our conclusions concerning some disputed factors, and this result, are based on this administrative record regarding the delivery partners’ services and actions during the period covered by the Department’s audit. Accordingly, any changes in the nature of Amazon Logistics’ delivery partners’ services and actions after the Department’s audit, as may arise in a separate case with a record different from the record in this case, may lead to a different result.

³ “The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive.” WIS. STAT. § 108.09(7)(c)1. None of the parties assert that LIRC’s findings of fact are fraudulent.

Separately, we note that Amazon Logistics’ response brief cites to the parties’ appendices instead of the record. On appeal, a party must include appropriate factual references to the record in its briefing. WIS. STAT. RULE 809.19(1)(d)-(e). The appendix is not the record. *United Rentals, Inc. v. City of Madison*, 2007 WI App 131, ¶1 n.2, 302 Wis. 2d 245, 733 N.W.2d 322. We remind counsel of the obligation to comply with the Rules of Appellate Procedure. *See* WIS. STAT. RULE 809.83(2).

by individual drivers. An individual interested in participating in this program was required to download the Amazon Flex software application (the “Flex app”) from Amazon Logistics’ website and apply to perform delivery services for Amazon Logistics as a delivery partner. As part of the application process, the delivery partners were required to agree to the “Amazon Flex Independent Contractor Terms of Service” (“the Agreement”).

¶8 Once an individual was approved for the Amazon Flex program, the individual could view available “delivery blocks” in the Flex app. A delivery block is a period of time—usually two to four hours—that was based on Amazon Logistics’ estimate of the amount of time that a delivery partner would need to deliver a certain collection of packages. Amazon Logistics paid the delivery partners what it referred to as a “service fee” to complete a delivery block.

¶9 After a delivery partner selected an available delivery block, the Flex app directed the delivery partner to Amazon Logistics’ warehouse in Milwaukee. At the warehouse, the delivery partner drove their vehicle into the warehouse and was directed to an open parking spot next to a rack containing packages. The delivery partner scanned the packages on the rack using the Flex app on their smartphone and then loaded those packages into their vehicle. The delivery partners were not able to choose from among the available racks to obtain a particular geographical delivery area and were not able to negotiate the geographical area associated with a delivery block.

¶10 After loading the packages into their vehicle, the delivery partner received from the Flex app a suggested route for the delivery of the packages. The delivery partner was free to follow the suggested route or devise a route of their preference. Upon delivering a package at its destination, the delivery partner

scanned the package using their smartphone and indicated through the Flex app that the delivery was completed. The delivery partner was required to return any undeliverable packages to the warehouse at the end of their route. After the delivery partner completed a delivery block, Amazon Logistics paid the service fee associated with the delivery block even if the delivery partner was unable to deliver all of the packages assigned within the delivery block.

¶11 In 2018, the Department requested a list of individuals who performed services as delivery partners during 2016 and 2017 and to whom Amazon Logistics had issued an Internal Revenue Service form 1099.⁴ The Department conducted what was referred to as an “audit” of those delivery partners and concluded that, of the more than 1,000 individuals subject to the audit, all but two of the individuals qualified as “employees” of Amazon Logistics for unemployment insurance taxation purposes. The Department determined that Amazon Logistics owed \$205,436.45 in unemployment insurance taxes, penalties, and interest concerning those delivery partners who were not reported by Amazon Logistics as employees to the Department during the pertinent portions of 2016, 2017, and 2018.⁵

⁴ The IRS Form 1099 is used to report certain types of non-employment income to the IRS, such as pay received as an independent contractor. *See Greco v. United States*, 380 F. Supp. 2d 598, 613 (M.D. Pa. 2005).

⁵ Specifically, the Department determined that Amazon Logistics owed these taxes, penalties, and interest for the final three quarters of 2016, the entire calendar year of 2017, and the first two quarters of 2018. The amounts owed for the first two quarters of 2018 were based on estimated wages. LIRC also noted that the Department’s audit initially included the first quarter of 2016, but the Department agreed during the administrative proceedings that Amazon Logistics did not operate in Wisconsin during that time. As a result, the Department adjusted the total amount assessed, although LIRC’s decision does not state exactly how much was adjusted at that point. In any event, the parties do not dispute LIRC’s findings as to the Department’s calculations or the time period during which the delivery partners performed the services at issue in this case.

(continued)

¶12 Amazon Logistics appealed the Department’s audit determination, and a hearing was held before an Administrative Law Judge in the Department’s Unemployment Insurance Division. During this hearing, the Department presented testimony from its auditor and one individual who had previously performed services for Amazon Logistics as a delivery partner. Amazon Logistics presented testimony from two management-level employees. The Administrative Law Judge affirmed the Department’s audit determination, concluding that the Department properly classified the delivery partners as employees pursuant to WIS. STAT. § 108.02(12).

¶13 Amazon Logistics petitioned LIRC for review of the Administrative Law Judge’s decision. LIRC reviewed the evidence submitted at the hearing, set forth its findings of fact, and, relevant to this appeal, concluded that Amazon Logistics demonstrated that only one of the nine factors of WIS. STAT. § 108.02(12)(bm)2. had been met. As a result, LIRC further concluded that Amazon Logistics failed to meet its burden of proving that the delivery partners did not qualify as employees pursuant to § 108.02(12).

¶14 Amazon Logistics commenced an action against the Department and LIRC in the circuit court for judicial review of LIRC’s decision. That court set aside LIRC’s decision, concluding that Amazon Logistics had met its burden

We also note that LIRC’s findings of fact did not break into discrete components the amounts owed for unemployment insurance taxes, penalties, and interest. Nonetheless, Amazon Logistics does not dispute that, if the delivery partners identified by the Department qualify as employees, the total amount assessed by the Department for those taxes, penalties, and interest to that date has been accurately stated.

because it established that all nine factors of WIS. STAT. § 108.02(12)(bm)2. had been met. The Department and LIRC each appeal the circuit court’s order.⁶

¶15 Additional material facts are set forth in the following discussion.

DISCUSSION

¶16 On appeal, the Department and LIRC (collectively, “the Department”)⁷ argue that LIRC properly concluded that the delivery partners who performed services for Amazon Logistics qualify as employees pursuant to WIS. STAT. § 108.02(12). We begin by setting forth the standard of review and governing principles regarding LIRC’s decisions, deference to LIRC’s legal conclusions, and construction of the applicable statutes.

I. Standard of Review and Governing Principles Regarding LIRC’s Decisions, Deference to LIRC’s Legal Conclusions, and Interpretation of WIS. STAT. Ch. 108.

A. Judicial Review of LIRC’s Decisions.

¶17 This court reviews LIRC’s decisions in unemployment insurance cases pursuant to WIS. STAT. § 108.09(7). See *Schiller v. DILHR*, 103 Wis. 2d 353, 355, 309 N.W.2d 5 (Ct. App. 1981). We review the decision of LIRC, not the order of the circuit court. *Gilbert v. LIRC*, 2008 WI App 173, ¶8, 315 Wis. 2d 726, 762 N.W.2d 671. Pertinent here, this court may “set aside” LIRC’s decision

⁶ The Department and LIRC each selected District IV of the Wisconsin Court of Appeals as venue for the appeal of the circuit court’s order. See WIS. STAT. § 752.21(2).

⁷ The Department and LIRC filed separate briefs with this court. LIRC’s brief largely adopts the arguments in the Department’s brief. Thus, for ease of reading, when LIRC has adopted the Department’s arguments on appeal, we refer to the arguments of the Department. When the Department and LIRC adopt different arguments, those are indicated accordingly.

only if LIRC acted “without or in excess of its powers,” § 108.09(7)(c)6.a., or if LIRC’s findings of fact are not supported by the evidence, § 108.09(7)(f).⁸

¶18 LIRC acts “without or in excess of its powers” if it bases an order on an incorrect interpretation of a statute. *DWD v. LIRC*, 2018 WI 77, ¶12, 382 Wis. 2d 611, 914 N.W.2d 625. When interpreting statutes, Wisconsin courts begin “with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.” *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.*; see WIS. STAT. § 990.01(1). As discussed in more detail below, the application of a statute to undisputed facts is a question of law that we review de novo. *DOR v. Menasha Corp.*, 2008 WI 88, ¶44, 311 Wis. 2d 579, 754 N.W.2d 95; *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21.

¶19 We may also “set aside the commission’s order and remand the case to the commission if the commission’s order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.” WIS. STAT. § 108.09(7)(f). Credible evidence is that which is “sufficient to exclude speculation or conjecture.” *Bumpas v. DILHR*, 95 Wis. 2d 334, 343, 290 N.W.2d 504 (1980). Substantial evidence is “[e]vidence that is relevant, probative, and credible, and which is in a quantum that will permit a

⁸ This court may also set aside LIRC’s decision if the order was procured by fraud. WIS. STAT. § 108.09(7)(c)6.b. None of the parties contend that LIRC’s decision was procured by fraud.

reasonable factfinder to base a conclusion upon it.” *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 54, 330 N.W.2d 169 (1983).

¶20 Additionally, our review of LIRC’s decision requires that we interpret the terms of the Agreement.⁹ The interpretation of an unambiguous contract is a question of law that we review de novo.¹⁰ *Town Bank v. City Real Est. Dev., LLC*, 2010 WI 134, ¶32, 330 Wis. 2d 340, 793 N.W.2d 476. As discussed in more detail below, we also review an agency’s conclusions of law de novo. *Tetra Tech*, 382 Wis. 2d 496, ¶84. Therefore, we do not defer to LIRC’s interpretation of an unambiguous contract. See *McAdams v. Marquette Univ.*, 2018 WI 88, ¶51 n.17, 383 Wis. 2d 358, 914 N.W.2d 708 (extending *Tetra Tech*’s holding to questions of contract interpretation); *Wisconsin End-User Gas Ass’n v. PSC*, 218 Wis. 2d 558, 565, 581 N.W.2d 556 (Ct. App. 1998) (“[A]n agency’s construction of a contract is subject to de novo review by this court.”).

B. Deference to LIRC’s Legal Conclusions.

¶21 In *Tetra Tech*, our supreme court ended Wisconsin courts’ practice of deferring to conclusions of law of administrative agencies and held that we review agencies’ conclusions of law de novo. *Tetra Tech*, 382 Wis. 2d 496, ¶¶3, 108. The supreme court also recognized that, when considering an agency’s arguments in the course of reviewing an agency’s decision pursuant to WIS. STAT.

⁹ The Agreement states that interpretation of the Agreement is governed by the law of the State of Washington. However, the parties do not identify any way in which Washington law is materially different from Wisconsin law regarding the interpretation of a contract such as the Agreement. Therefore, we apply Wisconsin law in interpreting the Agreement.

¹⁰ The parties do not argue that the Agreement is ambiguous, and we do not discern any material ambiguity in that contract.

ch. 227, a court accords “due weight” to the agency’s “experience, technical competence, and specialized knowledge.” *Id.*, ¶¶3, 108 (quoting § 227.57(10)).

¶22 The Department does not dispute that we must review LIRC’s conclusions of law de novo. Nevertheless, the Department argues that *Tetra Tech* requires that we give due weight to LIRC’s legal conclusions interpreting WIS. STAT. § 108.02(12). In response, Amazon Logistics argues that we should not give LIRC’s decision any persuasive weight. Amazon Logistics contends that the concept of due weight review announced in *Tetra Tech* applies only to judicial review of an agency decision under WIS. STAT. § 227.57(10). See *id.*, ¶11 n.8 (“While chapter 227 applies to judicial review of most administrative decisions, it does not apply to all.”). Here, LIRC’s decision is subject to review solely according to WIS. STAT. § 108.09(7), which states in pertinent part that “[t]he order of the commission is subject to review only as provided in this subsection and not under ch. 227.” Sec. 108.09(7)(c)1. As a result, Amazon Logistics asserts that the principle of due weight recognized in *Tetra Tech* does not apply to LIRC’s decision here.

¶23 As the parties observe, this court has not consistently applied the principle of due weight asserted in *Tetra Tech* in cases in which the review of an agency decision is not governed by WIS. STAT. ch. 227. In *Anderson v. LIRC*, 2021 WI App 44, 398 Wis. 2d 668, 963 N.W.2d 89, review denied (WI Nov. 17, 2021) (No. 2020AP27), this court reviewed a decision of LIRC pursuant to WIS. STAT. § 102.23. *Anderson*, 398 Wis. 2d 668, ¶9. This court ruled that LIRC’s technical expertise and specialized knowledge were not subject to due weight deference under chapter 227 because § 102.23(1)(a)1. specifically states that chapter 227 does not apply to LIRC’s decision. *Id.*, ¶11 n.5. By contrast, in *Mueller v. LIRC*, 2019 WI App 50, 388 Wis. 2d 602, 933 N.W.2d 645, this court

reviewed a decision of LIRC pursuant to § 102.23 and stated that it was giving due weight to LIRC’s technical expertise and specialized knowledge “in evaluating the persuasiveness of [LIRC’s] arguments.” *Mueller*, 388 Wis. 2d 602, ¶17.

¶24 To the extent that *Tetra Tech* recognized that a court gives due weight to an agency’s technical expertise and specialized knowledge as the court considers the agency’s arguments, the parties’ dispute on this point is immaterial because, as stated above and as the parties agree, we review LIRC’s conclusions of law de novo. Similarly, to the extent that there is any inconsistency among the applicable statutes, *Tetra Tech*, and *Anderson* on the one hand, and *Mueller* on the other hand, such inconsistency is also immaterial because we review LIRC’s conclusions of law de novo. In other words, “our conclusions remain the same whether or not we give ‘due weight’” deference to an agency’s technical expertise and specialized knowledge in this case. *See Catholic Charities Bureau, Inc. v. LIRC*, 2023 WI App ___, ¶19 n.9 ___ Wis. 2d ___, ___ N.W.2d ___ (questioning whether due weight is appropriately afforded in proceedings under WIS. STAT. ch. 108 rather than solely in administrative proceedings under WIS. STAT. ch. 227).¹¹

¹¹ In a letter of supplemental authority, LIRC informed us that this court’s recent opinion in *Catholic Charities* suggests that we may afford due weight to administrative agency decisions under WIS. STAT. ch. 108. However, approximately one week later, LIRC informed us that this court withdrew its opinion in *Catholic Charities*, and LIRC asked us to disregard its letter. Later, this court reissued its opinion and explained that it “questioned whether ‘due weight’ is appropriately afforded to proceedings under ch. 108, rather than only to general administrative proceedings under WIS. STAT. ch. 227.” *Catholic Charities Bureau, Inc. v. LIRC*, 2023 WI App ___, ¶19 n.9 ___ Wis. 2d ___, ___ N.W.2d ___.

C. Interpretation of WIS. STAT. § 108.02(12).

¶25 This appeal requires us to interpret WIS. STAT. § 108.02(12). The Department argues that it is a remedial statute that must be “liberally construed.” As our supreme court has explained:

Wisconsin’s unemployment compensation statutes embody a strong public policy in favor of compensating the unemployed. This policy is codified in WIS. STAT. § 108.01....

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 v. LIRC, 2017 WI 46, ¶¶31-32, 375 Wis. 2d 1, 894 N.W.2d 426 (quoting *Princess House*, 111 Wis. 2d at 62). Because chapter 108 is to be “liberally construed,” the Department argues that the exceptions set forth in § 108.02(12)(bm) must be “strictly ... construed.” See *McNeil v. Hansen*, 2007 WI 56, ¶10, 300 Wis. 2d 358, 731 N.W.2d 273 (“If a statute is liberally construed, ‘it follows that the exceptions must be narrowly construed.’” (citation omitted)).

¶26 We do not accept the Department’s assertion that WIS. STAT. § 108.02(12) must always be liberally construed or, with respect to the exception under § 108.02(12)(bm), strictly construed. Instead, when interpreting the language in § 108.02(12), we must first ascertain the plain meaning of that statutory language. *DOJ v. DWD*, 2015 WI 114, ¶31, 365 Wis. 2d 694, 875 N.W.2d 545 (holding that a statute cannot be liberally construed until the statutory language is given its “common, ordinary, and accepted meaning[s]” or its “special definitional meaning[s]” if definitions are provided (quoting *Kalal*, 271 Wis. 2d 633, ¶45)). Only if the plain meaning analysis reveals ambiguity in the statutory language may we liberally or strictly construe that language. *Id.*, ¶32 (“[A]

provision can be construed ‘liberally’ as opposed to ‘strictly’ only when there is some ambiguity to construe.”); *Kannenbergh v. LIRC*, 213 Wis. 2d 373, 393, 571 N.W.2d 165 (Ct. App. 1997) (“When statutory language is ambiguous and a choice must be made between two reasonable interpretations, one of the factors to consider in making this choice, if the statute is remedial in nature, is that it is to be liberally construed to effectuate its remedial purpose.”).

¶27 As explained in the following analysis, we conclude that the pertinent portions of WIS. STAT. § 108.02(12) are not ambiguous. Therefore, we need not liberally construe that statutory subpart.

II. LIRC Properly Concluded that the Delivery Partners Qualify as Employees Under WIS. STAT. § 108.02(12).

¶28 Under WIS. STAT. § 108.02(12)(a), the term “employee” is defined as “any individual who is or has been performing services for pay for an employing unit, whether or not the individual is paid directly by the employing unit.” Sec. 108.02(12)(a). LIRC concluded that the delivery partners performed services for pay for Amazon Logistics and that Amazon Logistics is an “employing unit.” The parties do not dispute those conclusions on appeal.

¶29 If an individual performed services for pay, “the individual is presumed to be an employee for purposes of unemployment compensation and the burden shifts to the [employing unit] to prove that the individual is exempt” under one of the exceptions to WIS. STAT. § 108.02(12)(a). *Gilbert*, 315 Wis. 2d 726, ¶33. Pursuant to § 108.02(12)(bm), Amazon Logistics can rebut the presumption that the delivery partners were its employees by demonstrating two conditions, both “by contract and in fact.” Sec. 108.02(12)(bm). The first condition requires proof that “[t]he services of the individual are performed free from control or

direction by the employing unit over the performance of [the individual's] services.” Sec. 108.02(12)(bm)1. LIRC concluded that Amazon Logistics satisfied this condition, and the parties do not dispute this conclusion on appeal.

¶30 The second condition of WIS. STAT. § 108.02(12)(bm) requires that Amazon Logistics prove (in the words of the statutory subpart, “satisfies the department”) that a delivery partner met at least six of the following nine factors which we now quote:

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.

Sec. 108.02(12)(bm)2.

¶31 On appeal, the Department argues that Amazon Logistics failed to satisfy its burden as to any of these nine factors. LIRC argues that Amazon Logistics failed to satisfy its burden as to eight of the nine factors. Amazon Logistics argues that it satisfied its burden as to all nine factors. We address each factor in turn.

A. Amazon Logistics Failed to Prove That the Delivery Partners Advertised or Otherwise Affirmatively Held Themselves Out as Being in Business.

¶32 The first factor in WIS. STAT. § 108.02(12)(bm)2. requires proof that “[t]he individual advertises or otherwise affirmatively holds [the individual] out as being in business.” Sec. 108.02(12)(bm)2.a. In *Keeler v. LIRC*, 154 Wis. 2d 626, 453 N.W.2d 902 (Ct. App. 1990), this court concluded that one factor to consider when analyzing if an individual is an employee as defined in chapter 108 concerns whether the individual is “[a]dvertising or holding out.” *Keeler*, 154 Wis. 2d. at 633. This court explained that this factor “deals with the concept that a truly independent contractor will advertise or hold out to the public or at least to a certain class of customers, the existence of its independent business.” *Id.* The “[a]dvertising or holding out” test announced in *Keeler* remains a reasonable interpretation of the current language of § 108.02(12)(bm)2.a., and the parties agree that this test from *Keeler* helps guide our interpretation.

¶33 LIRC determined that Amazon Logistics did not satisfy its burden as to this factor because the only pertinent evidence presented at the hearing was the testimony of one former delivery partner. According to LIRC, this individual did not “advertise or otherwise hold himself out as being in the business” of delivering packages, and he “did not attempt to inform anyone other than Amazon Logistics that he was willing and able to perform delivery services.” We defer to these findings of fact which weigh heavily against concluding that Amazon Logistics

has satisfied its burden as to this factor. WIS. STAT. § 108.09(7)(c)1. (“The findings of fact made by the commission acting within its powers shall ... be conclusive.”).

¶34 Amazon Logistics does not dispute LIRC’s finding that there was no testimony from delivery partners that they advertised or held out to the public that they were providing delivery services. Instead, Amazon Logistics argues that the delivery partners held themselves out as being in business by merely registering with the Flex app and thereby notifying Amazon Logistics that they were available to perform delivery services. According to Amazon Logistics, this argument is supported by this court’s unpublished judge-authored opinion in *Varsity Tutors LLC v. LIRC*, 2019 WI App 65, No. 2018AP1951, unpublished slip op. (WI App Oct. 15, 2019), and LIRC’s decision in *Ebenhoe v. Lyft, Inc.*, UI Dec. Hearing No. 16002409MD (LIRC Jan. 20, 2017).¹²

¶35 In *Varsity Tutors*, an individual entered into a contract with Varsity Tutors to perform tutoring services for students. *Varsity Tutors*, No. 2018AP1951, ¶3. The individual created a profile on Varsity Tutors’ website offering her tutoring services for purchase through Varsity Tutors’ online platform. *Id.*, ¶5. This court determined that the individual held herself out as being in the business of tutoring because she used Varsity Tutors’ online platform to advertise her tutoring services to students. *Id.*, ¶25. In *Ebenhoe*, an individual entered into a contract with Lyft to provide rideshare services for customers. *Ebenhoe*, UI Dec. Hearing No. 16002409MD. Material to this factor, LIRC

¹² As explained, we are not bound by LIRC’s conclusions of law. *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21. However, we may consider the parties’ arguments based on prior LIRC decisions although we are not bound by those decisions.

concluded that the individual “h[eld] himself out to a certain class of customers, i.e., passengers seeking digital connection to transportation services, as being available as a driver.” *Id.*

¶36 Amazon Logistics contends that, like the tutor in *Varsity Tutors* and the driver in *Ebenhoe*, the delivery partners made known that they were in the business of providing delivery services by registering with Amazon Logistics through the Flex app and, as a result, Amazon Logistics has satisfied its burden as to this factor. We are not persuaded. In *Varsity Tutors* and *Ebenhoe*, the individuals used a digital platform to advertise their services to third parties—i.e., students seeking tutoring services and individuals seeking rideshare services. As this court recognized in *Keeler*, this communication to the “public” or “a certain class of customers” is the type of conduct that this factor contemplates. *Keeler*, 154 Wis. 2d at 633. In this matter, the record indicates that the delivery partners used the Flex app only to communicate with Amazon Logistics, and not to advertise or offer their services to the wider public or third parties seeking delivery services. With the Flex app, the delivery partners were entirely dependent on Amazon Logistics to offer opportunities to provide delivery services, and the delivery partners could not use the Flex app to solicit other delivery opportunities from the public or Amazon.com customers. Thus, the material facts in *Varsity Tutors* and *Ebenhoe* are distinguishable from the operative facts in this matter.¹³

¹³ Amazon Logistics also argues that delivery partners were similar to the tutor in *Varsity Tutors LLC v. LIRC*, 2019 WI App 65, No. 2018AP1951, unpublished slip op. (WI App Oct. 15, 2019), and the driver in *Ebenhoe v. Lyft, Inc.*, UI Dec. Hearing No. 16002409MD (LIRC Jan. 20, 2017), because the delivery partners could “choose to accept or not accept specific delivery opportunities.” We reject this argument because Amazon Logistics does not explain how that fact is probative of whether delivery partners advertised or held themselves out as being in business.

¶37 In a similar vein, Amazon Logistics argues that the delivery partners did not need to hold themselves out to more than one customer to satisfy the factor set forth in WIS. STAT. § 108.02(12)(bm)2.a. According to Amazon Logistics, this factor is not concerned “with how many clients [an individual] solicits (at all or per platform) or the types of platforms he or she chooses to use.” This contention fails because Amazon Logistics is essentially arguing that this factor can be satisfied any time an individual applies to provide services for even one employing unit. As we explained in *Keeler*, this factor “deals with the concept that a truly independent contractor will advertise or hold out to the *public or at least to a certain class of customers*, the existence of its independent business.” *Id.* (emphasis added). Holding oneself out to a single business by virtue of filling out an application does not come within the test this court stated in *Keeler*. The proper consideration concerning this factor is whether the individual communicates to the public or a certain class of customers that the individual has an independent business and is available to perform services, not whether the individual has ever offered to perform services for the one purported employing unit. Thus, we conclude that the delivery partners did not advertise or hold themselves as being in business simply by registering with the Flex app.

¶38 Next, Amazon Logistics asserts that the delivery partners, like other participants in what Amazon Logistics refers to as the “gig” economy, held out their services generally because they were able to provide services on other digital platforms, such as Uber, Lyft, or Instacart. However, Amazon Logistics does not point to any evidence in the record that the delivery partners performed services on other digital platforms. As explained, this factor requires proof that an individual actually advertises or affirmatively holds the individual out as being in business, not merely that the individual could hypothetically do so. WIS. STAT.

§ 108.02(12)(bm)2.a. (the employing unit must prove that “[t]he individual *advertises* or otherwise *affirmatively holds [the individual] out* as being in business” (emphasis added)).

¶39 In sum, we conclude that Amazon Logistics did not meet its burden as to the factor set forth in WIS. STAT. § 108.02(12)(bm)2.a..

B. The Delivery Partners Performed Most of the Services in a Location of Their Choosing and Used Their Own Equipment or Materials in Performing the Services.

¶40 The second factor in WIS. STAT. § 108.02(12)(bm)2. requires that “[t]he individual maintains [the individual’s] own office or performs most of the services in a facility or location chosen by the individual *and* uses [the individual’s] own equipment or materials in performing the services.” Sec. 108.02(12)(bm)2.b. (emphasis added). This is a two-part inquiry. The first element requires that the individual either maintains the individual’s own office *or* performs most of the services in a facility or location chosen by the individual. The second element requires that the individual uses the individual’s own equipment or materials in performing the services. Interpreting a former version of § 108.02(12), we held that this factor “asks whether the worker has maintained a separate business with the features of an actual business.” *Gilbert*, 315 Wis. 2d 726, ¶¶34-35, 38 (citing § 108.02(12)(b)2.a., (bm)3. (2005-06)).¹⁴ The language of the current version of § 108.02(12)(bm)2.b. is not identical to the language in

¹⁴ The version of this factor that was interpreted in *Gilbert* required that the individual “maintains a separate business with [the individual’s] own office, equipment, materials and other facilities.” *Gilbert v. LIRC*, 2008 WI App 173, ¶34, 315 Wis. 2d 726, 762 N.W.2d 671 (citing WIS. STAT. § 108.02(12)(b)2.a. (2005-06)). *Gilbert* also referenced § 108.02(12)(bm)3. (2005-06), which contained language identical to paragraph (b)2.a. (2005-06). *Id.*, ¶35.

the former version of that subpart that we analyzed in *Gilbert*, but the language is in most material respects the same, and the general purpose of this factor announced in *Gilbert* still applies to the current version of § 108.02(12)(bm)2.b.

¶41 As to the first element of this factor, LIRC concluded that the delivery partners neither maintained their own offices nor chose the facility or location for performing their services. As to the second element of this factor, LIRC concluded that Amazon Logistics met its burden to show that the delivery partners used their own equipment in performing delivery services because the delivery partners used their own vehicles and smartphones as part of their work.

¶42 For the following reasons, we conclude that Amazon Logistics met its burden on both elements of this factor. We next address each element of WIS. STAT. § 108.02(12)(bm)2.b.

1. The Delivery Partners Did Not Maintain Their Own Offices.

¶43 On appeal, Amazon Logistics argues that the delivery partners maintained their own offices because the word “office” includes the delivery partners’ vehicles. We are not persuaded.¹⁵

¹⁵ LIRC’s decision indicates that Amazon Logistics did not argue that the delivery partners’ vehicles qualify as offices. Our own review of Amazon Logistics’ briefing to LIRC and the circuit court confirms that Amazon Logistics did not raise this argument until its briefing to this court on appeal. Therefore, as a separate basis to reject Amazon Logistics’ argument, we could also conclude that Amazon Logistics has forfeited its argument that a delivery partner’s vehicle is an “office.” See *DOJ v. DWD*, 2015 WI App 22, ¶18, 361 Wis. 2d 196, 861 N.W.2d 789, *aff’d*, 2015 WI 114, 365 Wis. 2d 694, 875 N.W.2d 545 (“[A] party’s failure to properly raise an issue before the administrative agency generally forfeits the right to raise that issue before a reviewing court.”).

¶44 As noted, in ascertaining the plain meaning of a statute, we give statutory language “its common, ordinary, and accepted meaning.” *Kalal*, 271 Wis. 2d 633, ¶45. “A dictionary may be utilized to guide the common, ordinary meaning of words.” *Noffke ex rel. Swenson v. Bakke*, 2009 WI 10, ¶10, 315 Wis. 2d 350, 760 N.W.2d 156. “When a word used in a statute has more than one dictionary definition, ‘the applicable definition depends upon the context in which the word is used.’” *Pierce v. American Fam. Mut. Ins. Co.*, 2007 WI App 152, ¶11, 303 Wis. 2d 726, 736 N.W.2d 247 (quoting *Kalal*, 271 Wis. 2d 633, ¶49).

¶45 Black’s Law Dictionary defines “office,” in this context, as: “A place where business is conducted or services are performed.... [A]n office may be a building, a suite of rooms in the building, or an individual room within the building or suite.” *Office*, BLACK’S LAW DICTIONARY (11th ed. 2019). Similarly, Merriam-Webster defines “office,” in this situation, as “a place where a particular kind of business is transacted or a service is supplied.” *Office*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/office> (last visited Mar. 29, 2023). These definitions indicate that the common, ordinary, and accepted meaning of the term “office” in this context is a building or a portion of a building where business is conducted or services are performed.

¶46 Amazon Logistics argues that we should broadly interpret the term “office” as including any location where services are performed. Amazon Logistics does not cite to any case law to support this interpretation but, instead, relies on the circuit court’s reasoning. Specifically, the circuit court proposed that the word “office” refers to an individual’s physical location and is not limited to a static, immovable location.

¶47 The delivery partners’ vehicles were, in a broad sense, locations where the delivery partners performed services. But, the context of WIS. STAT. § 108.02(12)(bm)2.b. indicates that the term “office” has a narrower meaning in that statutory subpart than the meaning ascribed by Amazon Logistics. As the Department points out, the dictionaries referred to above define “office” as a “place.” Reasonably considered, the term “place” connotes a fixed physical area or portion of space, not simply one’s present location. *See Place*, AMERICAN HERITAGE DICTIONARY, <https://www.ahdictionary.com/word/search.html?q=place> (last visited Mar. 29, 2023) (defining “place” as “a portion of space.”). As well, experience demonstrates that individuals performing services, such as the delivery partners, must do so in some place or location. As a result, if we were to adopt Amazon Logistics’ broad interpretation of the term “office” as any location where an individual performs services, then we would be required to conclude that any individual who performs services for an employing unit does so in an “office.” Not only is this interpretation of “office” incompatible with the context of § 108.02(12), *see Pierce*, 303 Wis. 2d 726, ¶11, but it would also render meaningless the “office” criterion set forth under § 108.02(12)(bm)2.b. *See Belding v. Demoulin*, 2014 WI 8, ¶17, 352 Wis. 2d 359, 843 N.W.2d 373 (“Statutory interpretations that render provisions meaningless should be avoided.”).

¶48 Therefore, Amazon Logistics has not demonstrated that the delivery partners maintained their own offices within the meaning of WIS. STAT. § 108.02(12)(bm)2.b.

2. The Delivery Partners Performed Most of the Services in a Facility
or Location of Their Choosing.

¶49 Our conclusion regarding the delivery partners’ purported offices does not end our analysis as to the first element of this factor. As an alternative to the “office” portion of this element, WIS. STAT. § 108.02(12)(bm)2.b. allows a showing that an individual “performs most of the services in a facility or location chosen by the individual.” Sec. 108.02(12)(bm)2.b. According to this language, two parts must be shown: (1) the individual performs the services in at least one facility or location of the individual’s choosing; and (2) the services performed at that chosen facility or location constitute “most” of the services performed by the individual. We conclude that Amazon Logistics has satisfied both parts.

*a. The Delivery Partners Chose Some of the Locations Where
They Performed Services.*

¶50 LIRC’s findings of fact indicate that the delivery partners performed services for Amazon Logistics in three distinct locations: (1) the location where the delivery partners picked up packages for delivery and returned undeliverable packages; (2) the route the delivery partners took while driving packages to delivery locations; and (3) the locations where the delivery partners delivered packages to customers. The Department argues that this part of the element is not satisfied because the delivery partners did not choose the pick-up or delivery locations for packages. Amazon Logistics does not dispute that the delivery partners did not have a choice as to where packages were delivered to customers, and that conclusion is supported by the record. Nonetheless, Amazon Logistics argues that the delivery partners chose both the pick-up locations and the routes they took when delivering packages. For the following reasons, we conclude that

the delivery partners chose their own routes when delivering packages, but did not choose the pick-up locations.

¶51 As Amazon Logistics asserts, the Agreement permitted the delivery partners to choose their own routes and deliver packages in any order they chose:

As an independent contractor, subject only to this Agreement, it is for you to decide the means and manner in which to provide the Services and achieve the results that you have agreed to provide. Therefore, in performing Services, you are free to map out your own routes, sequence your deliveries and in every other way control the means and manner in which you deliver [packages].

Consistent with the Agreement, LIRC found that the delivery partners were permitted to choose their own routes when delivering packages: “After scanning the packages, each delivery partner receives through the petitioner’s app a suggested delivery route. A delivery partner is free to follow the suggested route or devise [the delivery partner’s] own.” Based on the terms of the Agreement, there is a sufficient basis in the record for LIRC’s finding of fact that the delivery partners chose to either follow the delivery routes suggested by the Flex app or follow their own routes or sequences of deliveries. *See* WIS. STAT. § 108.09(7)(f)

(this court may not set aside LIRC’s findings of fact unless those findings are “not supported by credible and substantial evidence”).¹⁶

¶52 Regardless, based on two factual premises, the Department argues that the record does not demonstrate that the delivery partners could choose their own routes. First, a former area manager for Amazon Logistics who testified at the hearing in this matter used the term “route” to refer to the rack or collection of packages at the pick-up location. Second, LIRC found that the delivery partners were “seldom able to choose from among the racks to obtain a desirable geographical location” to deliver packages from those racks. From those factual premises, the Department asserts that the delivery partners were not able to select their own “routes” for delivering packages. This argument fails. The Department’s argument ignores, and cannot be reconciled with, LIRC’s material finding of fact and the language of the Agreement already discussed. In addition, it conflates the action of picking up packages with the action of driving those packages to their destinations. The manager’s testimony on which the Department relies refers only to picking up packages and does not undermine the undisputed

¹⁶ Amazon Logistics also argues that legislative history supports its argument that the delivery partners chose their own delivery routes. Specifically, Amazon Logistics references a report of a committee of the Wisconsin Unemployment Insurance Advisory Council that was prepared in the process of drafting the current version of WIS. STAT. § 108.02(12). See Edward Lump, Dennis Penkalski, & Daniel LaRocque, *Report of the Committee to Review the Unemployment Insurance Statutory Definition of “Employee”* (2009). This report states that the language regarding services performed “in a facility or location chosen by the individual” was added to the statute because “[i]ndividuals who decide where to perform the services appear to be no less independent by the fact that they do not maintain their ‘own office.’” *Id.* at 28. Although not binding, this report nevertheless confirms our interpretation of § 108.02(12)(bm)2.b. See *Green Bay Packaging, Inc. v. DILHR*, 72 Wis. 2d 26, 34, 240 N.W.2d 422 (1976) (“The comments of a legislatively created advisory committee are relevant in construing statutes and ascertaining the legislative intent of statutes recommended by that committee.”).

fact that the delivery partners were able to choose their own delivery routes after leaving the warehouse.

¶53 Accordingly, the delivery partners performed services in a location of their choosing when they were driving packages from the pick-up location to those packages' destinations.¹⁷

¶54 With that, Amazon Logistics has satisfied the second portion of the first element of this factor; that is, whether the delivery partners performed services at a location of their choosing. We next consider whether the delivery partners chose the location where they picked up packages from Amazon Logistics. We do so because it is material to our required analysis in the following section of this opinion concerning the location of “most” of the delivery partners' services.

¶55 Regarding the issue of whether the delivery partners chose the location where they picked up packages, LIRC found that Amazon Logistics offered three delivery programs to the delivery partners during the audit period: “Amazon Logistics” for basic package delivery; “Prime Now” for “ultra-fast” package delivery; and “Amazon Fresh” for grocery delivery. The “Amazon Logistics” program began in early 2016 and operated out of a warehouse in Milwaukee. The “Prime Now” and “Amazon Fresh” programs began in spring 2017 and were located “just a couple suites down” in the same warehouse as the

¹⁷ Amazon Logistics argues that the Department's assertion that the delivery partners were not able to choose their own routes is an “impermissible post-hoc rationalization of an agency decision.” Because we conclude that the delivery partners were permitted to choose their own delivery routes, we need not address this argument. See *Barrows v. American Fam. Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) (“An appellate court need not address every issue raised by the parties when one issue is dispositive.”).

“Amazon Logistics” program. Because all deliveries started at the same warehouse during the audit period, LIRC found that Amazon Logistics “did not have multiple pick-up locations from which the delivery partners could choose.”¹⁸ Based on our review of the record, we defer to these findings of fact because they are supported by “credible and substantial evidence.” *See* WIS. STAT. § 108.09(7)(f).

¶56 Despite LIRC’s material findings of fact, Amazon Logistics argues that the delivery partners were able to choose where to pick up packages. According to Amazon Logistics, when selecting from among available delivery blocks, the delivery partners could choose whether to pick up deliveries “from an Amazon delivery station, [a] grocery store, or Prime Now facility.” As we now discuss, this assertion from Amazon Logistics is contrary to LIRC’s findings of fact and is not supported by the record.

¶57 In support of its argument, Amazon Logistics cites to the hearing testimony of Neil Loomis, a national program manager for the Amazon Flex program. When asked about the Flex app generally, Loomis stated that the delivery partners were able to see the pick-up location associated with each delivery block and could choose whether to accept a block depending on that location. Loomis confirmed that pick-up locations could vary depending on the type of delivery selected. However, Loomis admitted that he was “not super familiar” with the number of logistics stations in the Milwaukee area and had little

¹⁸ LIRC also distinguished the facts of the present dispute from the facts of one of its previous decisions involving Amazon Logistics delivery partners. However, LIRC does not identify the decision to which it is referring, and we are unable to find any other publicly available decision from LIRC regarding the delivery partners or Amazon Logistics.

pertinent “station knowledge” about Milwaukee. Significantly, Loomis stated that deliveries for the “Amazon Logistics” program were picked up at a warehouse in Sussex, Wisconsin, despite the fact that the “Amazon Logistics” program did not move into the Sussex warehouse until after the audit period.¹⁹ Loomis also stated that the delivery partners could choose to pick up deliveries at a Whole Foods location, even though the Whole Foods delivery program did not begin until after the audit period.²⁰ Because Loomis’s testimony relies on facts from outside the audit period, that testimony does not undermine LIRC’s finding that Amazon Logistics “did not have multiple pick-up locations from which delivery partners could choose.”

¶58 Therefore, the delivery partners were able to perform services in a location of their choosing when driving packages from the warehouse to the packages’ destination, but could not choose the pick-up or delivery locations for those packages.

b. The Delivery Partners Performed Most of Their Services While Driving on Their Selected Delivery Route.

¶59 The second portion of this element requires that the services performed at the individual’s chosen facility or location constituted “most” of the services performed by the individual. WIS. STAT. § 108.02(12)(bm)2.b. Amazon Logistics argues that the delivery partners performed most of their services for

¹⁹ The record indicates that the “Amazon Logistics” program moved from the Milwaukee warehouse to the Sussex warehouse in August 2018, after the end of the audit period, and the Prime Now and Amazon Fresh programs remained at the Milwaukee warehouse.

²⁰ The Whole Foods delivery program began sometime in late 2018 and was not available to the delivery partners during the audit period.

Amazon Logistics while driving on their chosen delivery routes. For the reasons that follow, we agree.

¶60 As LIRC found, delivery blocks were usually “two to four hours in length.” When a delivery partner arrived at the pick-up location, the delivery partner drove their vehicle into the warehouse and was directed to an open parking spot next to a rack containing packages. The delivery partner scanned each package on the rack through the Flex app on their smartphone, loaded the packages into their vehicle, and left to deliver the packages. Once at each customer’s location, the delivery partner scanned the package again and indicated through the Flex app that the package was delivered. Depending on the circumstances of each case, there may be more than one reasonable manner in which to interpret the standard in this factor regarding “most of the services.” In this particular situation, the most reasonable way to interpret that statutory phrase is to consider the delivery partner’s actions that took the most amount of time during the delivery blocks. The parties do not proffer a better measure for that determination in light of these facts. As we now discuss, the undisputed facts show that the delivery partners performed most of their services, in terms of time spent, while on routes of their choosing. *See Gansch v. Nekoosa Papers, Inc.*, 158 Wis. 2d 743, 754, 463 N.W.2d 682 (1990) (“The application [of the statutory test of control to] undisputed facts and undisputed inferences ... is ... a question of law for the court.”).

¶61 The undisputed facts demonstrate that the bulk of each delivery partner’s services for Amazon Logistics involved the transportation of packages from the pick-up location to multiple delivery destinations along a route chosen by the delivery partner. There can be no question from this record that the movement of packages from the Amazon Logistics warehouse to the streets outside the places

of delivery took up most of the delivery partners' delivery blocks. By contrast, the delivery partners spent less of their time performing services for Amazon Logistics while loading packages at the pick-up location and placing packages at the doorsteps of the delivery destinations.

¶62 For its part, the Department argues that Amazon Logistics has not satisfied its burden because it is speculative as to the relative amount of time the delivery partners spent transporting and delivering packages. We are not persuaded. In terms of time spent, the only reasonable inference from the undisputed facts is that the delivery partners spent relatively little time loading and unloading packages and spent a relatively longer time driving from the pick-up location to the customers along the delivery partners' chosen routes. In other words, the only reasonable view of the record based on common experience is that the delivery partners did not spend a majority of each two- to four-hour delivery block loading packages at the warehouse, scanning the packages, and placing those packages at customers' doorsteps. The facts already discussed indicate that the delivery partners performed "most" of—*i.e.*, spent most of their time providing—their services while transporting packages to the delivery destinations along their chosen routes. The Department does not point to anything in the record regarding time to refute this reasonable inference.

¶63 Therefore, Amazon Logistics showed that the delivery partners performed most of their services at a facility or location of their choosing.

3. The Delivery Partners Used Their Own Equipment or Materials in Performing the Services.

¶64 Next, regarding the second element of this factor, the Department argues that the delivery partners did not use their own equipment or materials in

performing delivery services. However, LIRC determined that this element of the test was met, and LIRC does not adopt this particular argument of the Department regarding this element of WIS. STAT. § 108.02(12)(bm)2.b.

¶65 To repeat, this element requires that an individual “uses [the individuals’] own equipment or materials in performing the services.” WIS. STAT. § 108.02(12)(bm)2.b. The plain meaning of this language establishes that, in performing services for an employing unit, an individual must use “equipment or materials” that the individual owns. Of course, the delivery partners performed services for Amazon Logistics by delivering packages to customers from Amazon Logistics’ warehouse. In doing so, the delivery partners not only used their own smartphones to interact with the Flex app, but they also used their own vehicles to transport packages from the warehouse to customers.

¶66 The Department asserts that this part of the test is not satisfied because the delivery partners were required to use the Flex app in performing delivery services, and the Flex app did not belong to the delivery partners. WISCONSIN STAT. § 108.02(12)(bm)2.b. does not require that any specific amount of the equipment or materials used in performing the services belong to the individual. In any event, the undisputed facts are that vital and necessary equipment for delivery partners to perform services for Amazon Logistics were a smartphone (in order to interact with the Flex app) and a vehicle (in order to get from the Amazon Logistics warehouse to the customers within the block of time assigned). Thus, because the delivery partners used their own smartphones and

vehicles as important equipment in performing delivery services, we conclude that this element of the test is satisfied.²¹

¶67 In sum, Amazon Logistics proved that the delivery partners performed most of their services in a location of their choosing and that the delivery partners used their own equipment or materials in performing the services. Therefore, we conclude Amazon Logistics met its burden as to the factor set forth in WIS. STAT. § 108.02(12)(bm)2.b.

C. The Record Does Not Establish That Delivery Partners Operated Under Multiple Contracts with One or More Employing Units to Perform Specific Services.

¶68 The third factor of WIS. STAT. § 108.02(12)(bm)2. requires that “[t]he individual operates under multiple contracts with one or more employing units to perform specific services.” Sec. 108.02(12)(bm)2.c. LIRC found that Amazon Logistics failed to produce evidence of the “actual existence of multiple contracts.” We agree and conclude that Amazon Logistics did not meet its burden as to this factor.

¶69 Amazon Logistics asserts that it produced sufficient evidence that the delivery partners operated under multiple contracts to perform specific services and first points to a portion of the Agreement that permitted the delivery partners to contract with other companies: “Nothing in this Agreement will prohibit you from providing Services or using your Vehicle on behalf of any other person or

²¹ On appeal, Amazon Logistics provides a number of alternative grounds for rejecting the Department’s argument regarding this element. Because we conclude that the Department’s argument fails, we need not address alternative arguments from Amazon Logistics. See *Barrows*, 352 Wis. 2d 436, ¶9.

entity, including competitors of Amazon, except during any Delivery Block.” As LIRC correctly observed in its decision, this factor contemplates the actual existence of multiple contracts and not merely the ability to enter into such contracts. *See* WIS. STAT. § 108.02(12)(bm)2.c. (the employing unit must prove that the individual “*operates* under multiple contracts with one or more employing units to perform specific services” (emphasis added)). Thus, evidence that the delivery partners were merely permitted to enter into contracts with other employing units cannot, by itself, satisfy this factor.

¶70 Amazon Logistics also points to the testimony of a former area manager for its Milwaukee warehouse. The area manager testified that she had observed signs for other companies such as Uber, Lyft, and GrubHub on the windows of some of the delivery partners’ vehicles. LIRC found as a factual matter that Amazon Logistics failed to prove that the delivery partners operated under contracts with other employing units or under multiple contracts with Amazon Logistics. Specifically, LIRC found that the testimony of the former area manager regarding the delivery partners’ window signs was not supported by credible and substantial evidence because that testimony “was largely based on hearsay, speculation, and conjecture.” Because, under WIS. STAT. § 108.09(7)(f), this court “shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact,” we conclude that LIRC properly determined that the testimony of the former area manager did not satisfy Amazon Logistics’ burden as to this factor.

¶71 Amazon Logistics argues that LIRC should not have discounted the testimony of the former area manager as hearsay because that testimony was “highly probative.” It points out that a rule promulgated by the Department regarding the evidence admissible at evidentiary hearings provides that all

evidence, including hearsay, is admissible if it has “reasonable probative value.” *See* WIS. ADMIN. CODE § DWD 140.16(1) (May 2019) (“Evidence having reasonable probative value is admissible. Irrelevant, immaterial and repetitive evidence is not admissible. Hearsay evidence is admissible if it has reasonable probative value.”). However, that rule does not assist Amazon Logistics here. LIRC found that the area manager’s testimony did not support an inference that numerous delivery partners operated under contracts for other companies because the testimony had little weight or credibility and, therefore, did not have probative value. We are bound by LIRC’s determination in that regard. *See* WIS. STAT. § 108.09(7)(f).

¶72 Amazon Logistics next argues that we should not adhere to LIRC’s determination regarding the former area manager’s testimony because it would have been “arbitrary and patently unworkable” for Amazon Logistics to produce better evidence. LIRC explained in its decision that the “best and most comprehensive evidence” regarding this issue “would have come directly from the delivery partners themselves” or a stipulation that “one delivery partner’s testimony be taken as ‘representative’ of all the others.” According to Amazon Logistics, “[i]t would have been impractical, if not impossible, to subpoena all or even a majority of the 1,000-plus Delivery Partners at issue,” especially when the scheduled evidentiary hearing lasted only one day. This argument fails because Amazon Logistics did not raise this concern during the proceedings before the Administrative Law Judge, so the Administrative Law Judge had no opportunity to accommodate Amazon Logistics’ evidentiary concerns. Therefore, we conclude that Amazon Logistics forfeited its arguments regarding this issue. *DOJ v. DWD*, 2015 WI App 22, ¶18, 361 Wis. 2d 196, 861 N.W.2d 789, *aff’d*, 2015 WI 114, 365 Wis. 2d 694, 875 N.W.2d 545 (“[A] party’s failure to properly raise an issue

before the administrative agency generally forfeits the right to raise that issue before a reviewing court.”).

¶73 In sum, we conclude that Amazon Logistics did not meet its burden as to the factor set forth in WIS. STAT. § 108.02(12)(bm)2.c.

D. The Delivery Partners Incurred the Main Expenses Related to the Services They Performed Under Contract.

¶74 The fourth factor in WIS. STAT. § 108.02(12)(bm)2. requires that “[t]he individual incurs the main expenses related to the services that [the individual] performs under contract.” Sec. 108.02(12)(bm)2.d. LIRC determined that Amazon Logistics met its burden as to this factor. For the following reasons, we agree with that determination.

¶75 As already discussed, the delivery partners required smartphones and vehicles to perform the services, and they incurred the costs of owning and operating their smartphones and vehicles. In its decision, LIRC relied on the terms of the Agreement which state that each delivery partner is responsible for providing and maintaining a smartphone, vehicle, and any other equipment for performing the services. LIRC also relied on a delivery partner’s testimony that he used his own smartphone and vehicle to perform services. The delivery partner testified that he was responsible for the costs of his smartphone and vehicle that were associated with his services for Amazon Logistics, including the costs of a mobile data plan, gas, vehicle wear and tear, and automobile insurance. These findings of fact establish that the delivery partners incurred the smartphone and vehicle expenses related to their delivery services under the Agreement. Because these expenses were directly related to, and necessary for, the delivery partners’

performance of delivery services, we agree with LIRC that these expenses constituted the “main” expenses.

¶76 On appeal, the Department²² does not dispute that the delivery partners incurred the expenses related to owning and maintaining their smartphones and vehicles. Rather, the Department argues that LIRC should have also considered the expenses incurred by Amazon Logistics and its parent company in running the Flex program, including the costs of creating and maintaining the Flex app, maintaining and staffing warehouses, providing delivery worker support services, and purchasing a commercial insurance policy.²³ We reject the Department’s broad argument about expenses related to the general operation of Amazon Logistics.

¶77 This factor does not require proof that the delivery partners incurred *all* expenses in any way related to operating Amazon Logistics. Rather, this factor concerns the “main” expenses for performing *the delivery partners’* services under the contract. *See id.* The use of the word “main” connotes that the expenses relevant to this factor are those that are more important, or more directly related to, the services performed by the individual under the contract. *See Main*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/main> (last visited Mar. 29, 2023) (defining “main” as “larger, more important, or having more influence than others of the same type”); *see also Varsity Tutors*,

²² LIRC concedes on appeal that Amazon Logistics met its burden as to this factor and does not adopt the Department’s arguments regarding this factor.

²³ Amazon Logistics argues that the Department forfeited its arguments as to this factor because it failed to seek judicial review of LIRC’s decision. Because we conclude that the Department’s arguments on this issue fail on the merits, we need not address whether the Department forfeited its arguments. *See Barrows*, 352 Wis. 2d 436, ¶9.

No. 2018AP1951, ¶29 (“LIRC has held that the only expenses relevant to this inquiry are those necessary to perform the actual services of the individual and not those relating to other costs outside of what the individual was contracted to perform.”). Here, the expenses incurred by Amazon Logistics in running the Flex program were not as important, or as directly related to, the delivery partners’ services as the expenses incurred by the delivery partners in providing and maintaining their own smartphones and vehicles. Therefore, the expenses incurred in running the Amazon Flex program did not constitute the “main” expenses related to the delivery partners’ delivery services under the Agreement.

¶78 The Department also argues that there is not sufficient proof as to this factor because Amazon Logistics did not quantify its expenses or the delivery partners’ expenses. We disagree. LIRC found that the delivery partners were responsible for all expenses associated with the services they performed—*i.e.*, the costs associated with the delivery partners’ smartphones and vehicles. Based on this fact, LIRC found that it is “obvious” that the expenses borne by the delivery partners in this regard exceeded the expenses borne by Amazon Logistics. We will not disturb LIRC’s finding in this regard because it is supported by credible and substantial evidence. *See* WIS. STAT. § 108.09(7)(f).

¶79 In sum, we conclude that Amazon Logistics satisfied the factor set forth in WIS. STAT. § 108.02(12)(bm)2.d.

**E. The Delivery Partners Were Subject to a Monetary Penalty
for Unsatisfactory Work.**

¶80 The fifth factor in WIS. STAT. § 108.02(12)(bm)2. requires either one of two elements: (1) the individual is “obligated to redo unsatisfactory work for no additional compensation”; or (2) the individual is “subject to a monetary

penalty for unsatisfactory work.” Sec. 108.02(12)(bm)2.e. (requiring that “[t]he individual is obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work.”). Amazon Logistics argues that it met its burden as to this factor because the Agreement contains an indemnification provision that subjected delivery partners to such a monetary penalty.²⁴ We agree.

¶81 The Agreement’s indemnification provision states that the delivery partners must:

defend, indemnify, and hold harmless [Amazon Logistics] from any third-party allegation or claim based on, or any loss, damage, settlement, cost, expense, and any other liability (including reasonable attorneys’ fees and expenses) arising out of or in connection with, (a) your negligence, strict liability, or misconduct, (b) a breach of this Agreement by you, (c) any action or inaction by you (including any and all loss or damage to personal property or bodily harm (including death) relating to or arising out of any such action or inaction), or (d) any allegation or claim that you failed to comply with applicable laws, rules, or regulations.

¶82 As discussed, we are not bound by LIRC’s conclusions of law and need not grant those conclusions any deference. *See Tetra Tech*, 382 Wis. 2d 496, ¶84. Nonetheless, we consider LIRC’s conclusions about this factor because it informs our analysis. Prior to this matter, LIRC had consistently concluded that indemnification provisions between an employing unit and an individual similar to the Agreement’s indemnification provision satisfied a previous version of this factor which stated: “The individual is responsible for the satisfactory completion

²⁴ Amazon Logistics does not assert that the delivery partners are obligated to redo unsatisfactory work for no additional compensation, and we ignore that language regarding this factor.

of the services that he or she contracts to perform and is liable for a failure to satisfactorily complete the services.” WIS. STAT. § 108.02(12)(bm)6. (2007-08). *See, e.g., Bentheimer v. Bankers Life & Cas. Co.*, UI Dec. Hearing No. 10006546JV (LIRC Aug. 16, 2011). After this factor was amended to its current language, LIRC continued to conclude that an indemnification provision satisfies this factor. *See, e.g., id.; Rohland v. Go2 IT Grp.*, UI Dec. Hearing No. 12202959EC (LIRC Feb. 14, 2013).²⁵

¶83 In this matter, LIRC arguably departed from its previous interpretation of WIS. STAT. § 108.02(12)(bm)2.e.²⁶ According to LIRC, an indemnification provision, such as that quoted above from the Agreement, no longer satisfies this factor. Instead, LIRC concluded as a matter of law that an indemnification provision will satisfy this factor only if the provision “speaks to an individual’s obligations with respect to unsatisfactory work, including an adverse pecuniary consequence.”

²⁵ In *Bentheimer*, the indemnification provision at issue required the individual to “hold harmless and indemnify Bankers Life from and against any claims, demands, penalties, suits or actions, and from all losses, costs, and expenses arising from her default in performance or the negligent performance of her services.” *Bentheimer v. Bankers Life & Cas. Co.*, UI Dec. Hearing No. 10006546JV (LIRC Aug. 16, 2011).

LIRC also addressed the new version of this factor in *Bentheimer*. There, LIRC conducted a statutory interpretation of the new language and determined that the individual was subject to a monetary penalty by agreeing to indemnify Bankers Life. In the present matter, LIRC did not address, or even recognize, its previous decisions in *Bentheimer* and *Rohland* that an indemnification provision satisfies the latest version of the statute.

²⁶ On appeal, Amazon Logistics contends that it was deprived of due process because LIRC abandoned its prior interpretation of this factor and then faulted Amazon Logistics for not producing evidence to meet its new interpretation. Because we conclude that the indemnification provision satisfies this factor, we need not address whether Amazon Logistics was deprived of due process in this regard. *Barrows*, 352 Wis. 2d 436, ¶9.

¶84 The Department argues that this court should adopt LIRC’s interpretation of WIS. STAT. § 108.02(12)(bm)2.e. As an initial matter, we agree with LIRC’s general observation that an indemnification provision in a contract will satisfy this factor only if it addresses or “speaks to” an individual’s obligations with respect to unsatisfactory work. However, an indemnification provision is not required to contain the phrase “unsatisfactory work” or any other particular set of words to satisfy this factor. Rather, the provision must be analyzed to determine whether it subjects the individual to a monetary penalty for unsatisfactory work. For the following reasons, we conclude that the indemnification provision in the Agreement satisfies this factor.²⁷

1. The Indemnification Provision Addresses “Unsatisfactory Work.”

¶85 First, the indemnification provision addresses “unsatisfactory work.” LIRC concluded that the indemnification provision does not address the delivery partners’ obligations with respect to unsatisfactory work because it “does not specifically address what happens when a delivery partner fails to achieve the results he [or she] agreed to provide—the timely and effective delivery of undamaged parcels, bags, totes or other items to the customers’ and [Amazon Logistics’] satisfaction.” In effect, LIRC interprets the phrase “unsatisfactory work” as referring only to a delivery partner’s breach of the “Service Standards” set forth in the Agreement which include, but are not limited to, reliability, delivery quality, and customer service.

²⁷ The Department argues that we must liberally construe this factor in favor of employee status. As explained above, we will not liberally construe a statute unless there is some ambiguity to construe. *DOJ v. DWD*, 2015 WI 114, ¶32, 365 Wis. 2d 694, 875 N.W.2d 545. Because the Department does not argue that any part of this factor is ambiguous, we need not take up the question of liberal construction.

¶86 LIRC erred because its interpretation of the phrase “unsatisfactory work” is too narrow in these circumstances. Although the word “work” is not defined in WIS. STAT. ch. 108, the ordinary meaning of the word “work” in this context refers to any physical or mental exertion pursued by the individual primarily for the benefit of the employing unit. *See Work*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “work” as “[p]hysical and mental exertion to attain an end, esp[ecially] as controlled by and for the benefit of an employer; labor.”); *cf. Olson v. Auto Sport, Inc.*, 2002 WI App 206, ¶¶16-17, 257 Wis. 2d 298, 651 N.W.2d 328 (adopting the Black’s Law Dictionary definition of “work” in the context of Wisconsin’s child labor statutes under WIS. STAT. ch. 103); WIS. ADMIN. CODE § DWD 272.12(1)(a)1. (Feb. 2023) (defining “hours worked” in the context of Wisconsin’s minimum wage law as “all time spent in physical or mental exertion ... controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer’s business.” (internal quotation marks omitted)).

¶87 The Agreement sets forth “work” obligations of the delivery partners not only by describing the “Service Standards” that the delivery partners must follow but also by describing in the indemnification provision conduct that triggers the delivery partners’ obligation to defend and indemnify Amazon Logistics. As noted, such conduct includes, but is not limited to, the delivery partners’ negligence, “misconduct,” breach of the agreement, and “action and inaction” causing personal property damage. Neither LIRC’s conclusion about this factor nor the Department’s arguments on appeal explain why the delivery partners’ “work” obligations must have been limited to the “Service Standards” set forth in the Agreement. Just as importantly, the obligations placed on the delivery partners in the Agreement’s indemnification provision also set forth actions and

inactions that reasonably come within the definition of “unsatisfactory work.” Thus, we conclude that the indemnification provision required the delivery partners to defend and indemnify Amazon Logistics when they provided “unsatisfactory work.”

2. The Obligation to Defend and Indemnify is a “Monetary Penalty.”

¶88 Second, the indemnification provision subjected the delivery partners to a “monetary penalty.” LIRC did not address whether the indemnification provision subjected the delivery partners to a “monetary penalty” and addressed only the penalty associated with violations of the “Service Standards.” In doing so, LIRC concluded that the delivery partners were not subject to a monetary penalty because the sole penalty set forth in the Agreement for violating the Service Standards was ineligibility to continue participation in the Flex program. However, as Amazon Logistics correctly observes, the Agreement contains more than one penalty for unsatisfactory work. Specifically, delivery partners who provide unsatisfactory work are subject not only to the revocation of their eligibility to participate in the program, but also to the monetary obligations to defend and indemnify Amazon Logistics.

¶89 On appeal, the Department attempts to address this gap in LIRC’s decision. The Department argues that the phrase “monetary penalty” should be interpreted solely as an individual forfeiting a fixed sum of money for unsatisfactory work.

¶90 We do not agree with the Department’s interpretation of the phrase “monetary penalty” as used in this factor. Here, the phrase is used to describe the consequence an individual faces for “unsatisfactory work.” See WIS. STAT. § 108.02(12)(bm)2.e. By interpreting the word “monetary penalty” as referring

only to a sum fixed in the Agreement, the Department attempts to narrow the phrase “monetary penalty” inconsistent with a reasonable interpretation of the plain language of this factor.

¶91 Instead, the context in which the phrase “monetary penalty” is used indicates that this phrase broadly refers to any monetary punishment or disadvantage that stems from an individual’s failure to perform satisfactory work for the employing unit. *See Penalty*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “penalty,” in part, as a “[p]unishment imposed on a wrongdoer.”); *Penalty*, CAMBRIDGE DICTIONARY, dictionary.cambridge.org/us/dictionary/english/penalty (Last visited Mar. 29, 2023) (defining “penalty,” in part, as “a disadvantage brought about as a result of a situation or action”). The indemnification provision imposed a monetary punishment or disadvantage by requiring delivery partners to expend money to defend and indemnify Amazon Logistics if they provided unsatisfactory work in certain regards. Thus, the indemnification provision subjected the delivery partners to a “monetary penalty” for unsatisfactory work.

3. The Delivery Partners Were Subjected to a Monetary Penalty for Unsatisfactory Work.

¶92 LIRC concluded that Amazon Logistics did not satisfy this factor because there was no evidence that Amazon Logistics ever enforced the indemnification provision. *See* WIS. STAT. § 108.02(12)(bm) (requiring proof of each factor “by contract and in fact”). The Department argues that we should adopt LIRC’s determination.

¶93 We conclude that LIRC misinterpreted this factor. As will be discussed further in this opinion with respect to other factors under WIS. STAT.

§ 108.02(12)(bm)2., the language of § 108.02(12)(bm)2.e. may be satisfied by proof of the contractual obligation alone. To repeat, this factor requires, in pertinent part, that the individual is “*subject* to a monetary penalty for unsatisfactory work.” Sec. 108.02(12)(bm)2.e. Reasonably interpreted, the term “subject” in this context means that delivery partners were “exposed” to the possibility that they would be obligated to pay a monetary penalty for unsatisfactory work. *See Subject*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “subject” as “[e]xposed, liable, or prone”); *Subject*, MERRIAM-WEBSTER DICTIONARY, www.merriam-webster.com/dictionary/subject (Last visited Mar. 29, 2023) (defining “subject” as “suffering a particular liability or exposure”). Here, LIRC impermissibly added to this factor the requirement that Amazon Logistics show that the monetary penalty was actually enforced against delivery partners. *See State v. Neill*, 2020 WI 15, ¶23, 390 Wis. 2d 248, 938 N.W.2d 521 (“[C]ourts [and administrative agencies] should not add words to a statute to give it a certain meaning.” (citation omitted)). Thus, an employing unit can prove this element of the factor through the contractual obligations alone.²⁸

¶94 In this matter, Amazon Logistics established that the Agreement obligated all delivery partners to defend and indemnify Amazon Logistics for any costs or expenses arising from, among other things, the delivery partners’ negligence, misconduct, breach of the agreement, and actions or inactions causing

²⁸ To confirm our analysis of this point, we note that a prior version of WIS. STAT. § 108.02(12)(bm) also required this factor to be proved “by contract and in fact.” *See* Sec. 108.02(12)(bm)6. (2007-08). In *Bentheimer*, LIRC analyzed this prior version and concluded that an indemnification provision satisfied that version of this factor even though there was no evidence that the provision was ever enforced. *Bentheimer*, UI Dec. Hearing No. 10006546JV. As discussed in ¶82, above, *Bentheimer* also concluded that an indemnification provision similar to that in the Agreement satisfied the current version of this factor.

property damage. Thus, pursuant to this indemnification provision, the delivery partners were subject to a monetary penalty for unsatisfactory work. In sum, we conclude that Amazon Logistics has satisfied the factor set forth in WIS. STAT. § 108.02(12)(bm)2.e.

F. The Services Performed by the Delivery Partners Directly Related to Amazon Logistics.

¶95 The sixth factor of WIS. STAT. § 108.02(12)(bm)2. requires that “[t]he services performed by the individual do not directly relate to the employing unit retaining the services.” Sec. 108.02(12)(bm)2.f. LIRC concluded that Amazon Logistics did not meet its burden as to this factor because the delivery partners’ services directly related to Amazon Logistics’ business. We agree.

¶96 In *Keeler*, this court explained that this factor focuses on whether the individual’s services are “integrated” into the employing unit’s business. *Keeler*, 154 Wis. 2d at 633 (citing WIS. STAT. § 108.02(12)(b)2. (1989-90)).²⁹ *Keeler* illustrated this concept with the example of a tinsmith who is called upon to repair a company’s rain gutters when the company is engaged in a business unrelated to the repair or manufacture of gutters. *Id.* This court explained that “the services performed by the tinsmith do not directly relate to the activities conducted by the company retaining these services” because “the tinsmith’s activities are totally

²⁹ As explained earlier, *Keeler v. LIRC*, 154 Wis. 2d 626, 453 N.W.2d 902 (Ct. App. 1990), analyzed a former version of WIS. STAT. § 108.02(12) that did not include the current nine-factor test of § 108.02(12)(bm)2. Nevertheless, *Keeler*’s discussion of integration is helpful in interpreting the current language of § 108.02(12)(bm)2.f. See Lump, et al., *supra* at 30-31 (explaining that *Keeler*’s “integration” analysis was one of the bases for the current language of § 108.02(12)(bm)2.f.).

unrelated to the business activity conducted by the company retaining his services.” *Id.*

¶97 Here, the delivery partners’ services were integrated into and directly related to Amazon Logistics’ business. As LIRC found, Amazon Logistics’ “core purpose” is “to ensure that Amazon’s products get into the hands of its customers as quickly and efficiently as possible.” To that end, Amazon Logistics secured not only the delivery services of FedEx, UPS, and the United States Postal Service—all “independently established businesses [and a government entity] with their own employees”—but also secured the services of the delivery partners “when it deems it beneficial or necessary to do so.” Further, LIRC found that Amazon Logistics “provides its delivery partners with its proprietary smartphone app, assists them with mapping, and gives them access to its customer support teams.” Unlike the hypothetical tinsmith in *Keeler*, the services provided by the delivery partners were integrated and interwoven into Amazon Logistics’ business of quickly and efficiently shipping Amazon.com’s products to Amazon.com customers.³⁰

¶98 Amazon Logistics asserts that the delivery partners’ services did not directly relate to its business because the “fundamental nature” of its business is logistics, not delivery. Amazon Logistics further asserts that it “does not engage in delivery services itself” but, rather, “coordinates and arranges for the delivery of products to Amazon.com customers via contracts with a variety of delivery service providers.” Amazon Logistics contends that the delivery partners’ services

³⁰ The parties do not dispute that Amazon Logistics is a wholly-owned subsidiary of Amazon.com.

“merely ... assist with the coordination of the distribution of products sold on Amazon.com.”

¶99 We are not persuaded by Amazon Logistics’ assertion. As explained, we defer to LIRC’s findings of fact, including its pertinent finding that Amazon Logistics’ core purpose is “to ensure that Amazon’s products get into the hands of its customers as quickly and efficiently as possible.” *See* WIS. STAT. § 108.09(7)(c)1. Amazon Logistics’ business activities involve not only coordinating product deliveries, but also engaging in delivery services. Amazon Logistics created the Flex Program, created and maintained the Flex app used by the delivery partners, developed a mapping function to optimize the delivery of products, provided training videos to the delivery partners on how to navigate and use the Flex app, and provided a customer support team to assist the delivery partners with software and package handling issues. These facts demonstrate that the delivery partners’ services were integrated into Amazon Logistics’ business.

¶100 Amazon Logistics next argues that it met its burden as to this factor because it showed that the delivery partners’ services were analogous to the services provided by the individuals in *Ebenhoe* and *Varsity Tutors*. As discussed earlier, in *Ebenhoe*, LIRC determined that a Lyft driver satisfied this factor because Lyft is not a “provider of transportation services” but, instead, is a “transportation network company” that provides “technology services utilized in the transportation industry.” *Ebenhoe*, UI Dec. Hearing No. 16002409 MD. Similarly, in *Varsity Tutors*, this court concluded that this factor was satisfied because Varsity Tutors “does not provide any tutoring services” but, instead, “connects students who want tutoring with people who want to provide tutoring services.” *Varsity Tutors*, No. 2018AP1951, ¶33. In contrast, Amazon Logistics is not like Lyft or Varsity Tutors because it is not a digital platform connecting

providers of services with a class of customers interested in those services. Amazon Logistics is directly involved in the business of delivering products to Amazon.com customers, and it used the services of the delivery partners to achieve that objective.

¶101 In sum, we conclude that Amazon Logistics did not meet its burden as to the factor set forth in WIS. STAT. § 108.02(12)(bm)2.f.

G. The Delivery Partners May Have Realized a Profit or Suffered a Loss Under the Agreement.

¶102 The seventh factor of WIS. STAT. § 108.02(12)(bm)2. requires that “[t]he individual may realize a profit or suffer a loss under contracts to perform such services.” Sec. 108.02(12)(bm)2.g. We begin by considering the meaning of that language. See *Brey v. State Farm Mut. Auto. Ins. Co.*, 2022 WI 7, ¶11, 400 Wis. 2d 417, 970 N.W.2d 1 (“[T]he ascertainment of meaning involves a ‘process of analysis’ focused on deriving the fair meaning of the text itself.” (quoting *Kalal*, 271 Wis. 2d 633, ¶46)).

¶103 First, in this context, the parties do not dispute that individuals realize a “profit” when their income exceeds their expenses under the contract to perform services, and individuals suffer a “loss” when their expenses exceed their income under the contract.

¶104 Second, Amazon Logistics contends that the use of the word “may” in this factor requires only a “possibility” that a delivery partner could realize a profit or suffer a loss. The Department responds that Amazon Logistics’ interpretation of the word “may” renders this factor meaningless because a mere possibility of profit or loss could always be satisfied as “it is always possible a worker could lose money.” (Emphasis omitted.) The Department asserts that the

proper test is whether the individual faces a “realistic possibility of loss,” not whether, “given the universe of possibilities, something could occur that could result in a loss.”

¶105 We recognize that the ordinary meaning of the word “may” presents some difficulties in interpreting WIS. STAT. § 108.02(12)(bm)2.g. As defined in the dictionary, the word “may” means “[t]o be a possibility.” *May*, BLACK’S LAW DICTIONARY (11th ed. 2019); *see also Dane Cnty. v. Kelly M.*, 2011 WI App 69, ¶24, 333 Wis. 2d 719, 798 N.W.2d 697 (defining “may” as “in some degree likely to”). Because the word “may” in § 108.02(12)(bm)2.g. is not modified by language expressing a particular degree of possibility or likelihood, this factor could be read as being satisfied by any possibility of an individual realizing a profit or suffering a loss. However, when applied in the context of this factor, the dictionary definition of the word “may” leads to unreasonable results. This factor would then be satisfied in nearly every instance because there will almost always be at least a slim possibility that the individual would, or would not, earn enough income to cover their contractually-related expenses. Thus, using the common definition of the word “may,” § 108.02(12)(bm)2.g. would have no value in determining whether an individual is an “employee.” We will not adopt an interpretation that leads to such unreasonable results and cannot be the meaning intended by the legislature. *State v. Matasek*, 2014 WI 27, ¶13, 353 Wis. 2d 601, 846 N.W.2d 811 (“[W]ords are given meaning to avoid absurd, unreasonable, or implausible results and results that are clearly at odds with the legislature’s purpose.”).

¶106 To help guide our interpretation of this statutory subpart, we may consider LIRC’s decisions regarding this factor. In interpreting WIS. STAT. § 108.02(12)(bm)2.g., LIRC has concluded that the employing unit must show that

the individual has incurred a “realistic” risk of loss “over the course of the contract” to perform services. *See, e.g., Alsheski v. Codeworks, Inc.*, UI Dec. Hearing No. 09403672AP (LIRC Feb. 26, 2010) (“The test is whether, over the course of the contract between [the individual] and [the employing unit], there was a realistic possibility that [the individual] could realize a profit or suffer a loss.”).³¹

¶107 This is a reasonable interpretation of the word “may” in this context. Accordingly, we conclude that the proper test for determining whether individuals may realize a profit or suffer a loss under a contract to perform services is whether, over the course of the contract, there is a genuine or realistic possibility that the individuals will have their income exceed their expenses or will incur more expenses than they earn in income. LIRC determined that Amazon Logistics did not meet its burden as to this factor because the delivery partners could neither “realize a profit” nor “suffer a loss.” We disagree.

¶108 We address the two elements of “realize a profit” and “suffer a loss” in turn.

1. The Delivery Partners May Have Realized a Profit.

¶109 LIRC concluded that the delivery partners could not realize a profit because: Amazon Logistics “unilaterally determined the service fee to be paid for each block”; Amazon Logistics did not allow the delivery partners to negotiate their compensation; the delivery partners could not receive more than the service

³¹ In *Alsheski v. Codeworks, Inc.*, UI Dec. Hearing No. 09403672AP (LIRC Feb. 26, 2010), LIRC analyzed a prior version of WIS. STAT. § 108.02(12) that contained a factor with language identical to the current factor. *See* § 108.02(12)(b)2.f. (2007-08).

fee for a particular block; and the delivery partners could not accept multiple blocks at once.

¶110 On appeal, the Department argues that the delivery partners may not have realized a profit because they could not, “by their own initiative, increase the amount they earn.” In response, Amazon Logistics argues that the delivery partners may have realized a profit because they could increase the amount they earn by accepting blocks with higher fees, by accepting tip-eligible blocks, and by using more fuel-efficient vehicles.

¶111 We conclude that Amazon Logistics met its burden as to this element of WIS. STAT. § 108.023(12)(b)2.g., but not based on the considerations discussed by LIRC or the parties. The considerations of LIRC and the parties address only whether the delivery partners may have earned more than the service fee provided for each delivery block when each block is viewed in isolation. These arguments miss the mark.

¶112 In this context, the “income” that the delivery partners received under the contract was the service fee associated with delivery blocks they accepted, and the “expenses” that the delivery partners incurred were the costs that the delivery partners paid in order to perform the services under the contract, such as smartphone and vehicle expenses. Importantly, the parties do not dispute that the service fees earned by the delivery partners could—and often did—exceed the expenses incurred in performing the services over the course of the acceptance of multiple delivery blocks. Two points confirm that conclusion, and the Department gives no basis to question these points. LIRC found that “the only delivery partner who testified in this matter had never lost money on a delivery block” and, if that was true for each block, it necessarily follows that must also be true for multiple

delivery blocks. Further, experience teaches that, if individuals cannot make a profit in a business endeavor, it is highly likely that those individuals will leave that endeavor. Yet, the Flex program continued for at least the time of the audit with about one thousand participants. If delivery partners could not turn a profit in doing this work, the Flex program would likely have collapsed quickly from a lack of participants. Therefore, during the time period in dispute and based on the undisputed facts, the delivery partners may have “realized a profit” under the contract to perform services for Amazon Logistics.

2. The Delivery Partners May Have Suffered a Loss.

¶113 Next, and somewhat surprisingly in light of its determination that the delivery partners did not have a realistic possibility of realizing a profit, LIRC also concluded that the delivery partners did not have a realistic possibility of suffering a loss. LIRC determined that there was “no realistic possibility” of losing money under the Agreement because the delivery partners incurred predictable expenses and received fixed amounts of income for each delivery block. For this conclusion, LIRC relied on the delivery partner’s testimony that he had never lost money on a delivery block. On appeal, Amazon Logistics argues that the delivery partners had a realistic possibility of suffering a loss because their expenses incurred in completing delivery blocks could have exceeded the income they received for performing those services.

¶114 Depending on the facts of the case, there may be more than one reasonable method of measuring whether an individual faces a “realistic” possibility of suffering a loss over the course of a contract to perform services. One method that LIRC has articulated is whether the individual’s incurred expenses or earned income under the contract are sufficiently unpredictable such

that the individual faces a genuine risk that his or her expenses will exceed his or her income. *See, e.g., Dane Cnty. Hockey Offs. Ass’n*, UI Dec. Hearing No. S9800101MD (LIRC Feb. 22, 2000) (stating that those individuals did not face a “genuine risk of loss” because they had “fixed, predictable expenses of employment” that were “more than offset by the income they can earn through employment.”).³² We conclude that this method of measuring an individual’s realistic risk of loss over the course of the contract is a workable test under the specific facts of the present case.³³

¶115 Applying this test to the facts of the present matter, we conclude based on the undisputed facts that Amazon Logistics has satisfied this element. As LIRC found, the delivery partners were paid \$36 for two-hour delivery blocks and \$72 for four-hour delivery blocks. The delivery partners were also responsible for providing and maintaining their smartphones, vehicles, and any other equipment they wished to use in providing the services. The delivery partner who testified stated that he was responsible for paying the expenses related to performing delivery services, such as the costs of “gas, vehicle wear and tear, auto insurance, and data for his smartphone.” In fact, the Agreement recognized that a delivery partner may incur expenses such as the cost of fuel, taxes, registration fees,

³² In *Dane County Hockey Officials Ass’n*, UI Dec. Hearing No. S9800101MD (LIRC Feb. 22, 2000), LIRC analyzed a prior version of WIS. STAT. § 108.02(12) that contained a factor with language identical to the current factor. *See* WIS. STAT. § 108.02(12)(b)2.f. (1995-96).

³³ We emphasize that the “unpredictability” test may not be the only way to measure an individual’s risk of loss, nor is it necessarily applicable under every set of facts. In the present matter, LIRC discussed in its decision whether the delivery partners assumed the “entrepreneurial risks” of a “business undertaking.” Because our discussion of the “unpredictability” test is dispositive as to the facts of the present matter, we do not express any opinion as to whether LIRC’s “entrepreneurial risks” test can be a valid interpretation of WIS. STAT. § 108.02(12)(bm)2.g.

permits of all types, and any other fees assessed against the delivery partner's vehicle.

¶116 The delivery partners received a predictable amount of income for completing delivery blocks, but the delivery partners' expenses were not sufficiently predictable so as to eliminate a realistic or genuine risk of loss over the course of the Agreement. In particular, the delivery partners' expenses related to fuel and vehicle maintenance were not fixed or easily predictable. For instance, a delivery partner's vehicle could incur heavy wear and tear, unexpectedly break down, or be inadvertently damaged while the delivery partner delivered packages during a delivery block. In any of these realistic scenarios, the delivery partner was responsible for hundreds, if not thousands, of dollars in repairs to the vehicle in addition to the other vehicular and cellular phone expenses incurred under the Agreement. Even if the delivery partner completed multiple delivery blocks, the delivery partner may not have earned enough income to fully cover the expenses incurred in these scenarios.

¶117 The Department argues that the delivery partners did not face a realistic possibility of loss because they used their personal smartphones and vehicles and were not required to purchase equipment that they would use only when performing services for Amazon Logistics. We are not persuaded. Even if it is assumed that all delivery partners purchased their smartphones and vehicles for personal use prior to joining the Flex program, the Department does not explain how that assumption excludes the delivery partners' vehicular and cellular phone expenses from consideration under this test. As explained, the delivery partners needed smartphones and vehicles to perform services under the contract, and they were responsible for the expenses incurred when using that equipment to perform those services. Thus, the delivery partners had a realistic possibility of

suffering a loss while performing services under the contract even if they did not initially invest in their equipment for the sole purpose of providing services for Amazon Logistics.

¶118 The Department also argues that Amazon Logistics did not meet its burden as to this element because it did not present any “direct evidence ... of actual losses” suffered by the delivery partners but, instead, presented only “speculation” that certain events could have caused the delivery partners to suffer a loss. However, as discussed, the use of the word “may” in this test means that the employing unit need only prove that there was a realistic possibility of suffering a loss under the contract to perform services. As a result, this element can be satisfied by proof of reasonable scenarios and contractual obligations alone.

¶119 In sum, we conclude that Amazon Logistics met its burden as to the factor set forth in WIS. STAT. § 108.02(12)(bm)2.g.

H. The Delivery Partners Had Recurring Business Liabilities or Obligations.

¶120 The eighth factor of WIS. STAT. § 108.02(12)(bm)2. requires that “[t]he individual has recurring business liabilities or obligations.” Sec. 108.02(12)(bm)2.h. Amazon Logistics argues that it met its burden as to this factor because the Agreement required that the delivery partners pay the recurring costs of maintaining a smartphone and a vehicle. The Department responds that the delivery partners’ recurring smartphone and vehicle expenses do not satisfy this factor because those obligations were not incurred solely for business purposes. We agree with Amazon Logistics.

¶121 We begin by setting forth the proper interpretation of this factor.

1. Recurring Business Liabilities or Obligations Need Not Be Incurred
Solely for Business Purposes.

¶122 The Department argues that we should adopt LIRC’s interpretation of this factor. In this case and prior LIRC decisions, LIRC determined that recurring expenses will qualify as “business liabilities or obligations” under this factor only if those expenses are “for business purposes alone.” According to LIRC, expenses that are incurred for both personal and business purposes do not satisfy this factor. *See, e.g., Castforce Inc.*, UI Dec. Hearing No. S1300154MW (LIRC Sept. 8, 2014) (determining that the individual’s expenses for cellular service, automobile insurance, and automobile maintenance did not satisfy this factor because those were incurred for both personal and business purposes); *Martin v. Madison Newspapers Inc.*, UI Dec. Hearing No. 13001922MD (LIRC Oct. 10, 2013) (determining that the individual’s expenses of maintaining an internet services provider and a cell phone provider did not satisfy this factor because those were incurred for both personal and business purposes).

¶123 We conclude that LIRC’s interpretation of WIS. STAT. § 108.02(12)(bm)2.h. must be rejected because it is too narrow. According to the plain meaning of this factor, the employing unit must establish three points: (1) the individual has a liability or obligation; (2) that liability or obligation is incurred as a part of the individual’s “business”; and (3) that liability or obligation is “recurring.” Sec. 108.02(12)(bm)2.h. Nothing in the text of this factor indicates that the individual’s recurring liability or obligation must be incurred for business

purposes alone. Rather, this factor may be satisfied even if the recurring business liability or obligation is also incurred for personal purposes.³⁴

¶124 Our interpretation of this factor is consistent with decisions from this court and LIRC. In *Varsity Tutors*, this court concluded that this factor was satisfied because an individual’s contract with Varsity Tutors required her to maintain a specific level of automobile insurance. *Varsity Tutors*, No. 2018AP1951, ¶¶36-37. In doing so, this court rejected LIRC’s argument that the individual’s automobile insurance did not satisfy this factor if it was initially purchased for personal purposes. *Id.* Additionally, LIRC has determined that this factor was satisfied because the individual was required to maintain liability insurance and automobile insurance. *Quality Commc’ns Specialists Inc.*, Hearing Nos. S0000094MW, S0000095MW (LIRC July 30, 2001).³⁵ In that matter, LIRC did not question whether those expenses were initially incurred for personal or business purposes. *Id.* Instead, LIRC determined that “[t]he recurring obligation to pay premiums for insurance which must be maintained in order for the

³⁴ Additionally, in this matter and in some prior decisions, LIRC has interpreted this factor as requiring “a cost of doing business that the individual would incur even during a period of time when he [or she] was not performing work for the employing unit, such as expenses for office rent, liability insurance, continuing education, membership dues, and professional or license fees.” *See, e.g., Schumacher v. Spar Mktg. Servs. Inc.*, UI Dec. Hearing No. 11203182EC (LIRC Mar. 21, 2012) (explaining that this requirement refers to “overhead expenses that cannot be avoided by ceasing to perform services”). This requirement created by LIRC is also untethered to the text of WIS. STAT. § 108.02(12)(bm)2.h. Nothing in the language of this factor indicates that it is limited to “overhead expenses” or other expenses that are incurred when the individual is not performing services for an employing unit. Instead, as we explain, a recurring liability or obligation will satisfy this factor if it is reasonably related to the individual’s business.

³⁵ In *Quality Communications Specialists Inc.*, Hearing Nos. S0000094MW, S0000095MW (LIRC July 30, 2001), LIRC analyzed a prior version of WIS. STAT. § 108.02(12) that contained a factor with language identical to the current factor. *See* § 108.02(12)(b)2.g. (1999-2000).

individual to be able to perform their services under contract” was, by itself, sufficient to satisfy this factor. *Id.*

¶125 The Department argues that the interpretation of this factor we have adopted is incorrect because it would cause this factor to be “duplicative” of the factor that asks whether the individual “incurs the main expenses related to the services that he or she performs under contract.” *See* WIS. STAT. § 108.02(12)(bm)2.d. We disagree. As noted, factor 2.d. is concerned with “the main expenses related to the services,” while factor 2.h. is concerned with “recurring business liabilities or obligations.” Although these concepts may overlap at times, each factor addresses a distinct aspect of an individual’s performance of services. For instance, factor 2.h. broadly applies to the individual’s “business”—including the individual’s services for more than one employing unit—whereas factor 2.d. only looks at the services the individual performs under the contract with one particular employing unit. Additionally, factor 2.h. looks at all recurring expenses related to the individual’s “business,” whereas factor 2.d. only looks at the “main” expenses related to the individual’s services performed under the contract with the employing unit. Finally, factor 2.h. requires the individual’s liabilities or obligations to be “recurring,” whereas factor 2.d. may, in some circumstances, be satisfied by a one-time expense. Thus, our interpretation of factor 2.h. gives that factor a separate meaning from factor 2.d.

¶126 The Department next contends that our interpretation of this factor is incorrect because it renders the word “business” meaningless. According to the Department, if the factor is interpreted to include costs associated with personal uses, the factor would be meaningless because “any Wisconsin driver will have auto insurance and most individuals have cell phones.” We are not persuaded. As

we explained, this factor requires that the individual’s recurring liabilities or obligations are incurred as a part of the individual’s “business.” If the individual has recurring insurance and cell phone obligations as a part of his or her business, then those obligations will satisfy this factor. If those recurring obligations are incurred solely for personal use, however, then those will not satisfy this factor. Therefore, our interpretation of this factor does not render any statutory language meaningless.

¶127 Next, the Department argues that we should “reconsider” our decision in *Varsity Tutors* because, according to the Department, *Varsity Tutors* misinterpreted LIRC’s conclusion in *Quality Communications*. This argument fails because the Department is essentially asking us to overrule the *Varsity Tutors* opinion. Only our supreme court has the authority to overrule a previous opinion of the court of appeals. *Cook v. Cook*, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997).

¶128 The Department further appears to contend that the doctrine of “legislative acquiescence” requires that we adopt its interpretation of this factor. The doctrine provides that “legislative silence following judicial interpretation of a statute demonstrates legislative acquiescence in that interpretation.” *Wenke v. Gehl Co.*, 2004 WI 103, ¶31, 274 Wis. 2d 220, 682 N.W.2d 405. This doctrine is premised on the presumptions that the legislature acts with knowledge of a court’s binding interpretation of a statute and recognizes that, if it does not explicitly change the law, the court’s binding interpretation will remain unchanged. *State ex rel. Campbell v. Township of Delavan*, 210 Wis. 2d 239, 256, 565 N.W.2d 209 (Ct. App. 1997). Our supreme court has emphasized that this doctrine is not conclusive of the legislature’s intent, but “is merely a presumption to aid in statutory construction.” *Wenke*, 274 Wis. 2d 220, ¶35; see also *Green Bay*

Packaging, Inc. v. DILHR, 72 Wis. 2d 26, 35, 240 N.W.2d 422 (1976) (“[L]egislative inaction following an interpretation of a statute by this court ... is to be considered as evidence that the legislature agrees with that interpretation, but not as raising a conclusive presumption of tacit adoption and ratification by the legislature.”).

¶129 In the present matter, the Department asserts that the legislature implicitly approved of LIRC’s interpretation of WIS. STAT. § 108.02(12)(bm)2.h. now espoused in this appeal when the legislature amended § 108.02(12) in 2010 without altering the language of that subpart. *See* 2009 Wis. Act 287, § 8. The Department does not point to any specific LIRC decision on which the legislature purportedly relied. Rather, it states that the legislature was aware of LIRC’s interpretation of this factor based on the report of the advisory committee that recommended the 2010 amendments to § 108.02(12). *See* Edward Lump, Dennis Penkalski, & Daniel LaRocque, *Report of the Committee to Review the Unemployment Insurance Statutory Definition of “Employee”* 31 (2009).³⁶

¶130 We conclude that the doctrine of legislative acquiescence does not require us to adopt LIRC’s current interpretation of WIS. STAT. § 108.02(12)(bm)2.h. As explained, this doctrine is merely a presumption to aid in statutory construction and does not, by itself, require any court to adopt any

³⁶ The committee report on which the Department relies does not alter our discussion immediately below. The report states that the committee declined to recommend any changes to WIS. STAT. § 108.02(12)(bm)2.h. because that factor “is a useful element in determining employee status and its wording and interpretation have posed no significant difficulties.” Lump, et al., *supra* at 31. This general statement from the committee does not describe the interpretation advanced by the Department in this matter or otherwise indicate how LIRC had interpreted this factor up to that point. *See id.* Thus, the committee report provides no basis for us to presume that the legislature recognized LIRC’s interpretation of this factor or that the legislature intended to endorse that interpretation by declining to amend this factor.

particular statutory interpretation. *Wenke*, 274 Wis. 2d 220, ¶35. Second, and more importantly, the doctrine of legislative acquiescence does not apply to a Wisconsin administrative agency’s interpretation of a statute. As noted, the underpinning of this doctrine is the presumption that the legislature knows that a particular statutory interpretation is binding and, thus, recognizes that its inaction will leave that interpretation intact. *Campbell*, 210 Wis. 2d at 256. However, as explained earlier in this opinion, a Wisconsin administrative agency’s interpretation of a statute is not binding on any court of this state. See *Tetra Tech*, 382 Wis. 2d 496, ¶108. Accordingly, there is no basis for us to presume that the legislature recognized that its inaction would leave LIRC’s interpretation intact. See *State ex rel. Angela M.W. v. Kruzicki*, 209 Wis. 2d 112, 125, 561 N.W.2d 729 (1997) (“[T]he doctrine presupposes the existence of a decision which ... is not subject to further appellate review.”). Therefore, we will not presume that the legislature was aware of LIRC’s non-binding interpretation of § 108.02(12)(bm)2.h. or that the legislature was, in effect, endorsing that interpretation when it declined to amend this factor in 2010.

2. The Delivery Partners Had Recurring Business Liabilities and Obligations.

¶131 To repeat, this factor requires the employing unit to establish three points: (1) the individual has liabilities or obligations; (2) the liabilities or obligations are incurred as a part of the individual’s “business”; and (3) the liabilities or obligations are “recurring.” WIS. STAT. § 108.02(12)(bm)2.h. Amazon Logistics argues that it met its burden as to this factor because the delivery partners had recurring obligations related to maintaining a smartphone

and a vehicle.³⁷ Based on the undisputed facts, we agree and conclude that the delivery partners had recurring business liabilities or obligations under the Agreement to purchase a mobile data plan, fuel for their vehicles, and automobile insurance.³⁸

¶132 First, under the terms of the Agreement, the delivery partners were required to “provide and maintain a mobile device compatible with the Amazon Flex app.” LIRC found that the delivery partners were required to bear the costs of maintaining “a data plan to utilize the smartphones’ technologies and capabilities.” The parties do not dispute that this is a “liability” or “obligation” for the purposes of this factor. Further, the requirement to maintain a mobile data plan is a “business” liability or obligation because the delivery partners were required to incur that expense as part of their business of performing delivery services for Amazon Logistics. It does not matter in this context that the delivery

³⁷ Amazon Logistics also argues that the testimony of its witnesses demonstrates that delivery partners purchased “separate smartphone devices or secondary vehicles used specifically for delivery services.” However, LIRC found that this testimony did not constitute “competent evidence” that the delivery partners made these purchases. We therefore do not consider this evidence in our analysis. *See* WIS. STAT. § 108.09(7)(f) (“[T]he court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact.”).

Amazon Logistics also points to testimony from a delivery partner that he deducted mileage costs from his income taxes owed as a business expense tax deduction. However, Amazon Logistics does not explain how an income tax deduction translates to facts that are relevant to this factor. In any event, we need not address these deductions because we conclude that this factor is satisfied by the delivery partners’ other obligations. *See Barrows*, 352 Wis. 2d 436, ¶9.

³⁸ Amazon Logistics argues—and the Department does not dispute—that this factor can be satisfied with proof of recurring business liabilities or obligations required under an individual’s contract with the employing unit. We agree. Thus, if the contract contains such liabilities or obligations, then the employing unit need not prove that each individual subject to that contract followed through with those liabilities or obligations.

partners may have purchased their mobile data plans prior to performing services for Amazon Logistics or that they may have used their mobile data plans in part for personal use. What matters is that the delivery partners were required to purchase and maintain a mobile data plan as a part of their business of delivering packages. In addition, the Department does not dispute that the cost of a mobile data plan is a recurring expense. Thus, we conclude that the delivery partners had a recurring business liability or obligation to maintain a mobile data plan for their smartphones.

¶133 Second, LIRC found that the delivery partners were required to provide and maintain a motor vehicle.³⁹ As part of this obligation, the Agreement required the delivery partners to pay for the costs of fuel for their vehicles. Because fuel is necessary to operate a vehicle, the costs of purchasing fuel are a “liability” or an “obligation” for the purposes of this factor. Further, the costs of fuel are a “business” liability or obligation because the delivery partners were required to incur these costs as a part of their business of delivering packages for Amazon Logistics. Like the cost of purchasing a mobile data plan, the costs of fuel may be a business obligation even if the delivery partners initially purchased that fuel in part for personal purposes. In addition, these costs were a “recurring” obligation because experience demonstrates that drivers must periodically purchase fuel for their vehicles to operate.

³⁹ We note that the Agreement does not require that the delivery partners provide a motor vehicle. Nonetheless, none of the parties dispute LIRC’s finding that a motor vehicle was needed to perform services under the Agreement, and we agree that, based on the facts in the record, those services could not reasonably have been performed in a timely manner on foot, bicycle, or public transportation.

¶134 Third, as part of their obligation to provide a motor vehicle under the Agreement, the delivery partners were required to maintain automobile insurance coverage as required by applicable laws. The parties do not dispute that this is an “obligation” for the purposes of this factor. Further, the requirement to maintain automobile insurance is a “business” obligation because the delivery partners were required to provide a vehicle and maintain automobile insurance in order to perform delivery services under the Agreement. The Department is correct that Wisconsin law requires individuals to maintain automobile insurance for their personal vehicles, *see* WIS. STAT. § 344.62, but that fact does not alter our conclusion. As explained, nothing in the text of the factor indicates that the individual’s business obligation must be incurred solely for business purposes. As a result, the requirement to purchase automobile insurance is still a business obligation even if the individual was also required to incur that expense to fulfill another legal obligation. In addition, the parties do not dispute that the obligation to pay automobile insurance premiums is a “recurring” obligation. *See Varsity Tutors*, No. 2018AP1951, ¶37.

¶135 In sum, we conclude that Amazon Logistics met its burden as to the factor set forth in WIS. STAT. § 108.02(12)(bm)2.h.

III. Amazon Logistics Did Not Prove that The Delivery Partners Were Not Economically Dependent Upon Amazon Logistics With Respect to the Services Performed.

¶136 The ninth factor in WIS. STAT. § 108.02(12)(bm)2. requires that “[t]he individual is not economically dependent upon a particular employing unit with respect to the services being performed.” Sec. 108.02(12)(bm)2.i. In analyzing a similar factor under a former version of § 108.02(12), this court concluded 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) (citing § 108.02(12)(b)2. (1991-92)). An individual is likely not economically dependent if the individual “performs services and then moves on to perform similar services for another.” *Keeler*, 154 Wis. 2d at 633. However, an individual is likely economically dependent if the individual’s business would cease to exist if the relationship with the employing unit ended. *Larson*, 184 Wis. 2d at 392.⁴⁰

¶137 LIRC found that this factor was not met. LIRC explained that Amazon Logistics failed to present evidence that the delivery partners performed services for other entities either during or before their relationship with Amazon Logistics or that they would continue to perform delivery services after ceasing to perform work for Amazon Logistics. LIRC found that the delivery partner who testified at the hearing did not have any “customers” other than Amazon Logistics. These are findings of fact to which we must defer and weigh heavily against concluding that Amazon Logistics has satisfied its burden as to this factor.

¶138 Amazon Logistics argues that it satisfied this factor because a former area manager for Amazon Logistics testified at the hearing that many of the delivery partners arrived at the warehouse in vehicles displaying signs for other

⁴⁰ As noted, this former version of WIS. STAT. § 108.02(12) asked, in part, whether the individual’s services for the employing unit “have been performed in an independently established trade, business or profession in which the individual is customarily engaged.” Sec. 108.02(12)(b)2. (1991-92). In *Keeler*, this court held that one question to be considered in this inquiry is “economic dependence.” *Keeler*, 154 Wis. 2d at 633. This court’s discussions in *Keeler* and *Larson v. LIRC*, 184 Wis. 2d 378, 392, 516 N.W.2d 456 (Ct. App. 1994), are instructive in interpreting the current language of § 108.02(12)(b)2.i.

delivery companies such as Uber, Lyft, and GrubHub. However, as noted earlier in this opinion, LIRC rejected this testimony from the former area manager and found that this testimony was not supported by “credible and substantial evidence” because it was “largely based on hearsay, speculation, and conjecture.” We will not disturb LIRC’s finding as to the weight or credibility of this testimony. *See* WIS. STAT. § 108.09(7)(f) (“[T]he court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact.”).

¶139 Amazon Logistics also argues that the Agreement expressly permitted the delivery partners to perform similar delivery services for other entities. However, as explained earlier in this opinion and based on the wording of this factor, Amazon Logistics is required to prove this particular factor “by contract and in fact.” *See* WIS. STAT. § 108.02(12)(bm). That the delivery partners had the opportunity to perform delivery services for other entities does not by itself satisfy this factor. Thus, because Amazon Logistics did not provide any evidence as to the delivery partners’ other sources of income or the services that the delivery partners provided for other employing units, Amazon Logistics failed to demonstrate that the delivery partners were not economically dependent on Amazon Logistics.

¶140 In sum, we conclude that Amazon Logistics did not meet its burden as to the factor set forth in WIS. STAT. § 108.02(12)(bm)2.i.

CONCLUSION

¶141 For the foregoing reasons, we conclude that Amazon Logistics satisfied its burden as to five factors of WIS. STAT. § 108.02(12)(bm)2.: b., d., e.,

g., and h. Because Amazon Logistics did not satisfy its burden as to six or more factors, we conclude that LIRC correctly determined that the delivery partners at issue qualify as “employees” under § 108.02(12). Therefore, we reverse the order of the circuit court and remand to the circuit court with directions to enter an order consistent with this opinion confirming LIRC’s order.

By the Court.—Order reversed and cause remanded with directions.

Recommended for publication in the official reports.

D23-01

Amend Social Security Disability Insurance Disqualification

Date: April 20, 2023

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI LAW CHANGE
Amend Social Security Disability Insurance Disqualification**

1. Description of Proposed Change

Currently, recipients of federal Social Security Disability Insurance (“SSDI”) payments are ineligible for unemployment insurance benefits under s. 108.04(12)(f). Recipients of pension payments are eligible for unemployment insurance benefits, but the unemployment benefit is reduced by the pension payment (s. 108.05(7)).

The Governor’s Budget Bill (2023 AB 43 / 2023 SB 70) proposes to amend the prohibition on receipt of UI for SSDI recipients by reducing the amount of weekly UI benefits by the proportionate amount of the claimant’s SSDI payment.

Under this proposal, a claimant who receives \$1,000 monthly in SSDI and would otherwise be eligible for \$300 weekly in UI would receive a weekly UI payment of \$69.¹

2. Proposed Statutory Changes

Section 108.04 (2) (h) of the statutes is amended to read:

A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance payments, as defined in ~~sub. (12) (f)~~ s. 108.05 (7m) (b). If the claimant is receiving social security disability insurance payments, the claimant shall, in the manner prescribed by the department, report to the department the amount of the social security disability insurance payments.

¹ This calculation is preliminary and subject to revision.

D23-01

Amend Social Security Disability Insurance Disqualification

Section 108.04 (12) (f) 1m. and 2m. of the statutes are renumbered 108.05 (7m) (a) and (b) and amended to read:

(a) The intent of the legislature in enacting this ~~paragraph~~ subsection is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

(b) In this ~~paragraph~~ subsection, "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

Section 108.04 (12) (f) 3. of the statutes is repealed.

Section 108.04 (12) (f) 4. of the statutes is renumbered 108.05 (7m) (e).

Section 108.05 (7m) (title), (c) and (d) of the statutes are created to read:

(title) SOCIAL SECURITY DISABILITY INSURANCE PAYMENTS.

(c) If a monthly social security disability insurance payment is issued to a claimant, the department shall reduce benefits otherwise payable to the claimant for a given week in accordance with par.

(d). This subsection does not apply to a lump sum social security disability insurance payment in the nature of a retroactive payment or back pay.

(d) The department shall allocate a monthly social security disability insurance payment by allocating to each week the fraction of the payment attributable to that week.

Section 108.05 (9) of the statutes is amended to read:

(9) ROUNDING OF BENEFIT AMOUNTS. Notwithstanding sub. (1), benefits payable for a week of unemployment as a result of applying sub. (1m), (3) ~~or~~, (7), or (7m) or s. 108.04 (11) or (12), 108.06 (1), 108.13 (4) or (5) or 108.135 shall be rounded down to the next lowest dollar.

D23-01

Amend Social Security Disability Insurance Disqualification

Section 108.05 (10) (intro.) of the statutes is amended to read:

(10) DEDUCTIONS FROM BENEFIT PAYMENTS. (intro.) After calculating the benefit payment due to be paid for a week under subs. (1) to ~~(7)~~ (7m), the department shall make deductions from that payment to the extent that the payment is sufficient to make the following payments in the following order:

3. Effects of Proposed Change

- a. **Policy:** Under this proposed change, recipients of SSDI may receive UI benefits, but the benefits would be reduced due to the receipt of SSDI benefits.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would take effect on the first Sunday of the 7th month beginning after publication.

D23-01

Amend Social Security Disability Insurance Disqualification

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

The proposal repeals the prohibition that allows an otherwise eligible claimant to receive both federal social security disability benefits (SSDI) and Unemployment Insurance (UI) benefits for the same period, and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. Under the proposal, DWD will reduce the amount of weekly UI benefits by the proportionate amount of the claimant's SSDI payment.

UI Trust Fund Impact:

There is not expected to be any measurable impact to the UI Trust Fund.

IT and Administrative Impact:

This proposal would have an estimated one-time IT impact of \$27,946 and a one-time administrative impact of \$8,384. There are no ongoing administrative impacts to the UI program.

Trust Fund Methodology:

SSDI recipients in general have strict limits on the amount of income they may earn and continue to receive SSDI. This maximum amount ranges from \$1,260 per month for disabled individuals to \$2,110 per month for blind individuals. Assuming the individuals meet the other qualifying requirements, this would lead to a weekly benefit rate of either \$151 or \$253 per week. The average SSDI payment in Wisconsin was \$1,443 per month in 2020. Treating SSDI payments as employer contributed pension payments, each weekly benefit payment would be reduced on average by \$166 per week. For most SSDI claimants, this likely would completely offset any UI benefit available. While certain individuals would be eligible for UI, most SSDI recipients would not qualify for any UI payments. There is not expected to be a measurable impact on UI benefits or the UI Trust Fund.

D23-02
Worker Misclassification Penalties

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Worker Misclassification Penalties

1. Description of Proposed Change

Administrative and criminal penalties were created, as part of the 2015-2016 UIAC Agreed Bill, for employers who intentionally misclassify their workers as independent contractors. The current penalties only apply to construction employers and are:

1. \$500 administrative penalty for each employee who is misclassified, but not to exceed \$7,500 per incident.
2. \$1,000 criminal fine for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation, but only if the employer has previously been assessed a administrative penalty for misclassified workers.
3. \$1,000 administrative penalty for each individual coerced to adopt independent contractor status, up to \$10,000 per calendar year.

The administrative penalties are deposited into the Department's program integrity fund, which is used, in part, to fund the costs of staff who investigate employee classification.

The Joint Task Force on Payroll Fraud and Worker Misclassification recommended that the penalties for intentional worker misclassification be structured to deter repeat violations.¹ The Governor's Budget Bill (2023 AB 43 / 2023 SB 70) proposes to amend the administrative penalties statutes by having the penalties potentially apply to all employers. The Bill also eliminates the \$7,500 and \$10,000 caps on the administrative penalties and doubles the penalties for subsequent violations. The Bill amends the criminal penalties to potentially apply to any employer.

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

D23-02
Worker Misclassification Penalties

2. Proposed Statutory Changes²

108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.) and amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall, for each incident, be assessed a penalty by the department as follows:

1. For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$500 for each employee who is misclassified, ~~but not to exceed \$7,500 per incident.~~

Section 108.221 (1) (a) 2. of the statutes is created to read:

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$1,000 for each employee who is misclassified.

108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who, through coercion, requires an individual to adopt the status of a nonemployee shall be assessed a penalty by the department as follows:

- (a) For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$1,000 for each individual so coerced, ~~but not to exceed \$10,000 per calendar year.~~

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

D23-02
Worker Misclassification Penalties

Section 108.221 (2) (b) of the statutes is created to read:

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of \$2,000 for each individual so coerced.

108.24 (2m) of the statutes is amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who, after having previously been assessed an administrative penalty by the department under s. 108.221 (1), 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 be fined \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation. The department may, regardless of whether an employer has been subject to any administrative assessment under s. 108.221 or any other penalty or assessment under this chapter, refer violations of this subsection for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

3. Effects of Proposed Change

- a. **Policy:** The proposed change will permit the Department to assess administrative penalties against any employer that intentionally misclassifies workers as independent contractors and will increase the amount of the penalties for subsequent violations.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

D23-02
Worker Misclassification Penalties

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective for employees misclassified after the law change is enacted.

D23-02
Worker Misclassification Penalties

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is \$500 for each employee who is misclassified, not to exceed \$7,500 per incident. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year. Penalties are deposited in the unemployment program integrity fund.

The proposal removes the \$7,500 and \$10,000 limitations on these penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation. The proposal also removes the limitations on the types of employers to which the penalties apply, allowing them to be assessed against any type of employer that violates the above prohibitions.

UI Trust Fund Impact:

This proposal is expected to have a positive but indeterminate impact on the Trust Fund because of the incentive for employers to correctly register as an employer and correctly list employees to avoid penalties.

IT and Administrative Impact:

Ongoing administrative impact to the UI program is indeterminate.

D23-03
Discharge for Use of Marijuana

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Discharge for Use of Marijuana

1. Description of Proposed Change

Under current state law, the possession of marijuana is illegal. A worker who is discharged from employment may be found ineligible for unemployment insurance benefits on the grounds of misconduct if the worker violates an employer's written controlled substances policy under s. 108.04(5)(a). The use of marijuana may also result in a discharge for substantial fault.

The Governor's Budget Bill (2023 AB 43 / 2023 SB 70) proposes to legalize and regulate marijuana. The Bill also proposes that "misconduct" under s. 108.04(5) and substantial fault under s. 108.04(5g) do not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because that use is permitted under s. 111.35, as amended by the Budget Bill.

2. Proposed Statutory Change

Section 108.04 (5m) of the statutes is created to read:

DISCHARGE FOR USE OF MARIJUANA. (a) Notwithstanding sub. (5), "misconduct," for purposes of sub. (5), does not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

(b) Notwithstanding sub. (5g), "substantial fault," for purposes of sub. (5g), does not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

D23-03

Discharge for Use of Marijuana

3. Effects of Proposed Change

a. Policy: The proposal would ensure that a person would not be denied UI benefits for recreational use of marijuana during non-working hours unless termination for that use is permitted under the fair employment law.

b. Administrative: Staff would need to be trained on the implementation of this law.

c. Fiscal: A fiscal estimate is unavailable.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective on the effective date of the legalization of marijuana.

D23-04
Imposter Penalty

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Imposter Penalty

1. Description of Proposed Change

When someone makes a false statement and claims and receives unemployment insurance benefits in the name of another person, the person who filed the claim must repay the benefits and pay an administrative assessment (penalty) in the amount of the overpayment.¹

However, when someone makes a false statement to attempt to claim benefits in the name of another person but is unsuccessful because the Department discovers the fraud before benefits are paid, there is no penalty available to assess against the imposter.

The Department proposes to create a new \$5,000 penalty to assess against all imposters who make false statements for the purpose of attempting to receive benefits in the name of another person on an initial claim for their own benefit, but who fail to obtain benefits. This penalty would apply to both imposters who fraudulently receive benefits and those who do not receive benefits as a result of their fraudulent claim. The policy reason for this proposal is to deter people from attempting to file false claims using the credentials of another person for their own benefit.

Collection of the current administrative assessment is eliminated. The Department proposes to credit the new \$5,000 penalty to the interest and penalty appropriation.

¹ [Wis. Stat. § 108.04\(11\)\(cm\)](#).

D23-04
Imposter Penalty

2. Proposed Statutory Changes

Section 108.04 (11) (cm) of the statutes is amended to read:

If any person makes a false statement or representation in order to obtain benefits in the name of another person for their own benefit, the benefits received by that person constitute a benefit overpayment. Such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative ~~assessment in an additional amount equal to the amount of benefits obtained.~~ penalty of \$5,000.00. A person who makes a false statement or representation on an initial claim to intentionally obtain benefits in the name of another person for their own benefit, but fails to obtain benefits, will be assessed an administrative penalty of \$5,000.00.

Non-statutory provision:

(1) The treatment of s. 108.04 (11) (cm) first applies to determinations issued on the effective date of this subsection.

3. Effects of Proposed Change

- a. **Policy:** The proposed change is designed to deter people from filing false unemployment claims in the name of another person.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

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

D23-04
Imposter Penalty

5. Proposed Effective/Applicability Date

The treatment of section 108.04 (11) (cm) will apply to determinations issued on or after the effective date of the agreed-upon bill.

D23-04
Imposter Penalty

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

The Department proposes to create a new \$5,000 penalty to assess against all imposters who make false statements for the purpose of attempting to receive benefits in the name of another person on an initial claim for their own benefit. This penalty would apply to imposters who fraudulently receive benefits as an additional penalty for those individuals.² The new penalty would also apply to those who do not receive unemployment benefits as a result of their fraudulent claim. Further, the Department proposes to eliminate the current administrative assessment in an amount equal to the benefits overpaid as a result of fraudulent claims.

The penalty revenue will be credited to the interest and penalty appropriation.

UI Trust Fund Impact:

Since the penalty revenue is credited to the interest and penalty appropriation, there is no measurable UI Trust Fund impact.

IT and Administrative Impact:

There is no IT cost for this proposal. There is an estimated \$560 administrative cost to implement.

UI Trust Fund Methodology:

There is no measurable impact on the UI Trust Fund. It is expected that the increased fine will discourage identity fraud, but the impact cannot be estimated.

IT and Administrative Impact Methodology:

It is estimated that there would be 10 hours of administrative work updating documents and materials to reflect the new penalty. This is estimated to cost \$560. The new penalty will be expected to use the current process for establishing identity fraud penalty so there is no expected IT cost.

The penalty is expected to be assessed on fewer than ten people annually.

² If any person makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Under current law, such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative assessment in an additional amount equal to the amount of benefits obtained.

D23-05
Electronic Communication and Filing

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Electronic Communication and Filing

1. Description of Proposed Change

Employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically, but all employers may file electronically. Electronic filing is more efficient for employers, ensures that reports are not lost in the mail, and reduces administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer but any employer may do so. Currently, about 96% of employers file their tax and wage reports electronically and pay their contributions electronically. Current law also permits the Department to electronically communicate with those who opt for that form of communication—though not all Department communication can currently be sent electronically.

The Department proposes that the electronic filing, electronic payment, and electronic communication provisions be mandatory unless the person demonstrates good cause for being unable to use the electronic method.¹ “Good cause” would be defined to include employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult, as determined by the Department. The proposal

¹ The 2021 Budget Bill (AB 68 / SB 111) included a similar proposal that would have defined “good cause” by administrative rule. That proposal was not included in the final Budget Act.

D23-05
Electronic Communication and Filing

also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it. The tax filing and payment provisions will be effective on January 1, 2025, so that employers have enough time to adjust to the new electronic filing and payment requirements.

The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better customer service. This proposal will ensure the maximization of such efficiencies and service improvements while safeguarding the rights of those whose access to electronic means is severely limited or unavailable.

2. Proposed Statutory Changes²

Section 108.14 (2e) of the statutes is amended to read:

The department ~~may~~ shall provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, ~~upon request to and with prior approval by the department, may~~ shall be used for departmental transmission or receipt of any document specified by the department that is related to the administration of this chapter and related federal programs in lieu of any other means of submission or receipt specified in this chapter. The secure means of electronic interchange shall be used by employing units, claimants, and other persons unless a person demonstrates good cause for not being able to use the secure means of electronic interchange. For purposes of this subsection, good cause includes individuals with limited or no internet connection, the individual having digital literacy concerns, the individual having communication barriers (such as a vision disability or other disability that prevents the ease of

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

D23-05

Electronic Communication and Filing

electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult for the individual, as determined by the department. Subject to s. 137.25 (2) and any rules promulgated thereunder, the department may permit the use of electronic records and electronic signatures for any document specified by the department that is related to the administration of this chapter or any related federal program. If a due date is established by statute for the receipt of any document that is submitted electronically to the department under this subsection, then that submission is timely only if the document is submitted by midnight of the statutory due date.

Section 108.17 (2b) of the statutes is amended to read:

The department shall prescribe a form and methodology for filing contribution reports under sub. (2) electronically. ~~Each employer of 25 or more employees, as determined under s. 108.22 (1) (ae), that does not use an employer agent to file its contribution reports under this section shall file its contribution reports electronically in the manner and form prescribed by the department, unless the employer demonstrates good cause for not being able to file contribution reports electronically. For purposes of this subsection, good cause includes employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic unusually difficult for the employer, as determined by the department. Each employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to a reporting requirement under this subsection,~~

D23-05
Electronic Communication and Filing

~~it shall continue to file its reports under this subsection unless that requirement is waived by the department.~~

Section 108.17 (7) (a) of the statutes is amended to read:

~~Each employer whose net total contributions paid or payable under this section for any 12-month period ending on June 30 are at least \$10,000 shall pay all contributions under this section and all reimbursements due under ss. 108.15 to 108.152 by means of electronic funds transfer or other electronic method beginning with the next calendar year, unless the employer demonstrates good cause for not being able to pay contributions or reimbursements by electronic funds transfer. For purposes of this subsection, good cause includes employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult for the employer, as determined by the department. Once an employer becomes subject to an electronic payment requirement under this paragraph, the employer shall continue to make payment of all contributions by means of electronic funds transfer unless that requirement is waived by the department.~~

108.205 (2) of the statutes is amended to read:

~~Each employer of 25 or more employees, as determined under s. 108.22 (1) (ae), that does not use an employer agent to file its reports under this section shall file the quarterly report under sub. (1) electronically in the manner and form prescribed by the department, unless the employer demonstrates good cause for not being able to file reports electronically. For purposes of this subsection, good cause includes employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or~~

D23-05

Electronic Communication and Filing

other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult for the employer, as determined by the department. ~~An employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to the reporting requirement under this subsection, the employer shall continue to file its quarterly reports under this subsection unless that requirement is waived by the department.~~

Non-statutory provisions:

(1) UNEMPLOYMENT INSURANCE; ELECTRONIC INTERCHANGE. The department of workforce development shall submit a notice to the legislative reference bureau for publication in the Wisconsin Administrative Register indicating the date upon which the department is able to implement the treatment of s. 108.14 (2e).

(2) The treatment of ss. 108.17 (2b), 108.17 (7) (a) and 108.205 (2) shall take effect on January 1, 2025.

D23-05
Electronic Communication and Filing

3. Effects of Proposed Change

- a. **Policy:** The proposed change will result in increased efficiencies and improved experiences for claimants and employers.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

The treatment of section 108.14 (2e) will take effect on the date specified in the notice published in the register. The other provisions will take effect on January 1, 2025.

D23-05

Electronic Communication and Filing

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

Under current law, employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically. Electronic filing ensures that reports are not lost in the mail and reduce administrative costs for the Department. Employers who make contribution payments of at least \$10,000 annually must make those payments by electronic funds transfer, although any employer may do so. Current law also permits the Department to electronically communicate with employers who opt for that form of communication—though not all communication with the Department can currently be electronic.

This proposal makes the electronic filing, electronic communication, and electronic payment provisions mandatory for employers unless the employer demonstrates good cause for being unable to use the electronic method. This proposal mandates electronic communication for claimants unless the claimant has good cause for being unable to use the electronic method. The proposal also provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication will be effective when the Department has the technological capability to fully implement it.

The Department has begun the process of modernizing the unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements.

UI Trust Fund Impact:

This proposal is not expected to have a UI Trust Fund impact.

IT and Administrative Impact:

If this proposal is implemented as a part of a new system, then the IT costs and administrative impacts will be attributed to that modernization effort.

If this proposal is implemented before the modernization effort, then the estimated cost would be \$49,840 for IT and \$16,447 for administration for a total of \$66,287.

UI Trust Fund Methodology:

Any Trust Fund impacts resulting from modern technology and ease of reporting will be attributed to the technology modernization project.

IT and Administrative Impact Methodology:

Implementation is expected to be a part of a modernization effort. If implemented separately, the majority of the cost is changing hard-coded correspondence.

D23-06
Creation of Administrative Fund

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Creation of Administrative Fund

1. Description of Proposed Change

The Department receives federal funds to operate the unemployment insurance program. It also collects interest and penalties from employers and penalties from claimants. The penalties and interest incentivize timely reporting and payments by employers and provide an additional source of revenue for the Department to cover shortfalls in the federal administrative grant. The amounts that the Department receives are appropriated under state law for administration of the unemployment program.

State law previously provided that amounts related to the administration of the unemployment insurance program were to be deposited into the “Unemployment Administration Fund.” That fund was eliminated in 1985 Wisconsin Act 29 (the 1985 Budget Act) and the appropriations were transferred to the general fund. Chapter 108 was amended to repeal references to the Unemployment Administration Fund and to refer to the “Administrative Account.”¹ A review of the legislative history reveals that the amendments were made for accounting purposes at that time. However, other funds are created in chapter 108, such as the Unemployment Program Integrity Fund. The 1985 changes have resulted in different terminology between chs. 20 and 108 to describe the same things, resulting in confusion and inaccurate references. The Department proposes to eliminate the “Administrative Account” and clarify the unemployment insurance appropriations references in Chapter 108 to be consistent with current State accounting practices.

¹ Wis. Stat. § 108.20.

D23-06
Creation of Administrative Fund

It would be clearer to specify the appropriation for deposit of funds, as is the case with other statutes, instead of generally referencing the administrative account. This will ensure that funds are deposited correctly and that payments are made from the correct appropriation.

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

The Department proposes to eliminate the Administrative Account and recreate a fund, the Unemployment Administration Fund, for receiving the employer interest and penalties collected under section 108.22(1) and any other amounts the Department collects that are not designated for another fund. This new fund would be, as the prior Unemployment Administration Fund was, designated as “nonlapsible.” The purpose of this proposal is to provide consistent treatment for the amounts collected by the Department and to better ensure that amounts paid by employers remain with the unemployment program.

The following chart shows the proposed changes from 2021 SB 899:

Section	Change	Reason
1 & 22	Create an appropriation for LIRC to receive transcript and copying fees.	Originally requested by LIRC in the 2015 State Budget process. Provides an appropriation for receiving fees currently collected by LIRC.
2	Clarifies location for deposit of assessment for program administration.	Department may assess employers an assessment to ensure funding for the UI program. This clarifies which appropriation would handle the funds.

² Wis. Stat. § 108.19(1s).

³ Wis. Stat. §§ 108.19(1m) to (1q).

D23-06
Creation of Administrative Fund

3	Amendment to the appropriation that primarily receives employer interest and penalties to receive additional sources of funds.	Consolidates certain appropriations and clarifies language.
4	Repeals the appropriation in s. 20.445(1)(gg).	Repeals an appropriation that is no longer used, related to technology assessments.
5	Amends s. 20.445(1)(gh).	Repeals an obsolete reference to 1997 WI Act 39.
6	Repeals the appropriation in s. 20.445(1)(gm).	Repeals an appropriation related to the employer handbook because those funds are redirected to the (gd) appropriation (employer interest and penalties).
7-10	Amends the appropriations in s. 20.445(1)(n)-(ne).	Updates references to federal law.
11	Amends s. 20.445(1)(u).	Updates cross-reference for interest payment fund.
12	Amends s. 20.445(1)(v).	Updates cross-references for program integrity fund.
13-14	Amends sections in ch. 25.	Updates cross-references.
15	Amends s. 103.05(5)(d)	Updates cross-reference for UI appropriations.
16 & 68	Repeal “administrative account.”	The “administrative account” is repealed and replaced by the Unemployment Administration Fund. State moneys are supposed to be handled by appropriations and funds, not accounts. This removes the references to the account in favor of the new Fund.
17, 23, 24, 26, 27, 31, 32, 34, 47, 48, 53, 65, 66, 67, 69	Repeals references to the “administrative account” and replaces those references with the specific appropriation in s. 20.445(1).	This change ensures that the unemployment appropriations are drafted consistent with current State budget practices and removes ambiguity regarding the appropriate appropriation applicable to certain moneys. Some of these statutes are also amended to update references to federal law.
18-21	Amend s. 108.07(5)(am)-(6).	Updates cross-references. Also ensures that benefits that would be chargeable related to substantial fault would be treated the same as misconduct.
25, 28, 30	Repeals and amends references regarding costs of printing certain materials.	Consolidates language regarding printing forms and handbooks. Replaces references to the “administrative account” with a specific appropriation for consistency.
29	Amends and renumbers s. 108.14(18)	To move the requirement that the Department informs the Council about payments for IT projects with assessed funds.

D23-06
Creation of Administrative Fund

52	Amends and renumbers s. 108.19(1)	To modernize and clarify language.
33, 49-51, 54-64	Amends s. 108.19	To clarify the treatment of funds under the interest payment fund and program integrity fund.
35-45	Amends s. 108.161	To modernize provisions related to federal Reed Act moneys.
46	Amends s. 108.17(2m)	To modernize language.
67	Amends and moves statute regarding use of contributions for administrative purposes.	If federal law is changed to permit this purpose, the Department prefers the proposed language in Section 30. This statutory language has apparently not been updated since 1943.
71	Transfers funds to the appropriation in s. 20.445(1)(gd).	It is necessary to transfer any remaining funds in these appropriations, which are being repealed.

2. Proposed Statutory Changes

The statutory language for this proposal is attached as it was presented to the Legislature during the 2021 session in 2021 SB 899.

3. Effects of Proposed Change

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

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

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

D23-06
Creation of Administrative Fund

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by Technical Services Section

Trust Fund Impact:

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

IT and Administrative Impact:

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

Summary of Proposal:

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

Trust Fund Methodology

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

IT and Administrative Impact Methodology

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

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



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5846/1
MED&EAW:cjs&wlj

2021 SENATE BILL 899

February 1, 2022 - Introduced by COMMITTEE ON LABOR AND REGULATORY REFORM.
Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to repeal* 20.445 (1) (gg), 20.445 (1) (gm), 108.02 (1), 108.14 (7) (c) and
2 108.14 (23) (d); *to renumber and amend* 20.445 (1) (gc), 20.445 (1) (gd), 20.445
3 (1) (gh), 108.14 (12) (e), 108.14 (18), 108.19 (1), 108.19 (1m), 108.19 (1n), 108.19
4 (1p), 108.19 (1q), 108.19 (1s), 108.19 (2), 108.19 (2m) and 108.19 (4); *to*
5 *consolidate, renumber and amend* 108.14 (12) (a) to (d), 108.161 (1) and
6 (1m) and 108.161 (5) and (6); *to amend* 20.445 (1) (n), 20.445 (1) (nb), 20.445
7 (1) (nd), 20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf),
8 103.05 (5) (d), 108.04 (11) (f), 108.07 (5) (am) (intro.), 108.07 (5) (am) 1., 108.07
9 (5) (am) 3., 108.07 (6), 108.09 (5) (b), 108.14 (2m), 108.14 (3m), 108.14 (16),
10 108.16 (5) (c), 108.16 (6) (k), 108.16 (6) (m), 108.16 (8) (f), 108.161 (title), 108.161
11 (2), 108.161 (3), 108.161 (3e), 108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9),
12 108.162 (7), 108.17 (2m), 108.17 (3), 108.17 (3m), 108.18 (7) (a) 1., 108.18 (7) (h),
13 108.19 (1e) (a), 108.19 (1e) (d), 108.19 (1f) (a), 108.19 (1f) (c), 108.22 (1) (am) and
14 108.22 (1m); *to repeal and recreate* 108.19 (title) and 108.20; and *to create*

SENATE BILL 899

1 20.427 (1) (g), 108.19 (1) (d), 108.19 (1e) (cm) and 108.19 (1m) (e) of the statutes;
2 **relating to:** various changes to the unemployment insurance law and making
3 an appropriation.

Analysis by the Legislative Reference Bureau

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

Segregated fund

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

Other changes

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

1. Repealing and consolidating certain appropriations and making other changes to clarify the funding sources and receiving appropriations for various revenues and expenses under the UI law.
2. Creating a program revenue appropriation for the Labor and Industry Review Commission to collect moneys received for the copying and generation of documents and for other services provided in carrying out its functions.
3. Deleting obsolete references to state laws.
4. Correcting various cross-references that are otherwise incomplete or erroneous.
5. Replacing certain references to provisions in federal acts or to the Internal Revenue Code with references to the U.S. Code in order to facilitate accessibility to federal law.
6. Making other nonsubstantive changes to the UI law to improve organization, modernize language, and provide further clarity, specificity, and consistency in the law.

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

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

SENATE BILL 899

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

2 20.427 (1) (g) *Agency collections.* All moneys received from fees or other
3 charges for copying of documents, generation of copies of documents from optical disc
4 or electronic storage, publication of books, and other services provided in carrying
5 out the functions of the commission.

6 **SECTION 2.** 20.445 (1) (gc) of the statutes is renumbered 20.445 (1) (wc) and
7 amended to read:

8 20.445 (1) (wc) *Unemployment administration.* ~~All From the unemployment~~
9 administration fund, all moneys received by the department under s. 108.19 ~~not~~
10 ~~otherwise appropriated under this subsection (1) for the administration of ch. 108.~~

11 **SECTION 3.** 20.445 (1) (gd) of the statutes is renumbered 20.445 (1) (wd) and
12 amended to read:

13 20.445 (1) (wd) *Unemployment interest and penalty payments.* ~~All From the~~
14 unemployment administration fund, all moneys received as interest and penalties
15 collected under ss. 108.04 (11) (c) and (cm) ~~and (13) (e) and 108.22~~ except interest and
16 penalties deposited under s. 108.19 (1q), ~~and forfeitures under s. 103.05 (5), all~~
17 ~~moneys not appropriated under par. (gg) and 108.20 (3), all moneys received as~~
18 forfeitures under s. 103.05 (5), all moneys received under s. 108.09 (5) (c), all moneys
19 received under s. 108.14 (16), all moneys received under s. 108.18 (1) (c), all moneys
20 transferred to this appropriation account from the appropriation account under par.
21 ~~(gh) (wh), and all other nonfederal moneys received for the employment service or~~
22 for the administration of ch. 108 that are not otherwise appropriated under this
23 subsection, for the payment of benefits specified in s. 108.07 (5) and 1987 Wisconsin
24 Act 38, section 132 (1) (e), for the payment of interest to employers under s. 108.17
25 (3m), for research relating to the condition of the unemployment reserve fund under

SENATE BILL 899**SECTION 3**

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

11 **SECTION 4.** 20.445 (1) (gg) of the statutes is repealed.

12 **SECTION 5.** 20.445 (1) (gh) of the statutes is renumbered 20.445 (1) (wh) and
13 amended to read:

14 20.445 (1) (wh) *Unemployment information technology systems; assessments.*
15 ~~All~~ From the unemployment administration fund, all moneys received from
16 assessments levied under s. 108.19 (1e) (a) and ~~1997 Wisconsin Act 39, section 164~~
17 ~~(2)~~, for the purpose specified in s. 108.19 (1e) (d). The treasurer of the unemployment
18 reserve fund may transfer moneys from this appropriation account to the
19 appropriation account under par. ~~(gd)~~ (wd).

20 **SECTION 6.** 20.445 (1) (gm) of the statutes is repealed.

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

22 20.445 (1) (n) *Employment assistance and unemployment insurance*
23 *administration; federal moneys.* All federal moneys received, as authorized by the
24 governor under s. 16.54, for the administration of employment assistance and
25 unemployment insurance programs of the department, for the performance of the

SENATE BILL 899

1 department's other functions under subch. I of ch. 106 and ch. 108, and to pay the
2 compensation and expenses of appeal tribunals and of employment councils
3 appointed under s. 108.14, to be used for such purposes, except as provided in s.
4 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC
5 1103 (d) of the federal Social Security Act, as amended, to transfer to the
6 appropriation account under par. (nb) an amount determined by the treasurer of the
7 unemployment reserve fund not exceeding the lesser of the amount specified in s.
8 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the
9 appropriation account under par. (nd) an amount determined by the treasurer of the
10 unemployment reserve fund not exceeding the lesser of the amount specified in s.
11 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the
12 appropriation account under par. (ne) an amount not exceeding the lesser of the
13 amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under
14 par. (ne) and the amount determined by the treasurer of the unemployment reserve
15 fund that is required to pay for the cost of banking services incurred by the
16 unemployment reserve fund, and to transfer to the appropriation account under s.
17 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve
18 fund.

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

20 20.445 (1) (nb) *Unemployment administration; information technology*
21 *systems.* From the moneys received from the federal government under ~~section 903~~
22 42 USC 1103 (d) of the federal Social Security Act, as amended, as a continuing
23 appropriation, the amounts in the schedule, as authorized by the governor under s.
24 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par.
25 (n) for this purpose shall be credited to this appropriation account. No moneys may

SENATE BILL 899**SECTION 8**

1 be expended from this appropriation unless the treasurer of the unemployment
2 reserve fund determines that such expenditure is currently needed for the purpose
3 specified in s. 108.19 (1e) (d).

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

5 20.445 (1) (nd) *Unemployment administration; apprenticeship and other*
6 *employment services.* From the moneys received from the federal government under
7 ~~section 903~~ 42 USC 1103 (d) of the federal Social Security Act, as amended, the
8 amounts in the schedule, as authorized by the governor under s. 16.54, to be used for
9 administration by the department of apprenticeship programs under subch. I of ch.
10 106 and for administration and service delivery of employment and workforce
11 information services, including the delivery of reemployment assistance services to
12 unemployment insurance claimants. All moneys transferred from par. (n) for this
13 purpose shall be credited to this appropriation account. No moneys may be expended
14 from this appropriation unless the treasurer of the unemployment reserve fund
15 determines that such expenditure is currently needed for the purposes specified in
16 this paragraph.

17 **SECTION 10.** 20.445 (1) (ne) of the statutes is amended to read:

18 20.445 (1) (ne) *Unemployment insurance administration and bank service*
19 *costs.* From the moneys received by this state under ~~section 903 of the federal Social~~
20 ~~Security Act, as amended~~ 42 USC 1103, all moneys transferred from the
21 appropriation account under par. (n) to be used for the administration of
22 unemployment insurance and for the payment of the cost of banking services
23 incurred by the unemployment reserve fund. No moneys may be expended from this
24 appropriation unless the treasurer of the unemployment reserve fund determines

SENATE BILL 899

1 that such expenditure is currently needed for the purpose specified in this
2 paragraph.

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

4 20.445 (1) (u) *Unemployment interest payments and transfers.* From the
5 unemployment interest payment fund, all moneys received from assessments under
6 s. 108.19 (1m) (a) for the purpose of making the payments and transfers authorized
7 under s. 108.19 (1m) (f).

8 **SECTION 12.** 20.445 (1) (v) of the statutes is amended to read:

9 20.445 (1) (v) *Unemployment program integrity.* From the unemployment
10 program integrity fund, all moneys received from sources identified under s. ~~108.19~~
11 ~~(1s)~~ 108.20 (2) (a) for the purpose of making the payments authorized under s. ~~108.19~~
12 ~~(1s)~~ 108.20 (2) (b).

13 **SECTION 13.** 25.17 (1) (xe) of the statutes is amended to read:

14 25.17 (1) (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.20 (3));

15 **SECTION 14.** 25.17 (1) (xf) of the statutes is amended to read:

16 25.17 (1) (xf) Unemployment program integrity fund (s. ~~108.19 (1s)~~ 108.20 (2));

17 **SECTION 15.** 103.05 (5) (d) of the statutes is amended to read:

18 103.05 (5) (d) The department shall deposit all moneys received under this
19 subsection in the appropriation account under s. 20.445 (1) (~~gd~~) (wd).

20 **SECTION 16.** 108.02 (1) of the statutes is repealed.

21 **SECTION 17.** 108.04 (11) (f) of the statutes is amended to read:

22 108.04 (11) (f) All amounts forfeited under par. (c) and all collections from
23 administrative assessments under par. (cm) shall be credited to the administrative
24 account appropriation under s. 20.445 (1) (wd).

25 **SECTION 18.** 108.07 (5) (am) (intro.) of the statutes is amended to read:

SENATE BILL 899**SECTION 18**

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

8 **SECTION 19.** 108.07 (5) (am) 1. of the statutes is amended to read:

9 108.07 (5) (am) 1. If no employer from which the claimant has base period
10 wages is subject to the contribution requirements of ss. 108.17 and 108.18, the
11 benefits shall be ~~charged to the administrative account and~~ paid from the
12 appropriation under s. 20.445 (1) (gd) (wd).

13 **SECTION 20.** 108.07 (5) (am) 3. of the statutes is amended to read:

14 108.07 (5) (am) 3. If 2 or more employers from which the claimant has base
15 period wages are not subject to the contribution requirements of ss. 108.17 and
16 108.18, and one or more employers from which the claimant has base period wages
17 are subject to the contribution requirements of ss. 108.17 and 108.18, that
18 percentage of the employee's benefits which would otherwise be chargeable to the
19 fund's balancing account under sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g), or under s.
20 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), shall be ~~charged to the~~
21 ~~administrative account and~~ paid from the appropriation under s. 20.445 (1) (gd) (wd).

22 **SECTION 21.** 108.07 (6) of the statutes is amended to read:

23 108.07 (6) The department may initially charge benefits otherwise ~~chargeable~~
24 ~~to the administrative account payable from the appropriation under s. 20.445 (1)~~
25 (wd) as provided under this section to the fund's balancing account, and periodically

SENATE BILL 899

1 reimburse the charges to the balancing account from the ~~administrative account~~
2 appropriation under s. 20.445 (1) (wd).

3 **SECTION 22.** 108.09 (5) (b) of the statutes is amended to read:

4 108.09 (5) (b) All testimony at any hearing under this section shall be recorded
5 by electronic means, but need not be transcribed unless either of the parties requests
6 a transcript before expiration of that party's right to further appeal under this
7 section and pays a fee to the commission in advance, the amount of which shall be
8 established by rule of the commission. When the commission provides a transcript
9 to one of the parties upon request, the commission shall also provide a copy of the
10 transcript to all other parties free of charge. The transcript fee collected shall be paid
11 ~~to the administrative account~~ credited to the appropriation account under s. 20.427
12 (1) (g).

13 **SECTION 23.** 108.14 (2m) of the statutes is amended to read:

14 108.14 (2m) In the discharge of their duties under this chapter an appeal
15 tribunal, commissioner, or other authorized representative of the department or
16 commission may administer oaths to persons appearing before them, take
17 depositions, certify to official acts, and by subpoenas, served in the manner in which
18 circuit court subpoenas are served, compel attendance of witnesses and the
19 production of books, papers, documents, and records necessary or convenient to be
20 used by them in connection with any investigation, hearing, or other proceeding
21 under this chapter. A party's attorney of record may issue a subpoena to compel the
22 attendance of a witness or the production of evidence. A subpoena issued by an
23 attorney must be in substantially the same form as provided in s. 805.07 (4) and must
24 be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of
25 issuance, send a copy of the subpoena to the appeal tribunal or other representative

SENATE BILL 899**SECTION 23**

1 of the department responsible for conducting the proceeding. However, in any
2 investigation, hearing, or other proceeding involving the administration of oaths or
3 the use of subpoenas under this subsection due notice shall be given to any interested
4 party involved, who shall be given an opportunity to appear and be heard at any such
5 proceeding and to examine witnesses and otherwise participate therein. Witness
6 fees and travel expenses involved in proceedings under this chapter may be allowed
7 by the appeal tribunal or representative of the department at rates specified by
8 department rules, and shall be paid from the ~~administrative account~~ appropriation
9 under s. 20.445 (1) (n).

10 **SECTION 24.** 108.14 (3m) of the statutes is amended to read:

11 108.14 (3m) In any court action to enforce this chapter the department, the
12 commission, and the state may be represented by any licensed attorney who is an
13 employee of the department or the commission and is designated by either of them
14 for this purpose or at the request of either of them by the department of justice. If
15 the governor designates special counsel to defend, in behalf of the state, the validity
16 of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101
17 to 1111, the expenses and compensation of the special counsel and of any experts
18 employed by the department in connection with that proceeding may be charged to
19 the ~~administrative account~~ appropriation under s. 20.445 (1) (wd). If the
20 compensation is being determined on a contingent fee basis, the contract is subject
21 to s. 20.9305.

22 **SECTION 25.** 108.14 (7) (c) of the statutes is repealed.

23 **SECTION 26.** 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered
24 108.14 (12) (am) and amended to read:

SENATE BILL 899

1 108.14 **(12)** (am) Consistently with the provisions of ~~pars. (8) and (9) of section~~
2 ~~303 (a) of Title III of the federal social security act, 42 USC 503 (a) (8) and (9), the~~
3 ~~department shall expend~~ all moneys received in the federal administrative financing
4 account from any federal agency under said Title III ~~shall be expended 42 USC ch.~~
5 ~~7 subch. III solely for the purposes and in the amounts found necessary by said that~~
6 ~~agency for the proper and efficient administration of this chapter. (b) Consistently~~
7 ~~with said provisions of said Title III, any~~ The department shall replace, within a
8 ~~reasonable time, any such moneys, that were received prior to before~~ July 1, 1941,
9 and ~~remaining~~ remained unencumbered on said that date, or that were received on
10 or after said that date, ~~which, because of any action or contingency, have been if the~~
11 moneys are lost or have been expended for purposes other than, or in amounts in
12 excess of, those found necessary by said the federal agency for the proper
13 administration of this chapter, ~~shall be replaced within a reasonable time. This~~
14 ~~paragraph is the declared policy of this state, as enunciated by the 1941 legislature,~~
15 and shall be implemented as further provided in this subsection. (c). If it is believed
16 that any amount of money thus received ~~has been thus~~ is lost or improperly
17 expended, the department, on its own motion or on notice from said the federal
18 agency, shall promptly investigate and determine the matter and shall, depending
19 on the nature of its determination, take such steps as it ~~may deem~~ considers
20 necessary to protect the interests of the state. (d) If it is finally determined that
21 moneys ~~thus received~~ have been ~~thus~~ lost or improperly expended, then the
22 department shall either make the necessary replacement from ~~those moneys in the~~
23 ~~administrative account specified in s. 108.20 (2m)~~ the appropriation under s. 20.445
24 (1) (wd) or shall submit, at the next budget hearings conducted by the governor and
25 at the budget hearings conducted by the next legislature convened in regular session,

SENATE BILL 899**SECTION 26**

1 a request that the necessary replacement be made by an appropriation from the
2 general fund.

3 **SECTION 27.** 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and
4 amended to read:

5 108.14 (12) (bm) This subsection shall not be construed to relieve this state of
6 any obligation existing ~~prior to its enactment before July 1, 1941,~~ with respect to
7 moneys received ~~prior to before July 1, 1941, pursuant to said Title III under 42 USC~~
8 ch. 7 subch. III.

9 **SECTION 28.** 108.14 (16) of the statutes is amended to read:

10 108.14 (16) The department shall have duplicated or printed, ~~and shall~~
11 ~~distribute without charge, such employment security~~ any reports, studies and,
12 forms, records, decisions, regulations, rules, or other materials, including the text of
13 this chapter ~~and, the handbook under sub. (23), and other~~ instructional or
14 explanatory pamphlets for employers or workers, as that it deems necessary for
15 public information or for the proper administration of this chapter; ~~but the.~~ The
16 department may collect a reasonable charge, which shall be credited to the
17 administrative appropriation account under s. 20.445 (1) (wd), for any such item the
18 cost of which is not fully covered by federal administrative grants.

19 **SECTION 29.** 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and
20 amended to read:

21 108.19 (1e) (e) No later than the end of the month following each quarter in
22 which the department expends moneys derived from assessments levied under s.
23 ~~108.19 (1e)~~ this subsection, the department shall submit a report to the council on
24 unemployment insurance describing the use of the moneys expended and the status
25 at the end of the quarter of any project for which moneys were expended.

SENATE BILL 899

1 **SECTION 30.** 108.14 (23) (d) of the statutes is repealed.

2 **SECTION 31.** 108.16 (5) (c) of the statutes is amended to read:

3 108.16 (5) (c) While the state has an account in the “Unemployment Trust
4 Fund”,” public deposit insurance charges on the fund’s balances held in banks,
5 savings banks, savings and loan associations, and credit unions in this state, the
6 premiums on surety bonds required of the fund’s treasurer under this section, and
7 any other expense of administration otherwise payable from the fund’s interest
8 earnings, shall be paid from the ~~administrative account~~ appropriation under s.
9 20.445 (1) (n) or (ne).

10 **SECTION 32.** 108.16 (6) (k) of the statutes is amended to read:

11 108.16 (6) (k) All payments to the fund from the ~~administrative account as~~
12 ~~authorized under s. 108.20 (2m)~~ appropriation under s. 20.445 (1) (wd).

13 **SECTION 33.** 108.16 (6) (m) of the statutes is amended to read:

14 108.16 (6) (m) Any amounts transferred to the balancing account from the
15 unemployment interest payment fund under s. 108.19 (1m) (f).

16 **SECTION 34.** 108.16 (8) (f) of the statutes is amended to read:

17 108.16 (8) (f) The successor shall take over and continue the transferor’s
18 account, including its positive or negative balance and all other aspects of its
19 experience under this chapter in proportion to the payroll assignable to the
20 transferred business and the liability of the successor shall be proportioned to the
21 extent of the transferred business. The transferor and the successor shall be jointly
22 and severally liable for any amounts owed by the transferor ~~to the fund and to the~~
23 ~~administrative account~~ under this chapter at the time of the transfer, but a successor
24 under par. (c) is not liable for the debts of the transferor except in the case of fraud
25 or malfeasance.

SENATE BILL 899

1 **SECTION 35.** 108.161 (title) of the statutes is amended to read:

2 **108.161 (title) Federal administrative financing account; Reed Act**
3 **distributions.**

4 **SECTION 36.** 108.161 (1) and (1m) of the statutes are consolidated, renumbered
5 108.161 (1) and amended to read:

6 108.161 (1) The fund's treasurer shall maintain within the fund an
7 employment security "federal administrative financing account", and shall credit
8 thereto to that account all amounts credited to the fund pursuant to the federal
9 employment security administrative financing act (of 1954) and section 903 of the
10 federal social security act, as amended. ~~(1m) The treasurer of the fund shall also~~
11 ~~credit to said account~~ under 42 USC 1101 to 1103 and all federal moneys credited to
12 the fund pursuant to under sub. (8).

13 **SECTION 37.** 108.161 (2) of the statutes is amended to read:

14 108.161 (2) The requirements of ~~said section 903~~ 42 USC 1103 shall control any
15 appropriation, withdrawal, and use of any moneys in said the federal administrative
16 financing account.

17 **SECTION 38.** 108.161 (3) of the statutes is amended to read:

18 108.161 (3) Consistently with this chapter and ~~said section 903~~, such 42 USC
19 1103, moneys in the federal administrative financing account shall be used solely for
20 benefits or employment security administration by the department, including
21 unemployment insurance, employment service, apprenticeship programs, and
22 related statistical operations.

23 **SECTION 39.** 108.161 (3e) of the statutes is amended to read:

24 108.161 (3e) Notwithstanding sub. (3), any moneys allocated under ~~section 903~~
25 ~~of the federal Social Security Act, as amended,~~ 42 USC 1103 for federal fiscal years

SENATE BILL 899

1 2000 and 2001 and the first \$2,389,107 of any distribution received by this state
2 under ~~section 903 of that act~~ 42 USC 1103 in federal fiscal year 2002 shall be used
3 solely for unemployment insurance administration.

4 **SECTION 40.** 108.161 (4) of the statutes is amended to read:

5 108.161 (4) ~~Such moneys~~ Moneys in the federal administrative financing
6 account shall be encumbered and spent for employment security administrative
7 purposes only pursuant to, and after the effective date of, a specific legislative
8 appropriation enactment that does all of the following:

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

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

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

23 (d) ~~Limiting Limits~~ the total amount ~~which~~ that may be obligated during any
24 fiscal year to the aggregate of all amounts credited under sub. (1), including amounts

SENATE BILL 899**SECTION 40**

1 credited pursuant to under sub. (8), reduced at the time of any obligation by the sum
2 of the moneys obligated and charged against any of the amounts credited.

3 **SECTION 41.** 108.161 (5) and (6) of the statutes are consolidated, renumbered
4 108.161 (5m) and amended to read:

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

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

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

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

19 **SECTION 42.** 108.161 (7) of the statutes is amended to read:

20 108.161 **(7)** If any moneys appropriated ~~hereunder~~ under this section are used
21 to buy and hold suitable land, ~~with a view to the future construction of an~~ and to build
22 a suitable employment security building thereon, and if such land is later sold or
23 transferred to other use, the proceeds of such sale (~~or the value of such land when~~
24 transferred), shall be credited to the federal administrative financing account
25 ~~created by sub. (1)~~ except as otherwise provided in ss. 13.48 (14) and 16.848.

SENATE BILL 899

1 **SECTION 43.** 108.161 (8) of the statutes is amended to read:

2 108.161 (8) If any sums are appropriated and spent hereunder under this
3 section to buy land and to build a suitable employment security building thereon, or
4 to purchase information technology hardware and software, ~~then~~ any federal
5 moneys thereafter credited to the fund or paid to the department by way of gradual
6 reimbursement of such employment security capital expenditures, or in lieu of the
7 estimated periodic amounts ~~which~~ that would otherwise (, in the absence of such
8 expenditures), be federally granted for the rental of substantially equivalent
9 quarters, shall be credited to the federal administrative financing account ~~created~~
10 ~~by sub. (1)~~, consistently with any federal requirements applicable to the handling
11 and crediting of such moneys.

12 **SECTION 44.** 108.161 (9) of the statutes is amended to read:

13 108.161 (9) Any land and building or office quarters acquired under this section
14 shall continue to be used for employment security purposes. Realty or quarters may
15 not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am)
16 or 16.848 (1) and may not be sold or transferred without the governor's approval. The
17 proceeds from the sale, or the value of realty or quarters upon transfer, shall be
18 credited to the federal administrative financing account ~~established in sub. (1)~~ or
19 credited to the ~~fund established in s. 108.20~~ appropriate appropriation account
20 under s. 20.445, or both as determined by the department in accordance with federal
21 requirements. Equivalent substitute rent-free quarters may be provided, as
22 federally approved. Amounts credited under this subsection shall be used solely to
23 finance employment security quarters according to federal requirements.

24 **SECTION 45.** 108.162 (7) of the statutes is amended to read:

SENATE BILL 899**SECTION 45**

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

4 **SECTION 46.** 108.17 (2m) of the statutes is amended to read:

5 108.17 (2m) When a written statement of account is issued to an employer by
6 the department, ~~showing as duly credited~~ that shows a specified amount received
7 from the employer under this chapter as having been credited, no other form of state
8 receipt ~~therefor~~ is required.

9 **SECTION 47.** 108.17 (3) of the statutes is amended to read:

10 108.17 (3) If an employing unit ~~makes application~~ applies to the department
11 to adjust an alleged overpayment by the employer of contributions or interest under
12 this chapter, and files such an application within 3 years after the close of the
13 calendar year in which such payment was made, the department shall ~~make a~~
14 ~~determination~~ determine under s. 108.10 ~~as to the existence and whether and to~~
15 ~~what~~ extent of any such an overpayment, and said section shall apply to such
16 ~~determination~~ exists. Except as provided in sub. (3m), the department shall allow
17 an employer a credit for any amount determined under s. 108.10 to have been
18 erroneously paid by the employer, without interest, against its future contribution
19 payments; or, if the department finds it impracticable to allow the employer such a
20 credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from
21 the fund or the ~~administrative account, as the case may be~~ appropriate appropriation
22 under s. 20.445.

23 **SECTION 48.** 108.17 (3m) of the statutes is amended to read:

24 108.17 (3m) If an appeal tribunal or the commission issues a decision under
25 s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is

SENATE BILL 899

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

7 **SECTION 49.** 108.18 (7) (a) 1. of the statutes is amended to read:

8 108.18 (7) (a) 1. Except as provided in pars. (b) to (i), any employer may make
9 payments to the fund during the month of November in excess of those required by
10 this section and s. 108.19 (1), ~~(1e)~~, and ~~(1f)~~. Each payment shall be credited to the
11 employer's account for the purpose of computing the employer's reserve percentage
12 as of the immediately preceding computation date.

13 **SECTION 50.** 108.18 (7) (h) of the statutes is amended to read:

14 108.18 (7) (h) The department shall establish contributions, other than those
15 contributions required by this section and assessments required under s. 108.19 (1),
16 ~~(1e)~~, and ~~(1f)~~ and contributions other than those submitted during the month of
17 November or authorized under par. (f) or (i) 2., as a credit, without interest, against
18 future contributions payable by the employer or shall refund the contributions at the
19 employer's option.

20 **SECTION 51.** 108.19 (title) of the statutes is repealed and recreated to read:

21 **108.19 (title) Special assessments.**

22 **SECTION 52.** 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and
23 amended to read:

24 108.19 (1) (a) Each employer subject to this chapter shall regularly ~~contribute~~
25 ~~to the administrative account at the rate of two-tenths of one~~ pay an assessment

SENATE BILL 899**SECTION 52**

1 equal to 0.2 percent per year on its payroll, except that the department may prescribe
2 at the close of any fiscal year such lower rates ~~of contribution~~ under this section
3 subsection, to apply to classes of employers throughout the ensuing fiscal year, as will
4 in the department's judgment adequately finance the administration of this chapter,
5 and as will in the department's judgment fairly represent the relative cost of the
6 services rendered by the department to each such class.

7 **SECTION 53.** 108.19 (1) (d) of the statutes is created to read:

8 108.19 (1) (d) Assessments under this subsection shall be credited to the
9 appropriation account under s. 20.445 (1) (wc).

10 **SECTION 54.** 108.19 (1e) (a) of the statutes is amended to read:

11 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an
12 employer that finances benefits by reimbursement in lieu of contributions under s.
13 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable
14 under s. 108.18 and this section, pay an assessment ~~to the administrative account~~
15 for each year ~~prior to~~ before the year 2010 equal to the lesser of 0.01 percent of its
16 payroll for that year or the solvency contribution that would otherwise be payable
17 by the employer under s. 108.18 (9) for that year.

18 **SECTION 55.** 108.19 (1e) (cm) of the statutes is created to read:

19 108.19 (1e) (cm) Assessments under this subsection shall be credited to the
20 appropriation under s. 20.445 (1) (wh).

21 **SECTION 56.** 108.19 (1e) (d) of the statutes is amended to read:

22 108.19 (1e) (d) The department may expend the moneys received from
23 assessments levied under this subsection in the amounts authorized under s. 20.445
24 (1) ~~(gh)~~ (wh) for the renovation and modernization of unemployment insurance
25 information technology systems, specifically including development and

SENATE BILL 899

1 implementation of a new system and reengineering of automated processes and
2 manual business functions.

3 **SECTION 57.** 108.19 (1f) (a) of the statutes is amended to read:

4 108.19 (1f) (a) Except as provided in par. (b), each employer, other than an
5 employer that finances benefits by reimbursement in lieu of contributions under s.
6 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable
7 under s. 108.18 and this section, pay an assessment for each year equal to the lesser
8 of 0.01 percent of its payroll for that year or the solvency contribution that would
9 otherwise be payable by the employer under s. 108.18 (9) for that year.

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

12 **SECTION 58.** 108.19 (1f) (c) of the statutes is amended to read:

13 108.19 (1f) (c) Notwithstanding par. (a), the department may, if it finds that the
14 full amount of the levy is not required to effect the purposes specified in ~~sub. (1s) s.~~
15 108.20 (2) (b) for any year, prescribe a reduced levy for that year and in such case shall
16 publish in the notice under par. (b) the rate of the reduced levy.

17 **SECTION 59.** 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and
18 amended to read:

19 108.19 (1m) (a) Each employer subject to this chapter as of the date a rate is
20 established under this subsection shall pay an assessment ~~to the unemployment~~
21 ~~interest payment fund~~ at a rate established by the department sufficient to pay
22 interest due on advances from the federal unemployment account under ~~Title XII of~~
23 ~~the federal social security act~~, 42 USC 1321 to 1324. The rate established by the
24 department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or
25 108.152 (1) shall be 75 percent of the rate established for other employers. The

SENATE BILL 899**SECTION 59**

1 amount of any employer's assessment shall be the product of the rate established for
2 that employer multiplied by the employer's payroll of the previous calendar year as
3 taken from quarterly employment and wage reports filed by the employer under s.
4 108.205 (1) or, in the absence of the filing of such reports, estimates made by the
5 department.

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

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

17 **SECTION 60.** 108.19 (1m) (e) of the statutes is created to read:

18 108.19 **(1m)** (e) Assessments under this subsection shall be deposited in the
19 unemployment interest payment fund.

20 **SECTION 61.** 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and
21 amended to read:

22 108.19 **(1m)** (b) The department shall publish as a class 1 notice under ch. 985
23 any rate established under ~~sub. (1m) par. (a)~~ within 10 days of after the date that the
24 rate is established.

SENATE BILL 899

1 **SECTION 62.** 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and
2 amended to read:

3 108.19 **(1m)** (c) Notwithstanding ~~sub. (1m) par. (a)~~, an employer having a
4 payroll of \$25,000 or less for the preceding calendar year is exempt from any
5 assessment under ~~sub. (1m)~~ this subsection.

6 **SECTION 63.** 108.19 (1q) of the statutes is renumbered 108.20 (3) and amended
7 to read:

8 108.20 **(3)** UNEMPLOYMENT INTEREST PAYMENT FUND. There is created a separate,
9 nonlapsible trust fund designated as the unemployment interest payment fund
10 consisting of all amounts collected under ~~sub. s. 108.19~~ (1m) (a) and all interest and
11 penalties on those amounts collected under s. 108.22.

12 **SECTION 64.** 108.19 (1s) of the statutes is renumbered 108.20 (2), and 108.20
13 (2) (a) 2. and 3., as renumbered, are amended to read:

14 108.20 **(2)** (a) 2. Assessments levied and deposited into the unemployment
15 program integrity fund under ~~sub. (1f)~~ s. 108.19 (1f).

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

17 **SECTION 65.** 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and
18 amended to read:

19 108.19 **(1)** (b) If the department finds, at any time within a fiscal year for which
20 it has prescribed lower contribution rates to the administrative account than the
21 maximum rate permitted under ~~sub. (1) par. (a)~~, that such lower rates will not
22 adequately finance the administration of this chapter or are excessive for that
23 purpose, the department may by general rule prescribe a new schedule of rates in no
24 case exceeding the specified maximum to apply under this ~~section~~ subsection for the
25 balance of the fiscal year.

SENATE BILL 899**SECTION 66**

1 **SECTION 66.** 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and
2 amended to read:

3 108.19 (1) (c) Within the limit specified by ~~sub. (1)~~ under par. (a), the
4 department may by rule prescribe at any time as to any period any such rate or rates
5 or schedule as it deems necessary and proper ~~hereunder~~ under this subsection.
6 Unless thus prescribed, no such rate or rates or schedule shall apply under ~~sub. (1)~~
7 ~~or (2)~~ par. (a) or (b).

8 **SECTION 67.** 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and
9 amended to read:

10 108.18 (1) (c) ~~If section 303 Notwithstanding par. (b), if 42 USC 503 (a) (5) of~~
11 ~~title III of the social security act and section 26 USC 3304 (a) (4) of the internal~~
12 ~~revenue code are amended to permit a state agency to use, in financing~~
13 ~~administrative expenditures incurred in carrying out its employment security~~
14 ~~functions, some any part of the moneys collected or to be collected under the state~~
15 ~~unemployment insurance law, an employer's contributions in partial or complete~~
16 ~~substitution for grants under title III 42 USC 501 to 506, then this chapter shall, by~~
17 ~~rule of the department, be modified in the manner and to the extent and within the~~
18 ~~limits necessary to permit such use by the department under this chapter; and the~~
19 ~~modifications shall become effective on the same date as such use becomes~~
20 ~~permissible under the federal amendments~~ the department may credit any portion
21 of that part of an employer's contributions to the appropriation under s. 20.445 (1)
22 (wd).

23 **SECTION 68.** 108.20 of the statutes is repealed and recreated to read:

24 **108.20 Segregated funds. (1) UNEMPLOYMENT ADMINISTRATION FUND.** There
25 is created a separate, nonlapsible trust fund designated as the unemployment

SENATE BILL 899

1 administration fund consisting of moneys credited to the appropriation accounts
2 under s. 20.445 (1) (wc), (wd), and (wh).

3 **(2) UNEMPLOYMENT PROGRAM INTEGRITY FUND.**

4 **SECTION 69.** 108.22 (1) (am) of the statutes is amended to read:

5 108.22 **(1)** (am) The interest, penalties, and tardy filing fees levied under pars.
6 (a), (ac), (ad), and (af) shall be paid to the department and credited to the
7 administrative account appropriation under s. 20.445 (1) (wd).

8 **SECTION 70.** 108.22 (1m) of the statutes is amended to read:

9 108.22 **(1m)** If any person owes any contributions, reimbursements or
10 assessments under s. 108.15, 108.151, 108.152, 108.155, or 108.19 (~~1m~~), benefit
11 overpayments, interest, fees, payments for forfeitures, other penalties, or any other
12 amount to the department under this chapter and fails to pay the amount owed, the
13 department has a perfected lien upon the right, title, and interest in all of the
14 person's real and personal property located in this state in the amount finally
15 determined to be owed, plus costs. Except where creation of a lien is barred or stayed
16 by bankruptcy or other insolvency law, the lien is effective upon the earlier of the date
17 on which the amount is first due or the date on which the department issues a
18 determination of the amount owed under this chapter and shall continue until the
19 amount owed, plus costs and interest to the date of payment, is paid, except as
20 provided in sub. (8) (d). If a lien is initially barred or stayed by bankruptcy or other
21 insolvency law, it shall become effective immediately upon expiration or removal of
22 such bar or stay. The perfected lien does not give the department priority over
23 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
24 whose interests have been recorded before the department's lien is recorded.

25 **SECTION 71. Fiscal changes.**



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-2176/1
MED:skw

2023 ASSEMBLY BILL 147

April 7, 2023 - Introduced by Representatives ARMSTRONG, BEHNKE, BROOKS, EDMING, GREEN, GUNDRUM, KNODL, MACCO, MOSES, MURPHY, NEDWESKI, O'CONNOR, PENTERMAN, PETERSEN, PETRYK, PLUMER, RETTINGER, ROZAR, SCHMIDT, SORTWELL and WICHGERS, cosponsored by Senators WIMBERGER, FELZKOWSKI, NASS and STROEBEL. Referred to Committee on Workforce Development and Economic Opportunities.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 108.04 (2) (a) 4. and 108.04 (5) (e); *to amend*
2 16.54 (2) (a) 1., 108.04 (5) (b), 108.04 (15) (a) 1. and 108.14 (20); and *to create*
3 16.54 (14), 108.04 (2) (a) 4. c., 108.04 (5) (e) (intro.), 108.04 (5) (e) 2. and 108.04
4 (5) (h) of the statutes; **relating to:** various changes to the unemployment
5 insurance law and requiring approval by the Joint Committee on Finance of
6 certain federally authorized unemployment benefits.

Analysis by the Legislative Reference Bureau

UNEMPLOYMENT INSURANCE

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

Misconduct

Currently, if an employee is discharged for misconduct connected with his or her employment, the employee is ineligible to receive UI benefits until certain requalification criteria are satisfied. In addition, all wages earned with the employer that discharges the employee are excluded in determining the amount of any future benefits to which the employee is entitled. Current law provides a general definition of misconduct and also specifies a number of specific actions that constitute misconduct. The bill does all of the following with respect to what is considered misconduct:

ASSEMBLY BILL 147

1. Current law specifically provides that misconduct includes theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes substantial damage to his or her employer's property. The bill does the following:

a. Eliminates the requirement that the employee have intent to deprive the employer of the property or services permanently.

b. Provides that intentional or negligent conduct by an employee that causes the destruction of an employer's records is also considered misconduct.

c. Adds unauthorized possession of an employer's property, theft or unauthorized distribution of an employer's confidential or proprietary information, and use of an employer's credit card or other financial instrument for an unauthorized or nonbusiness purpose without prior approval from the employer to the list of what is considered misconduct.

2. Current law specifically provides that misconduct includes absenteeism by an employee on more than two occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

The bill instead provides that misconduct includes both of the following: 1) a violation of an employer's reasonable policy that covers employee absenteeism, tardiness, or both and that results in an employee's termination, if that termination is in accordance with that policy and the policy is specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature; and 2) if an employer does not have a policy covering absenteeism that meets the criteria just described, absenteeism on more than two occasions within the 120-day period preceding an employee's termination, if the employee does not provide to the employer both notice and one or more valid reasons for the absenteeism.

3. The bill specifically provides that misconduct includes a violation by an employee of an employer's reasonable employment policy that covers the use of social media specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature.

General qualifying requirements

Under current law, a claimant for UI benefits is generally required to 1) register for work, 2) be able to work and available for work, and 3) conduct a work search for each week in order to remain eligible. A claimant is required to conduct at least four work search actions each week, and DWD may require, by rule, that an individual conduct more than four work search actions per week. Finally, if a claimant is claiming benefits for a week other than an initial week, the claimant must provide information or job application materials that are requested by DWD and participate

ASSEMBLY BILL 147

in a public employment office workshop or training program or in similar reemployment services required by DWD.

The bill does the following:

1. Requires a claimant who resides outside this state and who is claiming benefits for a week other than an initial week to register with his or her local job center website or labor market exchange and requires DWD to verify that each such claimant has complied with that requirement.

2. Requires DWD to conduct random audits for at least 50 percent of all work search actions reported to have been performed by claimants. Current law requires random audits of work search actions, but does not require a specific number or level of audits.

OTHER CHANGES***UI benefit augmentations subject to review by Joint Committee on Finance***

The bill provides that whenever any UI benefit augmentation is provided for through an act of Congress or by executive action of the president of the United States, the cochairpersons of the Joint Committee on Finance must be notified, in writing, of the proposed benefit augmentation. The bill defines “benefit augmentation” to mean any action whereby the governor or any other state official or agency would encumber or expend moneys received from, or accept reimbursement from, the federal government or whereby the governor or any other state agency or official would enter into any contract or agreement with the federal government or any federal agency to 1) increase the weekly UI benefit rate payable to claimants above what is provided under state law, or 2) increase the total amount of UI benefits to which a claimant is entitled above what is provided under state law. Under the bill, such a benefit augmentation is subject to a 14-day passive review by the Joint Committee on Finance.

In addition, the bill provides that no benefit augmentation may be effectuated unless it is subject to termination or cancellation by the Joint Committee on Finance.

Worker’s compensation; misconduct

Currently, under the worker’s compensation law, an employer is not liable for temporary disability benefits during an employee’s healing period if the employee is suspended or terminated from employment due to misconduct, as defined under the UI law. Under the bill, the changes to the UI law’s definition of misconduct described above apply under the worker’s compensation law as well.

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

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

1 **SECTION 1.** 16.54 (2) (a) 1. of the statutes is amended to read:

ASSEMBLY BILL 147**SECTION 1**

1 16.54 (2) (a) 1. Except as provided in subd. 2. and sub. (14), whenever funds
2 shall be made available to this state through an act of congress and the funds are
3 accepted as provided in sub. (1), the governor shall designate the state board,
4 commission, or department to administer any of such funds, and the board,
5 commission, or department so designated by the governor is authorized and directed
6 to administer such funds for the purpose designated by the act of congress making
7 an appropriation of such funds, or by the department of the United States
8 government making such funds available to this state. Whenever a block grant is
9 made to this state, no moneys received as a part of the block grant may be transferred
10 from use as a part of one such grant to use as a part of another such grant, regardless
11 of whether a transfer between appropriations is required, unless the joint committee
12 on finance approves the transfer.

13 **SECTION 2.** 16.54 (14) of the statutes is created to read:

14 16.54 (14) (a) In this subsection, “benefit augmentation” means for any state
15 agency or official, including the governor, to encumber or expend moneys received
16 from, or accept reimbursement from, the federal government or for any state agency
17 or official, including the governor, to enter into any contract or agreement with the
18 federal government or any federal agency, to do any of the following:

19 1. Increase the weekly unemployment insurance benefit rate payable to
20 claimants to a rate that is higher than what is provided under s. 108.05, including
21 by providing any stipend or other benefit separately from unemployment insurance
22 benefits, if eligibility for that stipend or benefit is determined, in whole or in part,
23 based on an individual’s receipt of, or eligibility for, unemployment insurance
24 benefits.

ASSEMBLY BILL 147

1 2. Increase the total amount of unemployment insurance benefits to which a
2 claimant is entitled to an amount that is greater than what is provided under s.
3 108.06 (2), including by providing an increased overall benefit entitlement or
4 additional weeks of benefits.

5 (b) 1. Whenever any benefit augmentation is provided for through an act of
6 congress or by executive action of the president of the United States, the governor
7 or other state official or state agency shall notify the cochairpersons of the joint
8 committee on finance, in writing, of the proposed benefit augmentation. The notice
9 shall contain a detailed description of the proposed benefit augmentation, an
10 affirmative statement that the proposed benefit augmentation complies with subd.
11 2., and, if the proposed benefit augmentation requires any contract or agreement
12 with the federal government or any federal agency, a copy of the proposed contract
13 or agreement if available. If the cochairpersons of the committee do not notify the
14 governor, official, or agency that the committee has scheduled a meeting for the
15 purpose of reviewing the proposed benefit augmentation within 14 working days
16 after the date of the governor's, official's, or agency's notification, the benefit
17 augmentation may, subject to subd. 2., be effectuated as proposed by the governor,
18 official, or agency. If, within 14 working days after the date of the governor's,
19 official's, or agency's notification, the cochairpersons of the committee notify the
20 governor, official, or agency that the committee has scheduled a meeting for the
21 purpose of reviewing the proposed benefit augmentation, the benefit augmentation
22 may not be effectuated without the approval of the committee. The committee may
23 not approve a proposed benefit augmentation unless it complies with subd. 2.

24 2. No benefit augmentation may be effectuated unless it is subject to
25 termination or cancellation by the joint committee on finance.

ASSEMBLY BILL 147**SECTION 2**

1 (c) This subsection does not apply with respect to federal extended benefits
2 under s. 108.141.

3 **SECTION 3.** 108.04 (2) (a) 4. of the statutes is renumbered 108.04 (2) (a) 4.
4 (intro.) and amended to read:

5 108.04 (2) (a) 4. (intro.) If the claimant is claiming benefits for a week other
6 than an initial week, the claimant provides does all of the following:

7 a. Provides information or job application materials that are requested by the
8 department ~~and participates.~~

9 b. Participates in a public employment office workshop or training program or
10 in similar reemployment services that are required by the department under sub.
11 (15) (a) 2.

12 **SECTION 4.** 108.04 (2) (a) 4. c. of the statutes is created to read:

13 108.04 (2) (a) 4. c. Registers on his or her local job center website or with his
14 or her labor market exchange, if the claimant resides outside this state. The
15 department shall verify that each such claimant has complied with this subd. 4. c.

16 **SECTION 5.** 108.04 (5) (b) of the statutes is amended to read:

17 108.04 (5) (b) Theft or unauthorized possession of an employer's property ~~or,~~
18 theft of an employer's services with intent to deprive the employer of the property or
19 services permanently, theft or unauthorized distribution of an employer's
20 confidential or proprietary information, use of an employer's credit card or other
21 financial instrument for an unauthorized or nonbusiness purpose without prior
22 approval from the employer, theft of currency of any value, felonious conduct
23 connected with an employee's employment with his or her employer, or intentional

ASSEMBLY BILL 147

1 or negligent conduct by an employee that causes the destruction of an employer's
2 records or substantial damage to ~~his or her~~ an employer's property.

3 **SECTION 6.** 108.04 (5) (e) (intro.) of the statutes is created to read:

4 108.04 (5) (e) (intro.) Any of the following:

5 **SECTION 7.** 108.04 (5) (e) of the statutes is renumbered 108.04 (5) (e) 1. and
6 amended to read:

7 108.04 (5) (e) 1. Absenteeism by an employee on more than 2 occasions within
8 the 120-day period before the date of the employee's termination, ~~unless otherwise~~
9 ~~specified by his or her employer~~ if the employee does not provide to his or her
10 employer both notice and one or more valid reasons for the absenteeism. This
11 subdivision does not apply if the employer has a reasonable policy that covers
12 absenteeism described in subd. 2. in an employment manual of which the employee
13 has acknowledged receipt with his or her signature, ~~or excessive tardiness by an~~
14 ~~employee in violation of a policy of the employer that has been communicated to the~~
15 ~~employee, if the employee does not provide to his or her employer both notice and one~~
16 ~~or more valid reasons for the absenteeism or tardiness.~~

17 **SECTION 8.** 108.04 (5) (e) 2. of the statutes is created to read:

18 108.04 (5) (e) 2. A violation of an employer's reasonable policy that covers
19 employee absenteeism, tardiness, or both, and that results in an employee's
20 termination, if that termination is in accordance with that policy and the policy is
21 specified by the employer in an employment manual of which the employee has
22 acknowledged receipt with his or her signature.

23 **SECTION 9.** 108.04 (5) (h) of the statutes is created to read:

24 108.04 (5) (h) A violation by an employee of an employer's reasonable policy
25 that covers the use of social media and is substantially related to the employee's

ASSEMBLY BILL 147**SECTION 9**

1 employment, if the violation results in an employee's termination and if that
2 termination is in accordance with that policy and the policy is specified by the
3 employer in an employment manual of which the employee has acknowledged receipt
4 with his or her signature.

5 **SECTION 10.** 108.04 (15) (a) 1. of the statutes is amended to read:

6 108.04 (15) (a) 1. Use the information or materials provided under sub. (2) (a)
7 4. a. to assess a claimant's efforts, skills, and ability to find or obtain work and to
8 develop a list of potential opportunities for a claimant to obtain suitable work. A
9 claimant who otherwise satisfies the requirement under sub. (2) (a) 3. is not required
10 to apply for any specific positions on the list in order to satisfy that requirement.

11 **SECTION 11.** 108.14 (20) of the statutes is amended to read:

12 108.14 (20) The department shall conduct random audits on claimants for
13 benefits under this chapter to assess compliance with the work search requirements
14 under s. 108.04 (2) (a) 3. The department shall conduct the audits required under
15 this subsection at a level sufficient for the department to assess at least 50 percent
16 of all work search actions reported to have been performed by claimants.

17 **SECTION 12. Nonstatutory provisions.**

18 (1) The department of workforce development shall submit a notice to the
19 legislative reference bureau for publication in the Wisconsin Administrative
20 Register when the department determines that the department has any rules in
21 place that are necessary to implement the renumbering and amendment of s. 108.04
22 (2) (a) 4. and the creation of s. 108.04 (2) (a) 4. c. by this act.

23 **SECTION 13. Initial applicability.**

ASSEMBLY BILL 147

1 (1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of
2 s. 108.04 (2) (a) 4. c. first apply with respect to weeks of unemployment beginning on
3 the effective date of this subsection.

4 (2) The renumbering and amendment of s. 108.04 (5) (e), the amendment of s.
5 108.04 (5) (b), and the creation of s. 108.04 (5) (e) (intro.) and 2. and (h) first apply
6 with respect to determinations issued under s. 108.09 on the effective date of this
7 subsection.

8 **SECTION 14. Effective dates.** This act takes effect on the Sunday after
9 publication, except as follows:

10 (1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of
11 s. 108.04 (2) (a) 4. c. and SECTION 13 (1) of this act take effect on the Sunday after the
12 notice under SECTION 12 (1) of this act is published in the Wisconsin Administrative
13 Register or on December 31, 2023, whichever occurs first.

14 (2) The renumbering and amendment of s. 108.04 (5) (e), the amendment of s.
15 108.04 (5) (b), and the creation of s. 108.04 (5) (e) (intro.) and 2. and (h) and SECTION
16 13 (2) of this act take effect on December 31, 2025, or on the first Sunday after the
17 180th day after publication, whichever occurs later.

18

(END)

Fiscal Estimate - 2023 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2176/1	Introduction Number AB-0147	
Description various changes to the unemployment insurance law and requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits		
Fiscal Effect		
State: <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local: <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected Affected Ch. 20 Appropriations <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.445 (1)(n)		
Agency/Prepared By DWD/ Andrew Wescott-Barten (608) 405-4475	Authorized Signature Jeremy Simon (608) 267-9692	Date 4/17/2023

Fiscal Estimate Narratives

DWD 4/17/2023

LRB Number	23-2176/1	Introduction Number	AB-0147	Estimate Type	Original
Description various changes to the unemployment insurance law and requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits					

Assumptions Used in Arriving at Fiscal Estimate

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

The department estimates that proposed changes under the bill will have a total all funds fiscal effect to department appropriations of \$32,409,200 all funds, consisting of \$140,100 for one-time implementation steps and \$32,269,100 for on-going for operations. The estimated fiscal effect to the UI Trust Fund is a decrease in UI benefits payments of \$23,494,600.

These fiscal effects by provision are described in more detail below.

The bill's proposed changes to work search audits are estimated to greatly increase manual staff efforts and therefore UI operations costs. The department's current approach to work search audits utilizes automated technologies to assist manual staff efforts. Under the proposal, UI would be required to manually audit over two million work search actions which is anticipated to require 761,400 hours of work based on current audit experience. This is the equivalent of to the effort from 423 FTE. Assuming the annual cost per staff is \$76,286, this provision carries an expected annual administrative cost of \$32,269,100.

The bill's proposed change related to absenteeism is expected to increase the number of misconduct findings by 22 percent and is anticipated to have a fiscal impact to UI Trust Fund by decreasing UI benefits payments annually. The fiscal effect is an increase to the UI Trust Fund balance of \$5,400,000, after accounting for a reduction in UI taxes. There is also a one-time administrative cost to implement the absenteeism change of \$1,300.

The bill's proposed change to remove from misconduct the requirement that the employee have intent to deprive the employer of the property or services permanently could jeopardize Wisconsin's ability to comply with US Department of Labor (US DOL) conformity requirements necessary to receive federal funding. Current guidance from US DOL describes misconduct as "...a willful or controllable breach of an employee's duties, responsibilities, or behavior that the employer has a right to expect. Stated another way, the misconduct may be an act or an omission that is deliberately or substantially negligent, which adversely affects the employer's legitimate business interests. Simple negligence with no harmful intent is generally not misconduct, nor is inefficiency, unsatisfactory conduct beyond the claimant's control, or good-faith errors of judgment or discretion." (US DOL's ET Handbook p. IV-4). If Wisconsin's unemployment insurance program were to be found non-compliant, the result could be ineligibility for federal funding until conformity was reestablished. The Department receives over \$60 million in administrative funding from US DOL annually. The funding at risk due the bill's proposed change could be some or all of the annual administrative grant funding, as well as any federal benefit funding the state could be eligible for at that time. An exact amount is indeterminate at this time.

The fiscal impacts related to Joint Committee on Finance approvals concerning federal UI benefit augmentation programs is indeterminate at this time. The potential for delays in availability of federally funded benefits to UI claimants could lead to confusion for employees and employers, an increase in appeals related to eligibility determinations, and reduced federal revenues for the state.

Long-Range Fiscal Implications

Fiscal Estimate Worksheet - 2023 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2176/1	Introduction Number AB-0147	
Description various changes to the unemployment insurance law and requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits		
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): The department estimates that proposed changes under the bill will have a one time fiscal effect of \$140,100.		
II. Annualized Costs:	Annualized Fiscal Impact on funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs	32,269,100	
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$32,269,100	\$
B. State Costs by Source of Funds		
GPR		
FED	32,269,100	
PRO/PRS		
SEG/SEG-S		
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	\$	\$
NET ANNUALIZED FISCAL IMPACT		
	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$32,269,100	\$
NET CHANGE IN REVENUE	\$	\$
Agency/Prepared By	Authorized Signature	Date
	Jeremy Simon (608) 267-9692	4/17/2023

DWD/ Andrew Wescott-Barten (608) 405-4475



2023 ASSEMBLY BILL 149

April 7, 2023 - Introduced by Representatives PLUMER, MOSES, PENTERMAN, BEHNKE, BINSFELD, BODDEN, BRANDTJEN, BROOKS, DALLMAN, DITTRICH, DONOVAN, EDMING, GREEN, GUNDRUM, GUSTAFSON, KNODL, MAGNAFICI, MURPHY, NEDWESKI, O'CONNOR, PETERSEN, PETRYK, RETTINGER, ROZAR, SCHMIDT, SNYDER and SORTWELL, cosponsored by Senators TOMCZYK, CABRAL-GUEVARA, FELZKOWSKI, MARKLEIN, NASS and STROEBEL. Referred to Committee on Workforce Development and Economic Opportunities.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber* 108.04 (2) (ae); *to renumber and amend* 108.14 (19); *to*
2 *amend* 108.04 (2) (bm), 108.04 (2) (g) 2., 108.04 (11) (cm), 108.14 (21) and
3 108.22 (8) (a); and *to create* 108.04 (1) (hg), 108.04 (2) (ae) 1., 108.04 (2) (hL),
4 108.14 (19) (b) and 108.14 (28) of the statutes; **relating to:** various changes to
5 the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This bill makes various changes regarding the unemployment insurance (UI) law, which is administered by the Department of Workforce Development.

Suitable work; work search

Current law requires that, as a condition of being eligible for UI benefits for a given week, a claimant must 1) be able to work and available for work; 2) register for work in the manner prescribed by DWD; and 3) conduct a reasonable search for suitable work. Separately, current law also makes a claimant ineligible for UI benefits if a claimant fails, without good cause, to accept suitable work when offered.

The bill provides that an employer may report to DWD whenever 1) an individual declines a job interview or job offer; 2) an individual fails to respond to a job interview offer or job offer; 3) an individual fails to attend a scheduled job interview without attempting to reschedule the job interview; 4) a UI claimant is unavailable for, or unable to perform, work actually available within a given week; or 5) under certain circumstances, the employer recalls a former employee receiving

ASSEMBLY BILL 149

UI benefits who fails to return to work. The bill requires DWD to consider these reports in determining claimants' attachment to the labor market. The bill also provides that a UI claimant is not considered to have conducted a reasonable search for suitable work in a given week, and is therefore ineligible for benefits for that week, if the claimant had one or more credible reports without good cause of declining a job interview, failing to respond to a job interview offer, or failing to attend a job interview in that week. The bill, however, provides that the first such credible report is to be disregarded and allows subsequent reports to be disregarded upon certain showings by a claimant. The bill requires DWD to investigate each such report as needed to determine its effect on claimants' eligibility for benefits.

The bill requires DWD to include information on reports submitted by employers under the bill in its annual UI fraud report made to the Council on Unemployment Insurance, including actions taken by DWD in response to the reports and their effect on claimants' eligibility for benefits. In addition, the bill requires that this annual fraud report be submitted to the appropriate standing committees of the legislature.

The bill requires DWD to have in effect methods to address any circumstances in which a claimant for UI benefits fails to return to work or to accept suitable work without good cause or is unavailable for work or unable to work, including reporting methods for employers and a notice from DWD to claimants about the laws governing such circumstances.

Recovery of overpayments

Current law allows DWD to act to recover overpayments in certain circumstances and allows overpayments to be required to be repaid in cases where an individual makes misrepresentations to obtain benefits in the name of another person. This bill makes such recoveries mandatory, instead of permissive.

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

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

- 1 **SECTION 1.** 108.04 (1) (hg) of the statutes is created to read:
- 2 108.04 (1) (hg) 1. An employing unit may report to the department whenever
- 3 any of the following occurs:
- 4 a. An individual declines a job interview or job offer with the employing unit.
- 5 b. An individual fails to respond to a job interview offer or job offer made by the
- 6 employing unit.

ASSEMBLY BILL 149

1 c. An individual fails to attend a scheduled job interview with the employing
2 unit, unless the individual attempts to reschedule the job interview.

3 d. An employee claiming benefits is unavailable for, or unable to perform, work
4 actually available within a given week as described in par. (a).

5 e. The employing unit recalls an employee who fails to return to work as
6 described in sub. (8) (c).

7 2. The department shall investigate each report submitted under subd. 1. as
8 needed to determine whether the report affects a claimant's eligibility under sub. (2)
9 (hL).

10 **SECTION 2.** 108.04 (2) (ae) of the statutes is renumbered 108.04 (2) (ae) 2.

11 **SECTION 3.** 108.04 (2) (ae) 1. of the statutes is created to read:

12 108.04 (2) (ae) 1. In determining whether a claimant is available for work
13 under par. (a) 1. and has maintained an attachment to the labor market, the
14 department shall consider reports made by employing units under sub. (1) (hg).

15 **SECTION 4.** 108.04 (2) (bm) of the statutes is amended to read:

16 108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for
17 which there is a determination that the claimant failed to comply with the
18 registration for work and work search requirements under par. (a) 2. or 3. or failed
19 to provide verification to the department that the claimant complied with those
20 requirements, unless the department has waived those requirements under par. (b),
21 (bb), or (bd) or s. 108.062 (10m). If the department has paid benefits to a claimant
22 for any such week, the department ~~may~~ shall act to recover the overpayment under
23 s. 108.22.

24 **SECTION 5.** 108.04 (2) (g) 2. of the statutes is amended to read:

ASSEMBLY BILL 149**SECTION 5**

1 108.04 (2) (g) 2. If a claimant's security credentials are used in the filing of an
2 initial or continued claim for benefits or any other transaction, the individual using
3 the security credentials is presumed to have been the claimant or the claimant's
4 authorized agent. This presumption may be rebutted by a preponderance of evidence
5 showing that the claimant who created the security credentials or the claimant's
6 authorized agent was not the person who used the credentials in a given transaction.
7 If a claimant uses an agent to engage in any transaction with the department using
8 the claimant's security credentials, the claimant is responsible for the actions of the
9 agent. If a claimant who created security credentials or the claimant's authorized
10 agent divulges the credentials to another person, or fails to take adequate measures
11 to protect the credentials from being divulged to an unauthorized person, and the
12 department pays benefits to an unauthorized person because of the claimant's action
13 or inaction, the department ~~may recover from the claimant the benefits that were~~
14 ~~paid to the unauthorized person~~ shall, in the same manner as provided for
15 overpayments to claimants under s. 108.22 or under s. 108.245, act to recover from
16 the claimant the benefits that were paid to the unauthorized person. If a claimant
17 who created security credentials or the claimant's authorized agent divulges the
18 credentials to another person, or fails to take adequate measures to protect the
19 credentials from being divulged to an unauthorized person, the department is not
20 obligated to pursue recovery of, or to reimburse the claimant for, benefits payable to
21 the claimant that were erroneously paid to another person.

22 **SECTION 6.** 108.04 (2) (hL) of the statutes is created to read:

23 108.04 (2) (hL) 1. Subject to subd. 2., if a claimant is subject to the requirement
24 under par. (a) 3. to conduct a reasonable search for suitable work for a given week
25 and the department received one or more credible reports in that week that the

ASSEMBLY BILL 149

1 claimant declined or failed to respond to a job interview offer or failed to attend a
2 scheduled job interview, the claimant shall not be considered to have conducted a
3 reasonable search for suitable work in that week under par. (a) 3.

4 2. a. A claimant may demonstrate to the department that a report described
5 in subd. 1. was inaccurate, that an interview was for a job that the claimant was not
6 required to accept under sub. (8) (d) to (em), or that the claimant had other good cause
7 for the declination or failure reported. If the department so determines, the report
8 shall be disregarded for purposes of subd. 1.

9 b. The first credible report described in subd. 1. received during a claimant's
10 benefit year that is not otherwise disregarded under subd. 2. a. shall be disregarded
11 for purposes of subd. 1.

12 **SECTION 7.** 108.04 (11) (cm) of the statutes is amended to read:

13 108.04 (11) (cm) If any person makes a false statement or representation in
14 order to obtain benefits in the name of another person, the benefits received by that
15 person constitute a benefit overpayment. Such person ~~may~~ shall, by a determination
16 or decision issued under s. 108.095, be required to repay the amount of the benefits
17 obtained and be assessed an administrative assessment in an additional amount
18 equal to the amount of benefits obtained.

19 **SECTION 8.** 108.14 (19) of the statutes is renumbered 108.14 (19) (intro.) and
20 amended to read:

21 108.14 (19) (intro.) No later than March 15 annually, the department shall
22 prepare and furnish to the council on unemployment insurance and to the chief clerk
23 of each house of the legislature, for distribution to the appropriate standing
24 committees under s. 13.172 (3), a report summarizing the department's activities
25 related to detection and prosecution of unemployment insurance fraud in the

ASSEMBLY BILL 149**SECTION 8**

1 preceding year. The department shall include all of the following in the report
2 information;

3 (a) Information about audits conducted by the department under sub. (20),
4 including the number and results of audits performed, in the previous year.

5 **SECTION 9.** 108.14 (19) (b) of the statutes is created to read:

6 108.14 (19) (b) Information on reports submitted by employing units under s.
7 108.04 (1) (hg) 1., including actions taken by the department in response to the
8 reports as required under s. 108.04 (1) (hg) 2. and their effect on claimants' eligibility
9 for benefits under s. 108.04 (2) (ae) 1. and (hL).

10 **SECTION 10.** 108.14 (21) of the statutes is amended to read:

11 108.14 (21) The department shall maintain a portal on the Internet that allows
12 employers employing units to log in and file with the department complaints related
13 to the administration of this chapter and reports under s. 108.04 (1) (hg).

14 **SECTION 11.** 108.14 (28) of the statutes is created to read:

15 108.14 (28) The department shall have in effect methods to address
16 circumstances in which an employee fails to return to work or to accept suitable work
17 without good cause as described in s. 108.04 (8) or in which the employee is
18 unavailable for work or unable to perform work under s. 108.04 (1) (a). The methods
19 shall include all of the following:

20 (a) Reporting methods, including a telephone line, an electronic mail address,
21 and an online portal, for an employing unit to notify the department when an
22 employee refuses an offer of work.

23 (b) A plain-language notice provided to employees by the department when
24 applying for benefits about the application of s. 108.04 (8) (a) to (c), including what
25 constitutes suitable work under s. 108.04 (8) (d) and (dm), and an employee's right

ASSEMBLY BILL 149

1 to fail to accept suitable work for good cause under s. 108.04 (8) (em); about the
2 application of s. 108.04 (1) (a); and including information on contesting the denial of
3 a claim that has been denied due to a report by an employing unit that an employee
4 failed to return to work, failed to accept suitable work, or was unavailable for work
5 or unable to perform work.

6 **SECTION 12.** 108.22 (8) (a) of the statutes is amended to read:

7 108.22 (8) (a) If benefits are erroneously paid to an individual, the individual's
8 liability to reimburse the fund for the overpayment ~~may~~ shall be set forth in a
9 determination or decision issued under s. 108.09. Any determination ~~which that~~
10 establishes or increases an overpayment shall include a finding concerning whether
11 waiver of benefit recovery is required under par. (c). If any decision of an appeal
12 tribunal, the commission or any court establishes or increases an overpayment and
13 the decision does not include a finding concerning whether waiver of benefit recovery
14 is required under par. (c), the tribunal, commission or court shall remand the issue
15 to the department for a determination.

16 **SECTION 13. Initial applicability.**

17 (1) The renumbering of s. 108.04 (2) (ae) and the creation of s. 108.04 (2) (ae)
18 1. and (hL) first apply to weeks of unemployment beginning on the effective date of
19 this subsection.

20 **SECTION 14. Effective dates.** This act takes effect on the Sunday after
21 publication, except as follows:

22 (1) The treatment of s. 108.14 (28) takes effect on the first Sunday after the
23 180th day after publication.

24

(END)

Fiscal Estimate - 2023 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2178/1	Introduction Number AB-0149
------------------------------------	---

Description
 various changes to the unemployment insurance law

Fiscal Effect

State:

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

Local:

<input checked="" type="checkbox"/> No Local Government Costs		
<input type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected	Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.445 (1)(n)	

Agency/Prepared By	Authorized Signature	Date
DWD/ Andrew Wescott-Barten (608) 405-4475	Jeremy Simon (608) 267-9692	4/17/2023

Fiscal Estimate Narratives

DWD 4/17/2023

LRB Number	23-2178/1	Introduction Number	AB-0149	Estimate Type	Original
Description various changes to the unemployment insurance law					

Assumptions Used in Arriving at Fiscal Estimate

This bill provides that an employer may report to DWD whenever: 1) an individual declines a job interview or job offer, 2) an individual fails to respond to a job interview offer or job offer, 3) an individual fails to attend a scheduled job interview without attempting to reschedule the job interview, 4) UI claimant is unavailable for, or unable to perform, work actually available within a given week, and 5) under certain circumstances when the employer recalls a former employee receiving UI benefits who fails to return to work. DWD will be required to consider these reports and investigate, as needed, to determine a claimant's eligibility for benefits.

As these provisions of the bill are optional to employers, they are not assumed to cause a material increase of employer responses submitted to DWD. However, it is assumed that a small percentage of submitted reports will involve UI claimants and a smaller portion of these reports may result in a reduction in UI benefits and thus an indeterminate increase to the UI Trust Fund balance.

While the department has a process to handle employer objections, to implement a process as specified under the bill to accept submitted employer responses, systems modifications are needed. The required IT work is estimated at 190 hours for a one-time cost of \$16,900. Administrative work to support the IT implementation is estimated to cost \$5,100. The costs for IT and related administrative support work are estimated to be one-time.

Additionally, this bill requires DWD to have in effect methods to address any circumstances in which a claimant for UI benefits fails to return to work or to accept suitable work without good cause or is unavailable for work or unable to work, including reporting methods for employers and a notice from DWD to claimants about the laws governing such circumstances.

These provisions are not different from current UI business practices and thus are not expected to increase administrative costs or impact the UI Trust Fund.

Finally, the bill requires, instead of allows, DWD to act to recover overpayments in certain circumstances and requires overpayments to be repaid in cases where an individual makes misrepresentations to obtain benefits in the name of another person. These provisions are not different from current UI business practices and thus are not expected to increase administrative costs or impact the UI Trust Fund. This provision would not apply when waivers of federal overpayments have been authorized.

Long-Range Fiscal Implications



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-2694/1
MED:skw

2023 ASSEMBLY BILL 150

April 7, 2023 - Introduced by Representatives PETRYK, ALLEN, ARMSTRONG, BEHNKE, BODDEN, BORN, BROOKS, DALLMAN, DITTRICH, DUCHOW, EDMING, GREEN, GUNDRUM, MACCO, MAGNIFICI, MICHALSKI, MOSES, MURSAU, NEDWESKI, O'CONNOR, OLDENBURG, PENTERMAN, PETERSEN, PLUMER, RETTINGER, SCHMIDT, WICHGERS, WITTKE and PRONSCHINSKE, cosponsored by Senators QUINN and FELZKOWSKI. Referred to Committee on Labor and Integrated Employment.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 108.04 (2) (a) 4., 108.04 (15) (a) 2. and 108.13
2 (4) (a) 4.; *to consolidate, renumber and amend* 108.04 (15) (a) (intro.) and
3 1.; *to amend* 20.445 (1) (aL), 20.445 (1) (gd), 20.445 (1) (nd), 40.02 (22) (b) 3.,
4 40.65 (5) (b) 2., 49.147 (3) (ac) 2., 49.163 (3) (a) 3. c., 71.67 (7) (title), 105.01 (1)
5 (b) 1., 105.115 (2) (b), 105.115 (2) (c), 105.115 (3) (a) 1., 105.115 (4) (b) 1., 105.115
6 (4) (b) 3., 106.38 (3) (c) 3., 108.04 (2) (a) 3., 108.04 (12) (b), 108.133 (2) (a) (intro.),
7 108.133 (2) (am), 108.14 (1), 108.141 (1) (b) 3., 108.142 (1) (h) 3., 108.19 (1m),
8 111.39 (4) (c), 230.43 (4), 230.85 (3) (d) and 779.01 (2) (am); *to repeal and*
9 *recreate* chapter 108 (title); and *to create* 15.223 (2), 108.01 (2m), 108.013,
10 108.02 (21r), 108.04 (2) (a) 4. c., 108.04 (2) (a) 5., 108.04 (15) (a) 2. b., 108.04 (15)
11 (am) and (ao) and 108.14 (8o) of the statutes; **relating to:** various changes to

ASSEMBLY BILL 150

1 the unemployment insurance law, federal Reemployment Services and
2 Eligibility Assessment grants, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

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

Program name change

The bill changes references in the statutes to “unemployment insurance” to “reemployment assistance” and requires the program and its benefits to be known as reemployment assistance. The bill also requires DWD to have a division known as the Division of Reemployment Assistance and requires the reemployment assistance law to be administered by that division.

General qualifying requirements

Under current law, a claimant for UI benefits is generally required to 1) register for work, 2) be able to work and available for work, and 3) conduct a work search for each week in order to remain eligible. A claimant is required to conduct at least four work search actions each week, and DWD may require, by rule, that an individual conduct more than four work search actions per week. Finally, if a claimant is claiming benefits for a week other than an initial week, the claimant must provide information or job application materials that are requested by DWD and participate in a public employment office workshop or training program or in similar reemployment services required by DWD.

The bill does the following:

1. Requires, for the third and subsequent weeks of a claimant’s benefit year, that at least two of the required weekly work search actions be direct contacts with potential employers.

2. Requires a claimant who resides in this state, for each week other than an initial week, to submit and keep posted on the DWD’s job center website a current resume.

3. Requires, when a claimant is claiming benefits with less than three weeks of benefits left, that the claimant complete a reemployment counseling session.

Additionally, current law allows DWD to use information or job application materials described above to assess a claimant’s efforts, skills, and ability to find or obtain work and to develop a list of potential opportunities for a claimant to obtain suitable work. However, current law provides that a claimant who otherwise satisfies the required weekly work search requirement is not required to apply for any specific positions on the list of potential opportunities in order to satisfy the work search requirement. The bill requires, instead of allows, DWD to provide this assistance. The bill also repeals the language in current law providing that a claimant who otherwise satisfies the weekly work search requirement is not required to apply for specific positions provided by DWD and requires DWD to provide each

ASSEMBLY BILL 150

claimant with at least four potential opportunities each week, one or more of which may be opportunities with a temporary help company.

Finally, current law allows DWD to require a claimant to participate in a public employment office workshop or training program. The bill provides that DWD must require a claimant to participate in a public employment office workshop or training program if the claimant is likely to exhaust regular UI benefits. DWD may also require other claimants to participate in a public employment office workshop or training program, but must prioritize claimants more likely to have difficulty obtaining reemployment.

Drug testing

Current state law requires DWD to establish a program that is consistent with federal law to test certain claimants who apply for UI benefits for the presence of controlled substances. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. Claimants who are required to undergo drug testing include individuals for whom suitable work is only available in occupations for which drug testing is regularly conducted in this state. However, current law provides that these provisions do not apply until DWD promulgates rules to implement the requirements and those rules take effect, including rules identifying occupations for which drug testing is regularly conducted in this state.

The bill requires DWD to immediately promulgate the required rules.

Reemployment Services and Eligibility Assessment grants

Under federal law, the United States Department of Labor (USDOL) operates the Reemployment Services and Eligibility Assessment (RESEA) program, whereby grants are awarded to states to provide reemployment services to claimants. Participation in the RESEA program is voluntary and requires that a state submit a state plan to USDOL that outlines how the state intends to conduct a program of reemployment services and eligibility assessments.

The bill requires that DWD act to continue to participate in the RESEA program and requires DWD to provide certain RESEA services to all UI claimants.

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

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

1 **SECTION 1.** 15.223 (2) of the statutes is created to read:

ASSEMBLY BILL 150**SECTION 1**

1 15.223 (2) DIVISION OF REEMPLOYMENT ASSISTANCE. There is created in the
2 department of workforce development a division of reemployment assistance.

3 **SECTION 2.** 20.445 (1) (aL) of the statutes is amended to read:

4 20.445 (1) (aL) *Unemployment insurance* Reemployment assistance
5 *administration; controlled substances testing and substance abuse treatment.*
6 Biennially, the amounts in the schedule for conducting screenings of applicants,
7 testing applicants for controlled substances, the provision of substance abuse
8 treatment to applicants and claimants, and related expenses under s. 108.133.
9 Notwithstanding s. 20.001 (3) (b), the unencumbered balance on June 30 of each
10 odd-numbered year shall be transferred to the ~~unemployment~~ reemployment
11 assistance program integrity fund.

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

13 20.445 (1) (gd) *Unemployment* Reemployment assistance; interest and penalty
14 *payments.* All moneys received as interest and penalties collected under ss. 108.04
15 (11) (c) and (cm) and (13) (c) and 108.22 except interest and penalties deposited under
16 s. 108.19 (1q), and forfeitures under s. 103.05 (5), all moneys not appropriated under
17 par. (gg) and all moneys transferred to this appropriation account from the
18 appropriation account under par. (gh) for the payment of benefits specified in s.
19 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the payment of interest
20 to employers under s. 108.17 (3m), for research relating to the condition of the
21 unemployment reserve fund under s. 108.14 (6), for administration of the
22 ~~unemployment insurance~~ reemployment assistance program and federal or state
23 ~~unemployment insurance~~ reemployment assistance programs authorized by the
24 governor under s. 16.54, for satisfaction of any federal audit exception concerning a
25 payment from the unemployment reserve fund or any federal aid disallowance

ASSEMBLY BILL 150

1 concerning the ~~unemployment insurance~~ reemployment assistance program, for
2 assistance to the department of justice in the enforcement of ch. 108, for the payment
3 of interest due on advances from the federal unemployment account under title XII
4 of the social security act to the unemployment reserve fund, and for payments made
5 to the unemployment reserve fund to obtain a lower interest rate or deferral of
6 interest payments on these advances, except as otherwise provided in s. 108.20.

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

8 20.445 (1) (nd) *Unemployment Reemployment assistance administration;*
9 *apprenticeship and other employment services.* From the moneys received from the
10 federal government under section 903 (d) of the federal Social Security Act, as
11 amended, the amounts in the schedule, as authorized by the governor under s. 16.54,
12 to be used for administration by the department of apprenticeship programs under
13 subch. I of ch. 106 and for administration and service delivery of employment and
14 workforce information services, including the delivery of reemployment assistance
15 services to ~~unemployment insurance~~ reemployment assistance claimants. All
16 moneys transferred from par. (n) for this purpose shall be credited to this
17 appropriation account. No moneys may be expended from this appropriation unless
18 the treasurer of the unemployment reserve fund determines that such expenditure
19 is currently needed for the purposes specified in this paragraph.

20 **SECTION 5.** 40.02 (22) (b) 3. of the statutes is amended to read:

21 40.02 (22) (b) 3. Unemployment insurance or reemployment assistance
22 benefits.

23 **SECTION 6.** 40.65 (5) (b) 2. of the statutes is amended to read:

24 40.65 (5) (b) 2. Any unemployment insurance or reemployment assistance
25 benefit payable to the participant because of his or her work record.

ASSEMBLY BILL 150**SECTION 7**

1 **SECTION 7.** 49.147 (3) (ac) 2. of the statutes is amended to read:

2 49.147 (3) (ac) 2. State and federal unemployment reemployment assistance
3 contributions or federal unemployment taxes.

4 **SECTION 8.** 49.163 (3) (a) 3. c. of the statutes is amended to read:

5 49.163 (3) (a) 3. c. State reemployment assistance contributions and federal
6 unemployment insurance ~~contributions or~~ taxes, if any.

7 **SECTION 9.** 71.67 (7) (title) of the statutes is amended to read:

8 71.67 (7) (title) ~~WITHHOLDING FROM UNEMPLOYMENT COMPENSATION INSURANCE~~
9 REEMPLOYMENT ASSISTANCE.

10 **SECTION 10.** 105.01 (1) (b) 1. of the statutes is amended to read:

11 105.01 (1) (b) 1. The person employing the individuals in addition to wages or
12 salaries pays federal social security taxes, state reemployment assistance
13 contributions, and federal unemployment ~~contributions or~~ taxes, carries worker's
14 compensation insurance as required by state law, and maintains liability insurance
15 covering the acts of its employees while rendering services to, for or under the
16 direction of a 3rd person; and

17 **SECTION 11.** 105.115 (2) (b) of the statutes is amended to read:

18 105.115 (2) (b) A statement of the employment status of the home care worker,
19 specifically, whether the home care worker is an employee of the home care
20 placement agency or of the home care consumer or is an independent contractor and
21 a statement identifying which party is responsible for paying the wages or salary of
22 the home care worker, paying federal social security taxes and state reemployment
23 assistance contributions and federal unemployment ~~contributions or~~ taxes with
24 respect to the home care worker, and procuring worker's compensation or liability
25 insurance covering injury to the home care worker.

ASSEMBLY BILL 150

1 **SECTION 12.** 105.115 (2) (c) of the statutes is amended to read:

2 105.115 (2) (c) A statement that, notwithstanding the employment status of the
3 home care worker specified in the notice, the home care consumer may be determined
4 to be the employer of the home care worker for purposes of certain state and federal
5 labor laws and that, if that is the case, the home care consumer may be held
6 responsible for paying the wages or salary of the home care worker, paying federal
7 social security taxes and state reemployment assistance contributions and federal
8 unemployment ~~contributions~~ or taxes with respect to the home care worker,
9 procuring worker's compensation or liability insurance covering injury to the home
10 care worker, and complying with various other state and federal labor laws.

11 **SECTION 13.** 105.115 (3) (a) 1. of the statutes is amended to read:

12 105.115 (3) (a) 1. A statement identifying which party is responsible for paying
13 the wages or salary of the home care worker, paying federal social security taxes and
14 state reemployment assistance contributions and federal unemployment
15 ~~contributions~~ or taxes with respect to the home care worker, and procuring worker's
16 compensation or liability insurance covering injury to the home care worker.

17 **SECTION 14.** 105.115 (4) (b) 1. of the statutes is amended to read:

18 105.115 (4) (b) 1. If the department finds that a home care placement agency
19 has failed to provide a home care consumer with the notice required under sub. (2)
20 and that the home care consumer is liable for the payment of federal social security
21 taxes or state reemployment assistance contributions or federal unemployment
22 ~~contributions~~ or taxes with respect to the home care worker, for the provision of
23 worker's compensation or liability insurance covering injury to the home care
24 worker, for the payment of any fine or penalty imposed on the home care consumer
25 for noncompliance with any state or federal labor law with respect to the home care

ASSEMBLY BILL 150**SECTION 14**

1 worker, or for any injury to the home care worker, the department may recover from
2 the home care placement agency, on behalf of the home care consumer, an amount
3 equal to the total cost of those liabilities.

4 **SECTION 15.** 105.115 (4) (b) 3. of the statutes is amended to read:

5 105.115 (4) (b) 3. In the case of a home care consumer who commences an action
6 in circuit court under par. (a), if the circuit court finds that the home care placement
7 agency has failed to provide the home care consumer with the notice required under
8 sub. (2) and that the home care consumer is liable for the payment of federal social
9 security taxes or state reemployment assistance contributions or federal
10 unemployment ~~contributions~~ or taxes with respect to the home care worker, for the
11 provision of worker's compensation or liability insurance covering injury to the home
12 care worker, for the payment of any fine or penalty imposed on the home care
13 consumer for noncompliance with any state or federal labor law with respect to the
14 home care worker, or for any injury to the home care worker, the court may order the
15 home care placement agency to pay to the home care consumer an amount equal to
16 the total cost of those liabilities, together with costs under ch. 814 and,
17 notwithstanding s. 814.04 (1), reasonable attorney fees.

18 **SECTION 16.** 106.38 (3) (c) 3. of the statutes is amended to read:

19 106.38 (3) (c) 3. State reemployment assistance contributions and federal
20 unemployment insurance ~~contributions~~ or taxes, if any.

21 **SECTION 17.** Chapter 108 (title) of the statutes is repealed and recreated to
22 read:

CHAPTER 108**REEMPLOYMENT ASSISTANCE**

23
24
25 **SECTION 18.** 108.01 (2m) of the statutes is created to read:

ASSEMBLY BILL 150

1 108.01 **(2m)** The federal Social Security Act requires that, in order for an
2 individual to be eligible for reemployment assistance benefits, the individual must
3 be able to work, available to work, and actively seeking work. The reemployment
4 assistance program in Wisconsin should enact and focus on policies that complement
5 individuals' efforts to find employment.

6 **SECTION 19.** 108.013 of the statutes is created to read:

7 **108.013 Name of program.** The program established under this chapter and
8 administered by the department shall be referred to as the "Reemployment
9 Assistance Program," and the benefits available under this chapter shall be referred
10 to as "reemployment assistance benefits."

11 **SECTION 20.** 108.02 (21r) of the statutes is created to read:

12 108.02 **(21r)** REEMPLOYMENT ASSISTANCE. "Reemployment assistance," when
13 used in reference to the law of another state or jurisdiction or the federal government,
14 includes an unemployment insurance law of that state or jurisdiction or the federal
15 government.

16 **SECTION 21.** 108.04 (2) (a) 3. of the statutes is amended to read:

17 108.04 **(2)** (a) 3. The claimant conducts a reasonable search for suitable work
18 during that week and provides verification of that search to the department. The
19 search for suitable work must include at least 4 actions per week that constitute a
20 reasonable search as prescribed by rule of the department. The department shall
21 require, for the 3rd or subsequent week of the claimant's benefit year, that at least
22 2 actions per week be direct contacts with potential employing units, as prescribed
23 by rule of the department. In addition, the department may, by rule, require a
24 claimant to take more than 4 reasonable work search actions in any week. The
25 department shall require a uniform number of reasonable work search actions for

ASSEMBLY BILL 150**SECTION 21**

1 similar types of claimants. The department may require a claimant to apply for one
2 or more of the potential opportunities provided to the claimant under sub. (15) (a) 1.
3 and may refer a claimant to opportunities with a temporary help company as part
4 of the required search for suitable work under this subdivision.

5 **SECTION 22.** 108.04 (2) (a) 4. of the statutes is renumbered 108.04 (2) (a) 4.
6 (intro.) and amended to read:

7 108.04 (2) (a) 4. (intro.) If the claimant is claiming benefits for a week other
8 than an initial week, the claimant ~~provides~~ does all of the following:

9 a. Provides information or job application materials that are requested by the
10 department ~~and participates.~~

11 b. Participates in a public employment office workshop or training program or
12 in similar reemployment services that are required by the department under sub.
13 (15) (a) 2.

14 **SECTION 23.** 108.04 (2) (a) 4. c. of the statutes is created to read:

15 108.04 (2) (a) 4. c. Submits and keeps posted on the department's job center
16 website a current resume, if the claimant resides in this state.

17 **SECTION 24.** 108.04 (2) (a) 5. of the statutes is created to read:

18 108.04 (2) (a) 5. The claimant completes any reemployment counseling session
19 required of the claimant under sub. (15) (ao) 1.

20 **SECTION 25.** 108.04 (12) (b) of the statutes is amended to read:

21 108.04 (12) (b) Any individual who receives, through the department, any other
22 type of unemployment or reemployment assistance benefit or allowance for a given
23 week is ineligible for benefits for that same week under this chapter, except as
24 specifically required for conformity with 19 USC 2101 to 2497b.

ASSEMBLY BILL 150

1 **SECTION 26.** 108.04 (15) (a) (intro.) and 1. of the statutes are consolidated,
2 renumbered 108.04 (15) (a) 1. and amended to read:

3 108.04 **(15)** (a) 1. Except as provided in par. (b), the department ~~may do any of~~
4 ~~the following shall~~, for the purpose of assisting claimants to find or obtain work: ~~1.~~
5 ~~Use, use the information or, materials, and resume~~ provided under sub. (2) (a) 4. to
6 assess a claimant's efforts, skills, and ability to find or obtain work and to develop
7 a list of potential opportunities for ~~a~~ the claimant to obtain suitable work. A
8 ~~claimant who otherwise satisfies the requirement under sub. (2) (a) 3. is not required~~
9 ~~to apply for any specific positions on the list in order to satisfy that requirement~~ The
10 department shall provide each claimant, prior to the claimant filing a weekly claim
11 for benefits, with at least 4 such potential opportunities each week, one or more of
12 which may be opportunities with a temporary help company.

13 **SECTION 27.** 108.04 (15) (a) 2. of the statutes is renumbered 108.04 (15) (a) 2.
14 a. and amended to read:

15 108.04 **(15)** (a) 2. a. ~~Require~~ Except as provided in par. (b), the department shall
16 require a claimant whom the department identifies as likely to exhaust regular
17 benefits to participate in a public employment office workshop or training program
18 or in similar reemployment services that do not charge the claimant a participation
19 fee and that offer instruction to improve the claimant's ability to obtain suitable
20 work.

21 **SECTION 28.** 108.04 (15) (a) 2. b. of the statutes is created to read:

22 108.04 **(15)** (a) 2. b. Except as provided in par. (b), in addition to the claimants
23 described in subd. 2. a., the department may require other claimants to participate
24 in the reemployment services described in subd. 2. a., but the department shall
25 prioritize claimants who are more likely to have difficulty obtaining reemployment.

ASSEMBLY BILL 150**SECTION 29**

1 **SECTION 29.** 108.04 (15) (am) and (ao) of the statutes are created to read:

2 108.04 (15) (am) In carrying out this state's program of reemployment services
3 and eligibility assessments using grant funds awarded under 42 USC 506, the
4 department shall, except as provided in par. (b), provide reemployment services to
5 all claimants receiving benefits, including benefits under ss. 108.141 and 108.142,
6 including by doing all of the following for each such claimant:

7 1. Requiring the claimant to complete an online assessment aimed at
8 identifying the claimant's skills, abilities, and career aptitude.

9 2. Coordinating with the claimant to develop an individualized employment
10 plan for the claimant.

11 3. Requiring the claimant to participate in the services described under par. (a)
12 2. a. as needed pursuant to the individualized employment plan described in subd.
13 2.

14 (ao) Except as provided in par. (b), the department shall, when a claimant's
15 remaining benefit entitlement under s. 108.06 (1) is 3 or less times the claimant's
16 weekly benefit rate under s. 108.05 (1), do all of the following:

17 1. Require the claimant to participate in a live, one-on-one reemployment
18 counseling session between the claimant and an employee of the department.

19 2. Provide the claimant information about services and benefits that are
20 available to the claimant pursuant to the federal Workforce Innovation and
21 Opportunity Act of 2014, 29 USC 3101 to 3361, once the claimant exhausts his or her
22 benefit entitlement.

23 **SECTION 30.** 108.13 (4) (a) 4. of the statutes is renumbered 108.13 (4) (a) 2m.
24 and amended to read:

ASSEMBLY BILL 150

1 108.13 (4) (a) 2m. ~~“Unemployment insurance”~~ “Reemployment assistance”
2 means any compensation payable under this chapter, including amounts payable by
3 the department pursuant to an agreement under any federal law providing for
4 compensation, assistance or allowances with respect to unemployment.

5 **SECTION 31.** 108.133 (2) (a) (intro.) of the statutes is amended to read:

6 108.133 (2) (a) (intro.) ~~Promulgate~~ Immediately promulgate rules to establish
7 the program. The department shall do all of the following in the rules promulgated
8 under this paragraph:

9 **SECTION 32.** 108.133 (2) (am) of the statutes is amended to read:

10 108.133 (2) (am) ~~Promulgate~~ Immediately promulgate rules identifying
11 occupations for which drug testing is regularly conducted in this state. The
12 department shall notify the U.S. department of labor of any rules promulgated under
13 this paragraph.

14 **SECTION 33.** 108.14 (1) of the statutes is amended to read:

15 108.14 (1) This chapter shall be administered by the department through its
16 division of reemployment assistance.

17 **SECTION 34.** 108.14 (8o) of the statutes is created to read:

18 108.14 (8o) The department shall act to continue to receive grants for
19 reemployment services and eligibility assessments under 42 USC 506.

20 **SECTION 35.** 108.141 (1) (b) 3. of the statutes is amended to read:

21 108.141 (1) (b) 3. Has no right to ~~unemployment~~ reemployment assistance
22 benefits or allowances, as the case may be, under the railroad unemployment
23 insurance act or such other federal laws as are specified in regulations issued by the
24 U.S. secretary of labor, and has not received and is not seeking ~~unemployment~~
25 reemployment assistance benefits under the ~~unemployment—insurance~~

ASSEMBLY BILL 150**SECTION 35**

1 reemployment assistance law of Canada, but if the individual is seeking such
2 benefits and the appropriate agency finally determines that he or she is not entitled
3 to benefits under such law he or she is an exhaustee.

4 **SECTION 36.** 108.142 (1) (h) 3. of the statutes is amended to read:

5 108.142 (1) (h) 3. Has no right to ~~unemployment~~ reemployment assistance
6 benefits or allowances under the railroad unemployment insurance act or such other
7 federal laws as are specified in regulations issued by the U.S. secretary of labor, and
8 has not received and is not seeking ~~unemployment~~ reemployment assistance
9 benefits under the ~~unemployment insurance~~ reemployment assistance law of
10 Canada, but if the individual is seeking such benefits and the appropriate agency
11 finally determines that he or she is not entitled to benefits under that law, the
12 individual is an “exhaustee”.

13 **SECTION 37.** 108.19 (1m) of the statutes is amended to read:

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

ASSEMBLY BILL 150

1 subsection is due within 30 days after the date the department issues the
2 assessment. If the amounts collected from employers under this subsection exceed
3 the amounts needed to pay interest due, the department shall use any excess to pay
4 interest owed in subsequent years on advances from the federal unemployment
5 account. If the department determines that additional interest obligations are
6 unlikely, the department shall transfer the excess to the balancing account of the
7 fund, the ~~unemployment~~ reemployment assistance program integrity fund, or both
8 in amounts determined by the department.

9 **SECTION 38.** 111.39 (4) (c) of the statutes is amended to read:

10 111.39 (4) (c) If, after hearing, the examiner finds that the respondent has
11 engaged in discrimination, unfair honesty testing or unfair genetic testing, the
12 examiner shall make written findings and order such action by the respondent as
13 will effectuate the purpose of this subchapter, with or without back pay. If the
14 examiner awards any payment to an employee because of a violation of s. 111.321 by
15 an individual employed by the employer, under s. 111.32 (6), the employer of that
16 individual is liable for the payment. If the examiner finds a respondent violated s.
17 111.322 (2m), the examiner shall award compensation in lieu of reinstatement if
18 requested by all parties and may award compensation in lieu of reinstatement if
19 requested by any party. Compensation in lieu of reinstatement for a violation of s.
20 111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly
21 wage of the person discriminated against when the violation occurred. Back pay
22 liability may not accrue from a date more than 2 years prior to the filing of a
23 complaint with the department. Interim earnings or amounts earnable with
24 reasonable diligence by the person discriminated against or subjected to unfair
25 honesty testing or unfair genetic testing shall operate to reduce back pay otherwise

ASSEMBLY BILL 150**SECTION 38**

1 allowable. Amounts received by the person discriminated against or subject to the
2 unfair honesty testing or unfair genetic testing as ~~unemployment~~ reemployment
3 assistance benefits or welfare payments shall not reduce the back pay otherwise
4 allowable, but shall be withheld from the person discriminated against or subject to
5 unfair honesty testing or unfair genetic testing and immediately paid to the
6 unemployment reserve fund or, in the case of a welfare payment, to the welfare
7 agency making the payment.

8 **SECTION 39.** 230.43 (4) of the statutes is amended to read:

9 230.43 (4) RIGHTS OF EMPLOYEE. If an employee has been removed, demoted or
10 reclassified, from or in any position or employment in contravention or violation of
11 this subchapter, and has been restored to such position or employment by order of
12 the commission or any court upon review, the employee shall be entitled to
13 compensation therefor from the date of such unlawful removal, demotion or
14 reclassification at the rate to which he or she would have been entitled by law but
15 for such unlawful removal, demotion or reclassification. Interim earnings or
16 amounts earnable with reasonable diligence by the employee shall operate to reduce
17 back pay otherwise allowable. Amounts received by the employee as ~~unemployment~~
18 reemployment assistance benefits or welfare payments shall not reduce the back pay
19 otherwise allowable, but shall be withheld from the employee and immediately paid
20 to the unemployment reserve fund or, in the case of a welfare payment, to the welfare
21 agency making such payment. The employee shall be entitled to an order of
22 mandamus to enforce the payment or other provisions of such order.

23 **SECTION 40.** 230.85 (3) (d) of the statutes is amended to read:

24 230.85 (3) (d) Interim earnings or amounts earnable with reasonable diligence
25 by the person subjected to the retaliatory action or threat shall reduce back pay

ASSEMBLY BILL 150

1 otherwise allowable. Amounts received by the person subjected to the retaliatory
2 action or threat as ~~unemployment~~ reemployment assistance benefits or welfare
3 payments do not reduce the back pay otherwise allowable, but shall be withheld from
4 the person subjected to the retaliatory action or threat and immediately paid to the
5 unemployment reserve fund or to the welfare agency making the payment.

6 **SECTION 41.** 779.01 (2) (am) of the statutes is amended to read:

7 779.01 (2) (am) “Labor” includes any wages and related contributions for state
8 employment taxes, worker’s compensation and ~~unemployment—compensation~~
9 insurance reemployment assistance, and other fringe benefits.

10 **SECTION 42. Terminology changes.**

11 (1) UNEMPLOYMENT INSURANCE; TERMINOLOGY CHANGES.

12 (a) Wherever “unemployment insurance” appears in the following, as affected
13 by the acts of 2023, “reemployment assistance” is substituted: ss. 6.10 (9), 13.63 (1)
14 (b), 15.227 (3), 16.48 (1) (intro.), (am), (bm), and (f) and (3), 19.85 (1) (ee), 20.002 (11)
15 (a), 20.445 (1) (gm), (n), and (ne), 29.024 (2r) (title) and (d) 1., 46.272 (7) (e), 47.035
16 (1), 48.715 (7), 49.163 (2) (am) 5., 49.19 (4) (dm) 4., 50.498 (title) and (4) (b), 51.032
17 (title) and (4), 59.40 (2) (e), 59.57 (2) (b), 66.1103 (1) (a), 71.01 (10) (b), 71.05 (6) (b)
18 47m., 71.26 (1) (h), 71.45 (1) (c), 71.52 (6), 71.67 (7) (a) and (b) 2., 71.80 (16) (a) and
19 (b), 73.0301 (2) (c) 2., 73.09 (8), 93.135 (title) and (4), 101.654 (2) (c), 102.17 (1) (c) 2.,
20 102.28 (7) (b) 2., 102.315 (2m) (d), 103.34 (10) (title), 103.92 (3) and (8) (title), 105.13
21 (1), 108.02 (15) (c) 1., (dm) 1., (e), (i) 2., and (k) 9., 10., and 19. b., (21) (a) 2. and (b),
22 and (21e) (e), 108.04 (2) (ae), (4) (c), (5) (intro.), (5g) (a) (intro.), (7) (a) and (L) (intro.),
23 (8) (a) and (c), (11) (g) 2. d., (12) (c) and (d), and (13) (g) 2., 108.06 (5) (a), 108.065 (3),
24 108.068 (6), 108.07 (3m) and (5m), 108.13 (2) and (4) (b), (c) (intro.), (e), and (f),
25 108.135 (1) (intro.) and (a), 108.14 (5) (a), (ag), and (ar), (6), (7) (a), (8) (a), (8m) (a),

ASSEMBLY BILL 150**SECTION 42**

1 (8n) (a) and (b), (8s) (a) and (b), (8t), (9), (13), (14), (18), (19), (23) (b) 1., and (24),
2 108.141 (1) (h) and (3g) (a) 2., (c), and (d), 108.142 (1) (i), 108.155 (6), 108.16 (5) (b),
3 108.161 (3) and (3e), 108.162 (1), 108.19 (1e) (d), (1f) (b), and (4), 108.20 (2m), 108.227
4 (title) and (2) (c) 2., 115.31 (6m), 116.03 (4), 118.19 (1m) (b), 120.25 (2) (a) and (6),
5 138.09 (3) (am) 2. and (4) (c), 138.12 (4) (b) 5m. and (5) (am) 1. b. and 3., 138.14 (5)
6 (b) 2m. and (9) (cm), 146.40 (4d) (d), 165.066 (title), 169.35 (title) and (3), 170.12 (8)
7 (b) 1. bm. and 4., 175.46 (5) (a), 202.021 (4) (a) 6., 202.06 (2) (g), 202.23 (2), 217.06
8 (5m), 217.09 (1t), 218.0116 (1g) (b) and (1m) (a) 2m. and (d), 218.02 (3) (dm), (6) (d),
9 and (9) (a) 1m., 218.04 (4) (am) 2m. and (5) (at), 218.05 (4) (c) 2m., (11) (bm), and (12)
10 (at), 218.11 (6m) (c), 218.12 (3m) (c), 218.22 (3m) (c), 218.32 (3m) (c), 218.41 (3m) (b)
11 3., 218.51 (4m) (b) 3., 224.44 (title), 224.72 (7m) (bm), 224.725 (6) (bm), 224.77 (2m)
12 (e), 224.95 (1) (bm), 230.26 (4), 238.31 (1) (e) 4. c., 238.397 (2) (a) 4. c., 254.115 (title)
13 and (5), 254.176 (5), 254.20 (7), 256.18 (title) and (4m), 299.07 (title) and (3), 303.08
14 (3), (4), and (5) (intro.), 341.51 (4m) (c), 343.305 (6) (e) 6., 343.66 (3m), 440.12 (title)
15 and (2), 463.14 (title) and (5), 551.412 (4g) (a) 2m. and (d), 562.05 (5) (a) 11. and (8)
16 (f), 563.285 (title) and (1m), 628.097 (title) and (2m), 628.10 (2) (cm), 628.93 (2) (title),
17 632.69 (2) (d) 2. and (4) (d), 633.14 (2m) (b), 633.15 (2) (d), 751.155 (title) and (3),
18 815.18 (13) (j), 859.02 (2) (a), and 949.06 (3) (b).

19 (b) Wherever “unemployment compensation” appears in the following, as
20 affected by the acts of 2023, “reemployment assistance” is substituted: ss. 49.45 (23b)
21 (a) 2. f., 71.07 (6n) (c) 3., 71.28 (6n) (c) 3., 71.47 (6n) (c) 3., 108.04 (13) (g) 1. b., 108.11
22 (2), 701.0508 (1) (b) 1., 756.04 (2) (c) 4., and 767.75 (3m) (title).

23 (c) Wherever “unemployment” appears in the following, as affected by the acts
24 of 2023, “reemployment assistance” is substituted: ss. 20.427 (1) (k) (title), 20.445 (1)
25 (gc) (title), (gg) (title), (gh) (title), (nb) (title), (u), and (v), 25.17 (1) (xe) and (xf), 108.04

ASSEMBLY BILL 150

1 (2) (bb) 5., 108.16 (6) (i) and (m) and (6m) (b), 108.19 (title), (1f) (a), (1q), and (1s) (a)
2 (intro.) and 2. and (b), 108.221 (3), 108.225 (4) (b), and 111.15.

3 **SECTION 43. Nonstatutory provisions.**

4 (1) The department of workforce development shall submit a notice to the
5 legislative reference bureau for publication in the Wisconsin Administrative
6 Register when the department determines that the department has any rules in
7 place that are necessary to implement the treatment of s. 108.04 (2) (a) 3. by this act.

8 **SECTION 44. Initial applicability.**

9 (1) The treatment of s. 108.04 (2) (a) 3. first applies with respect to weeks of
10 unemployment beginning on the effective date of this subsection.

11 (2) The renumbering and amendment of s. 108.04 (2) (a) 4. and (15) (a) 2., the
12 consolidation, renumbering, and amendment of s. 108.04 (15) (a) (intro.) and 1., and
13 the creation of s. 108.04 (2) (a) 4. c. and 5. and (15) (a) 2. b., (am), and (ao) first apply
14 with respect to weeks of unemployment beginning on the effective date of this
15 subsection.

16 **SECTION 45. Effective dates.** This act takes effect on July 2, 2024, except as
17 follows:

18 (1) The treatment of s. 108.04 (2) (a) 3. and SECTION 44 (1) of this act take effect
19 on the Sunday after the notice under SECTION 43 (1) of this act is published in the
20 Wisconsin Administrative Register or on December 31, 2023, whichever occurs first.

21 (2) The treatment of ss. 108.01 (2m), 108.133 (2) (a) (intro.) and (am), and
22 108.14 (8o) and (30), the renumbering and amendment of s. 108.04 (2) (a) 4. and (15)
23 (a) 2., the consolidation, renumbering, and amendment of s. 108.04 (15) (a) (intro.)
24 and 1., and the creation of s. 108.04 (2) (a) 4. c. and 5. and (15) (a) 2. b., (am), and (ao)

ASSEMBLY BILL 150

SECTION 45

1 and SECTIONS 43 (1) and 44 (2) of this act take effect on the first Sunday after
2 publication.

3 (END)

Fiscal Estimate - 2023 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2694/1	Introduction Number AB-0150				
Description various changes to the unemployment insurance law, federal Reemployment Services and Eligibility Assessment grants, and granting rule-making authority					
Fiscal Effect State: <div style="display: flex; flex-wrap: wrap; padding: 10px;"> <div style="width: 33%;"> <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations </div> <div style="width: 33%;"> <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues </div> <div style="width: 33%;"> <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs </div> </div> Local: <div style="display: flex; flex-wrap: wrap; padding: 10px;"> <div style="width: 33%;"> <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> <div style="width: 33%;"> 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> <div style="width: 33%;"> 5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts </div> </div>					
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Fund Sources Affected</td> <td style="width: 50%;">Affected Ch. 20 Appropriations</td> </tr> <tr> <td> <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS </td> <td>20.445 (1) (m) and (n)</td> </tr> </table>		Fund Sources Affected	Affected Ch. 20 Appropriations	<input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	20.445 (1) (m) and (n)
Fund Sources Affected	Affected Ch. 20 Appropriations				
<input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	20.445 (1) (m) and (n)				
Agency/Prepared By DWD/ Andrew Wescott-Barten (608) 405-4475	Authorized Signature Jeremy Simon (608) 267-9692	Date 4/17/2023			

Fiscal Estimate Narratives

DWD 4/17/2023

LRB Number	23-2694/1	Introduction Number	AB-0150	Estimate Type	Original
Description various changes to the unemployment insurance law, federal Reemployment Services and Eligibility Assessment grants, and granting rule-making authority					

Assumptions Used in Arriving at Fiscal Estimate

This bill makes various changes to Wisconsin's Unemployment Insurance (UI) program, establishes new requirements for how the Department of Workforce Development (DWD) Divisions of Employment and Training (DET) delivers the federal Re-employment Services and Eligibility Assessment Grants (RESEA) program, and updates federal references.

Certain provisions in the bill are anticipated to have a fiscal effect on operations costs totaling \$2,308,938 all funds, consisting of \$835,010 for one-time implementation steps and \$1,473,929 for on-going operations.

Some provisions in the bill are anticipated to have a fiscal effect on UI Trust Fund revenues and payments, but the annual net effect for all provisions in the bill is indeterminate.

The UI program fiscal effects related to operations costs and the UI Trust Fund are:

Program Name Change:

Costs to establish a Division of Reemployment Assistance and change all statutory references to "unemployment insurance" to "reemployment assistance" is estimated to have one-time IT changes estimated to take 454 hours, at \$88 per hour, for a cost of \$39,952.

Additional one-time administrative costs are estimated to total \$168,184 consisting of \$156,062 in contracted staff costs for 2,545 hours and an additional \$12,122 in supplies and services costs. This staff effort is to mitigate confusion for stakeholders as a quality control measure to minimize adverse impacts for employers making UI Trust Fund contributions and eligible claimants applying for benefits.

This provision is not estimated to impact to the UI Trust Fund.

General Qualifying Requirements:

The department has reviewed all five changes related to new qualifying requirements for claimants and has determined a total need for 1,250 hours of IT programming for a total cost of \$110,000. There are additional administrative cost to implement changes and update public facing program materials that are estimated to be \$88,900. The ongoing impact of these changes is uncertain. It is possible that the new requirements increase the number of redetermination and appeal requests, which would increase the administrative burden.

It is unknown what effect the new qualifying requirements will have on eligibility determinations, and therefore the impact on the UI Trust Fund is indeterminate.

Drug Testing:

The bill requires DWD to immediately promulgate rules related to the occupational drug testing program. There is not an anticipated IT cost. The one-time administrative impact is estimated at 170 hours of UI staff time for a total cost of \$14,340.

There will be revenue and payment impact on the UI Trust Fund, but the effect is indeterminate.

Reemployment Services and Eligibility Assessment (RESEA) Grants – providing services to claimants about to exhaust regular UI benefits:

These provisions expand outreach requirements for DET's current RESEA program and establish new participation requirements related to claimants about to exhaust their regular UI benefits. The department anticipates these provisions will need 4,500 hours of IT programming at \$88 per hour for a one-time cost of \$396,000. Ongoing IT maintenance needs are estimated to be 900 hours with an annual cost of \$79,200 per year. The department is assuming approximately 11,400 additional UI claimants per year will be served in the RESEA program which, based on experience with the current RESEA program effort, will require an allocation of funding equivalent to 11 FTE for the effort needed to serve the increased demand. The ongoing annualized staffing costs are anticipated to be \$1,213,300.

In UI these provisions have a one-time IT programming need estimated at 40 hours at \$88 per hour for a total cost of \$3,520. There is an administrative one-time cost of \$14,114 for implementation and development of a model to identify when UI claimants are likely to exhaust their eligibility for regular UI benefits.

There is an additional annual administrative impact of 3,421 hours of UI staff time at a cost of \$181,428. This staff time will be used to coordinate services between UI and DET programs for applicable UI claimants.

There will be revenue and payment impact on the UI Trust Fund, but the effect is indeterminate.

Long-Range Fiscal Implications

Fiscal Estimate Worksheet - 2023 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2694/1	Introduction Number AB-0150	
Description various changes to the unemployment insurance law, federal Reemployment Services and Eligibility Assessment grants, and granting rule-making authority		
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): Certain provisions in the bill are anticipated to have a one time fiscal effect on operations totaling \$835,010.		
II. Annualized Costs:	Annualized Fiscal Impact on funds from:	
	Increased Costs Decreased Costs	
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs	1,473,929	
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$1,473,929	\$
B. State Costs by Source of Funds		
GPR		
FED	1,473,929	
PRO/PRS		
SEG/SEG-S		
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	\$	\$
NET ANNUALIZED FISCAL IMPACT		
	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$1,473,929	\$
NET CHANGE IN REVENUE	\$	\$
Agency/Prepared By	Authorized Signature	Date
	Jeremy Simon (608) 267-9692	4/17/2023

DWD/ Andrew Wescott-Barten (608) 405-4475



2023 ASSEMBLY BILL 152

April 7, 2023 - Introduced by Representatives O'CONNOR, GUNDRUM, BROOKS, ROZAR, PETRYK, SORTWELL, EDMING, BEHNKE, MOSES, NEDWESKI, PLUMER, KNODL, MACCO, BRANDTJEN, PETERSEN, WICHGERS and GUSTAFSON, cosponsored by Senators FEYEN, STROEBEL, NASS and FELZKOWSKI. Referred to Committee on Workforce Development and Economic Opportunities.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to create* 108.14 (10m), 108.14 (23m), 108.14 (29) and 108.14 (30) of the
2 statutes; **relating to:** various changes to the unemployment insurance law and
3 authorizing the secretary of administration to transfer employees from any
4 executive branch agency to the Department of Workforce Development for
5 certain purposes.

Analysis by the Legislative Reference Bureau

UNEMPLOYMENT INSURANCE

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

Identity proofing

The bill requires DWD to implement identity-proofing measures for UI claimants who are engaging in benefit-related transactions with DWD that 1) require a claimant to verify his or her identity prior to filing an initial claim for benefits and when engaging in other transactions with DWD, and 2) achieve the IAL2 and AAL2 standards adopted in the National Institute of Standards and Technology's Digital Identity Guidelines.

Education and informational materials

Current law requires DWD to compile and provide to employers certain information about how the UI system works, including a handbook on the UI system

ASSEMBLY BILL 152

for employers and information concerning the financing of the UI system that is published on DWD's website. The bill requires DWD to also provide certain training materials for employers and claimants on the UI system. The bill requires DWD to publish training videos on its website and also to provide live training seminars for employing units that are free of charge and provided on a quarterly basis.

Assistance call center

The bill requires DWD to operate a call center to assist claimants for UI benefits or similar federal payments. Under the bill, if the volume of calls has increased by 300 percent or more over the same week during the previous year or if there is a declared state of emergency for the state that causes or relates to an increase in UI claims, DWD is required to increase the hours for the call center to include evening hours after 5 p.m. and weekend hours.

Database comparisons

The bill requires DWD to perform a comparison of state and national databases that track death records, employment records, and prison records against recipients of UI benefits for the purposes of detecting fraud or erroneous payments. The bill requires DWD to perform the comparison on at least a weekly basis. The bill provides that DWD may also make such comparisons with other databases.

OTHER CHANGES***Transfer of employees to DWD***

The bill authorizes the secretary of administration to temporarily transfer employees from any executive branch agency to DWD to assist in deciding UI appeals. Under the bill, DWD must pay all salary and fringe benefit costs of that employee during the time the employee is at DWD.

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

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

- 1 **SECTION 1.** 108.14 (10m) of the statutes is created to read:
- 2 108.14 (**10m**) The department shall implement identity-proofing measures for
- 3 claimants who are engaging in benefit-related transactions with the department
- 4 that satisfy all of the following:
- 5 (a) The measures require a claimant to verify his or her identity prior to filing
- 6 an initial claim for benefits and when engaging in other transactions with the
- 7 department.

ASSEMBLY BILL 152

1 (b) The measures achieve the IAL2 and AAL2 standards adopted in the
2 National Institute of Standards and Technology's Digital Identity Guidelines.

3 **SECTION 2.** 108.14 (23m) of the statutes is created to read:

4 108.14 (23m) The department shall provide training materials on the
5 unemployment insurance system, including all of the following:

6 (a) Training videos for claimants and employing units published on the
7 department's website.

8 (b) Live training seminars for employing units that are free of charge and
9 provided on a quarterly basis. The seminars may be in-person, online, or both.

10 **SECTION 3.** 108.14 (29) of the statutes is created to read:

11 108.14 (29) (a) The department shall maintain a call center to provide
12 assistance and support by telephone to claimants for benefits under this chapter or
13 payments under federal assistance programs for unemployment.

14 (b) The department shall, during each of the following periods, extend the call
15 center hours to include hours after 5 p.m. on weekdays and at least 16 hours on
16 weekends:

17 1. During a declared state of emergency for the state that causes or relates to
18 an increase in unemployment claims.

19 2. For 90 days after any week in which the call center experiences an increase
20 of at least 300 percent in calls compared to the same week during the previous year,
21 and for 90 days after each subsequent week in which such an increase occurs.

22 **SECTION 4.** 108.14 (30) of the statutes is created to read:

23 108.14 (30) (a) The department shall, on at least a weekly basis, perform a
24 comparison of recipients of benefits under this chapter against all of the following for
25 the purpose of detecting fraud or erroneous payments:

ASSEMBLY BILL 152**SECTION 4**

1 1. Nationally recognized databases that contain information on death records,
2 including the federal social security administration's death master file.

3 2. The National Association of State Workforce Agencies' integrity data hub.

4 3. The national directory of new hires maintained by the office of child support
5 enforcement in the U.S. department of health and human services.

6 4. Prisoner databases maintained by the department of justice, the department
7 of corrections, and the U.S. department of justice.

8 (b) The department may perform comparisons of recipients of benefits under
9 this chapter against public or private databases in addition to those specified in par.

10 (a) 1. to 4.

11 **SECTION 5. Nonstatutory provisions.**

12 (1) (a) In this subsection, "allowable period" means the period described in par.

13 (c).

14 (b) During the allowable period, the secretary of administration may transfer
15 any employee to the department of workforce development from any other state
16 agency to provide services for the department of workforce development that are
17 needed to hear and decide appeals under s. 108.09 (4). Such an employee may,
18 notwithstanding s. 108.09 (3) (a), serve as an appeal tribunal under ss. 108.09 to
19 108.10, subject to approval by the secretary of workforce development. The
20 department of workforce development shall pay all salary and fringe benefit costs of
21 the employee during the time he or she is providing services for the department of
22 workforce development. Any action by the secretary of administration under this
23 paragraph shall remain in effect until rescinded by the secretary or 90 days after the
24 last day of the allowable period, whichever is earliest.

ASSEMBLY BILL 152

1 (c) A transfer under par. (b) may be made at any time during the period
2 beginning on the effective date of this paragraph and ending on the 120th day after
3 the effective date of this paragraph, except that the joint committee on finance may,
4 upon request of the secretary of administration, extend the period by not more than
5 an additional 120 days.

6 (d) If an employee is transferred under par. (b), the department of workforce
7 development may not increase the employee's salary at the time of transfer or during
8 the time he or she is providing services for the department of workforce development,
9 and the agency from which the employee was transferred may not increase the
10 employee's salary at the time the employee returns to the agency.

11 (e) The secretary of administration shall submit a report to the joint committee
12 on finance, no later than the first day of the 2nd month beginning after the effective
13 date of this paragraph and on the first day of each subsequent month during the
14 allowable period, that provides information on all employee transfers under par. (b).
15 Each report shall specify the number of employees transferred, the title of each
16 employee transferred, the title the employee assumed at the department of
17 workforce development, and the reasons for each employee transfer.

SECTION 6. Effective date.

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

19
20 (END)

Fiscal Estimate - 2023 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2493/1	Introduction Number AB-0152	
Description various changes to the unemployment insurance law and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes		
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local: <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected Affected Ch. 20 Appropriations <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.445 (1)(n)		
Agency/Prepared By DWD/ Andrew Wescott-Barten (608) 405-4475	Authorized Signature Jeremy Simon (608) 267-9692	Date 4/17/2023

Fiscal Estimate Narratives

DWD 4/17/2023

LRB Number	23-2493/1	Introduction Number	AB-0152	Estimate Type	Original
Description various changes to the unemployment insurance law and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes					

Assumptions Used in Arriving at Fiscal Estimate

This bill makes various changes in the unemployment insurance (UI) law, which is administered by the Department of Workforce Development (DWD). The bill requires DWD to implement identity-proofing measures for UI claimants that achieve IAL2 and AAL2 standards adopted in the National Institute of Standards and Technology's Digital Identity Guidelines; provide certain training materials for employers and claimants on the UI system including videos on DWD's website and free live training seminars on a quarterly basis; and to operate a call center to assist claimants for UI benefits if the volume of calls has increased by 300 percent or more over the same week during the previous year or if there is a declared state of emergency relating to an increase in UI claims. The bill also requires DWD to perform, at least weekly, a comparison of state and national databases that track death records, employment records, and prison records against recipients of UI benefits for the purposes of detecting fraud or erroneous payments, and the bill authorizes the secretary of administration to temporarily transfer employees from any executive branch agency to DWD to assist in deciding UI appeals.

The proposed bill changes related to operation of a call center are estimated to have a one-time fiscal effect to the department of \$1,548,860. The proposed bill changes related to identity proofing measures are also estimated to increase costs, but these costs are indeterminate at this time. All other provisions of the bill do not have a fiscal impact.

The proposed changes to call center operations are estimated to have a fiscal impact, but only when the provisions in the bill require evening and weekend hours. When those circumstances arise, the fiscal effect will be comprised of costs to make IT modifications, one-time administrative changes, and costs for additional contract staff. The estimated IT impact is 800 hours of work costing \$71,200, and the one-time administrative cost associated with implementing these systems changes is \$21,360. These costs are related to rescheduling database computations and modifying internal applications to accommodate lengthened call center hours. The additional contracted staff need is estimated as 45 FTE, which would be approximately \$1,456,300. This contract staff estimate assumes UI call centers would be staffed until 7 PM on weekdays and would operate for sixteen hours on the weekend.

This estimated fiscal impact could be lower at the time the bill's call center provisions' thresholds are reached, as the department develops its virtual call center and virtual assistant options for claimants and employers. UI virtual agents are currently available on demand (24/7) to answer claimants' common questions.

For the purposes of this fiscal estimate, these call center costs are considered one-time.

The bill's proposed identity verification requirements are estimated to have an indeterminate cost impact. The primary driver of unknown costs under this bill is full implementation of the IAL2 standard which includes use of facial recognition technology (FRT) in identity verification. DWD's UI Division already has identity verification measures in place and is in the process of implementing additional measures. State workforce agencies anticipate receiving guidance from the US Department of Labor (US DOL) by Sept. 30, 2023, on the use of FRT. Without this US DOL guidance, costs to fully implement IAL2 and AAL2 standards cannot be estimated at this time. This work is expected to require a significant investment as implementation is expected to be complex.

Long-Range Fiscal Implications

Fiscal Estimate - 2023 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2493/1	Introduction Number AB-0152	
Description various changes to the unemployment insurance law and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes		
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local: <input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected Affected Ch. 20 Appropriations <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
Agency/Prepared By DOA/ Robin Kodosky (608) 264-6695	Authorized Signature Robin Malicki (608) 264-9576	Date 4/11/2023

Fiscal Estimate Narratives

DOA 4/11/2023

LRB Number	23-2493/1	Introduction Number	AB-0152	Estimate Type	Original
Description various changes to the unemployment insurance law and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes					

Assumptions Used in Arriving at Fiscal Estimate

Assembly Bill 152 (AB 152) changes unemployment insurance laws and authorizes the Department of Administration (Department) to transfer employees from any executive branch agency to the Department of Workforce Development (DWD).

Authority and prescribed processes for state agencies to interchange employees already exist under ss. 230.047 and 230.29, Wis. Stats., Temporary interchange of employees and Transfers, respectively, and s. 20.901 (1) Wis. Stats., and under which the Division of Personnel Management's (DPM) Chapter ER 47 (ER 47), Temporary Interchange Administrative Rule is promulgated to implement and operate as required under s. 230.047 (8), Wis. Stats. The bill prescribes employee transfer practices from state agencies to DWD which are already currently prescribed, such as for salary reimbursement practices (i.e., as under s. 230.047 (9), Wis. Stats.), the duration of interchanges (i.e., as under ER 47.04), and for intervening pay adjustments (i.e., as under ER 47.05 (1) (b)).

For example, an employee may currently be temporarily interchanged for a duration not in excess of two years with administrator approval, whereas AB 152 permits a transfer of the employee to DWD for not more than 240 days, inclusive of a 120-day extension with approval by Joint Committee on Finance (JFC). It is also specified that than an employee may currently be able to receive non-supplemental salary adjustments while on temporary interchange (i.e., ER 47.06 (1) (b) 1.), whereas the permissiveness of such adjustments is not identified under the proposed, and rather it is specified that DWD may not increase the employee's salary during the time they are providing services (to DWD). In addition, travel expenditures are currently required to be paid for by the receiving agency, whereas this is not specified under the proposed.

Any additional administration required by DPM associated with transfers from state agencies to DWD is anticipated to be absorbed under current workloads and associated expenditure and position authority, given the current existing practices that serve a similar purpose as requested under AB 152. If any of the Department's employees were interchanged to DWD, the administration of these interchanges is also anticipated to be absorbed, and there would be an indeterminate amount of resulting salary and fringe cost savings for the period in which the staff would be working at DWD and which DWD would be responsible for. Finally, the report containing transfer information required to be submitted by the Department to JFC on a monthly basis for the allowable period is also anticipated to be absorbed within current existing workloads and expenditure authority.

Long-Range Fiscal Implications



2023 ASSEMBLY BILL 153

April 7, 2023 - Introduced by Representatives DALLMAN, BROOKS, ALLEN, BEHNKE, BINSFELD, BODDEN, DITTRICH, GREEN, GUNDRUM, KNODL, MAGNAFICI, MOSES, MURPHY, O'CONNOR, PENTERMAN, PETERSEN, PLUMER, RETTINGER, ROZAR, SORTWELL, WICHGERS and WITKE, cosponsored by Senators FEYEN, BRADLEY, FELZKOWSKI, MARKLEIN and STROEBEL. Referred to Committee on Workforce Development and Economic Opportunities.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to renumber and amend** 108.142 (4); **to amend** 108.06 (1); and **to**
2 **create** 108.06 (1m) and 227.01 (13) (yL) of the statutes; **relating to:** the
3 amount of benefits received under the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This bill changes the maximum number of weeks of regular unemployment insurance (UI) benefits payable to an eligible claimant who is totally unemployed to an amount that varies depending upon the seasonally adjusted statewide unemployment rate.

Currently, the maximum number of weeks of regular UI benefits payable to an eligible claimant who is totally unemployed and who earns sufficient wages to qualify for those benefits is fixed at 26 weeks.

Under the bill, the maximum number of weeks available to claimants is determined monthly, based upon the unemployment rate using the most recently available federal data. Once a claimant begins a benefit year, the claimant's maximum number of weeks of regular benefits is fixed for that benefit year. Because the maximum number of weeks of state supplemental benefits payable to a claimant is calculated in part based upon the maximum number of weeks of regular benefits payable to a claimant, the change also affects the maximum number of weeks of state supplemental benefits payable to a claimant. Under the bill, the maximum number of weeks of regular benefits for total unemployment is determined as follows:

Statewide unemployment rate

Greater than 9.0 percent

Maximum weeks of benefits

26

ASSEMBLY BILL 153

Greater than 8.5 percent but less than or equal to 9.0 percent	25
Greater than 8.0 percent but less than or equal to 8.5 percent	24
Greater than 7.5 percent but less than or equal to 8.0 percent	23
Greater than 7.0 percent but less than or equal to 7.5 percent	22
Greater than 6.5 percent but less than or equal to 7.0 percent	21
Greater than 6.0 percent but less than or equal to 6.5 percent	20
Greater than 5.5 percent but less than or equal to 6.0 percent	19
Greater than 5.0 percent but less than or equal to 5.5 percent	18
Greater than 4.5 percent but less than or equal to 5.0 percent	17
Greater than 4.0 percent but less than or equal to 4.5 percent	16
Greater than 3.5 percent but less than or equal to 4.0 percent	15
Less than or equal to 3.5 percent	14

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

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

1 **SECTION 1.** 108.06 (1) of the statutes is amended to read:

2 108.06 (1) Except as provided in sub. (6) and ss. 108.141 and 108.142, no

3 claimant may receive total benefits based on employment in a base period greater

4 than ~~26 times~~ the number of weeks determined under sub. (1m) multiplied by the

5 claimant's weekly benefit rate under s. 108.05 (1) or 40 percent of the claimant's base

6 period wages, whichever is lower. Except as provided in sub. (6) and ss. 108.141 and

7 108.142, if a claimant's base period wages are reduced or canceled under s. 108.04

8 (5) or (18), or suspended under s. 108.04 (1) (f), (10) (a), or (17), the claimant may not

ASSEMBLY BILL 153

1 receive total benefits based on employment in a base period greater than ~~26 times~~
 2 the number of weeks determined under sub. (1m) multiplied by the claimant's
 3 weekly benefit rate under s. 108.05 (1) or 40 percent of the base period wages not
 4 reduced, canceled or suspended which were paid or payable to the claimant,
 5 whichever is lower.

6 **SECTION 2.** 108.06 (1m) of the statutes is created to read:

7 108.06 (1m) (a) 1. The department shall, on a monthly basis, determine the
 8 maximum number of weeks of regular benefits available to claimants under sub. (1)
 9 in accordance with this paragraph. Each such determination shall apply to benefit
 10 years that begin in the month to which that determination applies. For benefit years
 11 to which each determination applies, the maximum number of weeks of regular
 12 benefits is as follows: [See Figure 108.06 (1m) (a) 1. following]

13 **Figure 108.06 (1m) (a) 1.:**

<u>Statewide average unemployment rate</u>	<u>Maximum weeks of benefits</u>
Greater than 9.0 percent	26
Greater than 8.5 percent but less than or equal to 9.0 percent	25
Greater than 8.0 percent but less than or equal to 8.5 percent	24
Greater than 7.5 percent but less than or equal to 8.0 percent	23
Greater than 7.0 percent but less than or equal to 7.5 percent	22
Greater than 6.5 percent but less than or equal to 7.0 percent	21
Greater than 6.0 percent but less than or equal to 6.5 percent	20
Greater than 5.5 percent but less than or equal to 6.0 percent	19

ASSEMBLY BILL 153**SECTION 2**

Greater than 5.0 percent but less than or equal to 5.5 percent 18

Greater than 4.5 percent but less than or equal to 5.0 percent 17

Greater than 4.0 percent but less than or equal to 4.5 percent 16

Greater than 3.5 percent but less than 4.0 percent 15

Less than or equal to 3.5 percent 14

1 2. The department shall make the determinations under this paragraph using
2 the most recently available statewide, seasonally adjusted data from the current
3 employment statistics program published by the the bureau of labor statistics for the
4 U.S. department of labor, including preliminary estimates.

5 (b) The maximum number of weeks of regular benefits payable to a claimant
6 under sub. (1) in the first week of the claimant's benefit year remains the same
7 regardless of the maximum number of weeks of regular benefits in effect in any
8 subsequent week that benefits become payable to the claimant.

9 (c) The department shall publish on its website a notice about the maximum
10 number of weeks of regular benefits available as calculated in accordance with this
11 subsection.

12 **SECTION 3.** 108.142 (4) of the statutes is renumbered 108.142 (4) (intro.) and
13 amended to read:

14 108.142 (4) DURATION OF WISCONSIN SUPPLEMENTAL BENEFITS. (intro.) During
15 a Wisconsin supplemental benefit period, no claimant may receive total benefits
16 based on employment in a base period greater than ~~34 times~~ whichever of the
17 following is lower:

Fiscal Estimate - 2023 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2179/1	Introduction Number AB-0153	
Description the amount of benefits received under the unemployment insurance law		
Fiscal Effect		
State: <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local: <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected Affected Ch. 20 Appropriations <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.445 (1)(n)		
Agency/Prepared By DWD/ Andrew Wescott-Barten (608) 405-4475	Authorized Signature Jeremy Simon (608) 267-9692	Date 4/17/2023

Fiscal Estimate Narratives

DWD 4/17/2023

LRB Number	23-2179/1	Introduction Number	AB-0153	Estimate Type	Original
Description the amount of benefits received under the unemployment insurance law					

Assumptions Used in Arriving at Fiscal Estimate

This bill changes the maximum number of weeks of regular unemployment insurance (UI) benefits payable to an eligible claimant based on a seasonally adjusted unemployment rate formula.

Proposed changes under the bill are estimated to have a fiscal effect to operations of \$3,183,220 for all funds, consisting of an additional one-time cost of \$183,220 for implementation and an ongoing reduction in federal revenue of \$3,000,000 annually.

Provisions in the bill are also anticipated to have a fiscal effect on UI Trust Fund by decreasing UI benefits payments annually by \$58.8 million.

The UI program fiscal effects related to operations costs and the UI Trust Fund are estimated as follows:

IT changes to allow for variable changes in the monetary rate is estimated to require 1,600 hours of technical work, at \$88 per hour at a cost of \$140,800. There is an additional \$42,420 in administrative costs for the implementation of the proposal.

The number of weeks of UI benefits is likely to decline based on historic data. Under the bill, February 2023 average statewide seasonally adjusted unemployment rate was 2.7% resulting in 14 weeks of benefits. During the peak of the Great Recession, the highest applicable unemployment rate was 9.2% in October of 2009, which would have resulted in 26 weeks of unemployment benefits under this proposal. Using the average over the 2018 and 2019 benefit years to project future benefit reductions, the expected annual reduction in UI benefits paid is \$93.35 million. Of this amount, \$87.75 million would be charged to the UI Trust Fund with the remainder paid for by reimbursable employers. Accounting for reimbursable employers, UI tax revenue would be reduced by \$28.95 million annually with the net effect to the UI Trust Fund is a savings projected to be \$58.8 million annually.

As a result of a decline in UI weeks applied for and corresponding cases in adjudication and appeals, DWD expects to receive \$3,000,000 less in annual funding from USDOL for administering the Wisconsin UI program.

In addition, Wisconsin UI will lose additional above-base funding for administration of the UI program due to not offering 26 weeks of UI benefits, but this amount of forfeited funding is indeterminate.

Long-Range Fiscal Implications

Future federal additional benefits and administrative funds could be affected by this provision as well, by an indeterminate amount. The available weeks of Federal extended programs is often based upon a default UI benefit period of 26 weeks. The number of federal weeks an individual receives will often be reduced by the proportion of weeks that the state UI benefit is less than the standard 26 weeks. This can result in lost federal additional unemployment benefits and lost federal funding for those benefits estimated to be at least \$200 million.

Fiscal Estimate Worksheet - 2023 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-2179/1	Introduction Number AB-0153	
Description the amount of benefits received under the unemployment insurance law		
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):		
This is expected to have a one-time IT cost of \$142,400 representing 1,600 hours of work. There is a one-time administrative cost of \$42,720 for a one-time total implementation cost of \$185,120.		
II. Annualized Costs:	Annualized Fiscal Impact on funds from:	
	Increased Costs Decreased Costs	
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$	\$
B. State Costs by Source of Funds		
GPR		
FED		
PRO/PRS		
SEG/SEG-S		
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		-3,000,000
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	\$	\$-3,000,000
NET ANNUALIZED FISCAL IMPACT		
	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUE	\$-3,000,000	\$
Agency/Prepared By	Authorized Signature	Date
DWD/ Andrew Wescott-Barten (608) 405-4475	Jeremy Simon (608) 267-9692	4/17/2023

Date: Wednesday, April 12, 2023

To: Chair Petryk, Vice-Chair Michalski, and Members of the Assembly Committee on Workforce Development and Economic Opportunities

From: Department of Workforce Development Secretary-designee Amy Pechacek

Written Testimony Regarding AB 147, AB 149, AB 152, and AB 153

Chair Petryk, Vice-Chair Michalski, and Committee Members, thank you for the opportunity to provide written testimony for information only on AB 147, AB 149, AB 152, and AB 153, which propose changes to Wisconsin's unemployment insurance (UI) law and UI program. With more than 130 years of experience analyzing labor market data for employers, policymakers, educational institutions, and job seekers, the Wisconsin Department of Workforce Development is focused on creating and sustaining a thriving economy.

DWD had a record-breaking year in 2022: Wisconsin reached record low unemployment in January through April and reached a new record of only 2.7% in February of this year. Initial and existing weekly unemployment insurance claims are continuing at seasonal, historic lows. Of the \$344.5 million unemployment insurance payments made in 2022, only 0.4% were found to be fraud overpayments. We've also seen a record number of apprentices and youth apprentices. To say that Wisconsinites are not working and are sitting on the sidelines is simply not true.

Wisconsin, like the rest of the Midwest, the nation, and much of the world, is facing a worker quantity shortage. The workforce quantity shortage is a global issue due to demographic trends decades in the making. Baby boomers are retiring, which was exacerbated by the pandemic, birth rates have never been lower, and in the last decade, there has been net zero to negative migration to Wisconsin. DWD has taken a proactive rather than punitive approach to these challenges, working to remove employment barriers and connecting employers with underutilized talent pools.

The Governor's budget supports proactive approaches to workforce needs. He announced a \$200 million investment to continue the successful Workforce Innovation Grant Program to provide long-term solutions for businesses and, in particular, the healthcare industry to find workers and individuals to obtain family-supporting jobs. Other initiatives include a paid Family Medical Leave Program, investing in child care statewide, continued expansion of the apprenticeship program to retain our emerging workforce, further investment in job centers at correctional institutions, among many others that will build the 21st-century workforce and infrastructure Wisconsin needs.

The long-standing process for new legislation regarding both unemployment insurance and worker's compensation programs is to circulate drafts of proposed policy changes through their respective advisory councils—the Unemployment Insurance Advisory Council and the Worker's Compensation Advisory Council. Additionally, regarding UI law, the Department generally sends all changes to the U.S. Department of Labor for conformity review moving forward. Please note that to DWD's knowledge, the proposed bills did not undergo these processes, nor was DWD staff consulted on the need for the policy change.

Had DWD staff been consulted, the Department would have stressed the need for support of DWD's proactive approach to workforce development, supported by its dedicated staff and modernization efforts. In fact, those modernization efforts to date include:

- o Cloud-based omni-channel contact center;
- o Virtual customer service agents are available 24 hours a day, 365 days a year, to answer common questions in English and Spanish;
- o Online chatbot that can answer common questions in English, Spanish, and Hmong;
- o Fraud detection through LexisNexis and National Association of State Workforce Agencies' Integrity Hub;
- o Online filing process and document upload that uses AI to enter data instead of manual data entry;
- o Secure online messaging with adjudicators; and
- o Translation of the UI application into plain language.

Additionally, while this legislation purportedly responds to the recent statewide referendum regarding Wisconsinites' preference to require work search for welfare benefits, it nevertheless misses the mark. The referendum does not apply to unemployment insurance; unemployment insurance is not a welfare program and UI claimants are already required to conduct four work search actions weekly.

While DWD appreciates efforts to bolster Wisconsin's workforce, the proposed bills are not in touch with DWD's current operations or labor trends. The focus on changes to unemployment insurance does not take into account the significant progress DWD has made in terms of modernization and accessibility of the UI program. DWD is better equipped than ever before to handle an influx in UI claims and calls, which is evident given that Wisconsin ranked fifth in the nation in terms of timeliness in administering UI benefits from July to December 2022. Just last month, 88.64% of claimants received their benefits in three days or less of the weekly claim filing date. Some of these bills also have the potential to delay or deny Wisconsinites benefits in times when they need it the most, with the potential to disproportionately impact rural areas and certain industry sectors that do not have as many job opportunities.

AB 147

The bill proposes that UI benefit augmentations, such as the federal programs that provided critical supports for Wisconsinites during the pandemic, will require review by the Joint Committee on Finance (JFC). If federal programs and extended benefits are needed at a future date, this proposed change could delay benefits to Wisconsin citizens in times of high need, negatively affecting Wisconsin's economy by withholding funding that could be used by claimants for good and services.

Additionally, depending on how the federal programs are structured, there is the potential for the state of Wisconsin to lose federal benefits and administrative funding that other states will receive should participation in those federal programs be delayed.

The other proposed changes in AB 147 are either already DWD's current practice, or would not have the intended impact of bolstering Wisconsin's workforce, such as:

- The changes in the definitions of "misconduct" and "absenteeism": the bill would not create additional bases for ineligibility, it would simply shift the reason for claim denials from "substantial fault" to "misconduct." The changes to the misconduct and absenteeism under UI law would only result in a minor reduction in UI operational costs (for claims adjudication). This reclassification would not have tangible benefits to employers either, because in the case of the current or the proposed law, the employer does not pay when the claimant is found ineligible.
 - o Additionally, removing "intent" from the definition of misconduct could jeopardize the Department's ability to comply with the federal conformity requirements to receive federal funding.
- Registering out-of-state claimants at their local job center: this is UI's current practice. UI already requires out-of-state claimants to register with their closest public employment office and submit proof of said registration to DWD.
- Work search audits: The division has a well-established work search auditing program. UI claimants who are required to search for work must submit their work search record each week a claim is filed.

These records are subject to random or targeted audits for program integrity purposes. These audits can uncover mistakes made by claimants or instances of intentional fraud, as well as provide an opportunity to educate claimants on what constitutes a valid work search action and what information is needed by the division to verify work searches. In 2022, DWD completed 22,012 work search audits. The audits resulted in 9,045 adverse decisions with benefits denied, including when claimants failed to conduct four valid work search actions. An additional 27,404 adverse determinations were issued for failure to answer the work search question or failure to provide required information on the weekly claim before the claim paid.

- In addition, work search audits are labor intensive. Every audit of two claimants' work searches requires 45 minutes of staff time. To optimize results, UI targets its audits to efficiently and effectively review certain work search activity.
- As claimants complete four work search actions per week, auditing 50% of actions would result in millions of audits per year. This would require a large increase in staffing and substantial investment, and the bill does not allocate any additional positions or funding. Also, an increase in denials of claims will result in additional appeals, which would also require more staff. This bill is financially untenable, operationally infeasible, and unnecessary as DWD is confident in the efficacy of its approach using both random and targets audits identify falsified work search actions.

AB 149

Further, this bill is redundant as employers are currently able to report suspected claimant fraud, including fraud related to work search activities such as attending interviews, turning down job offers, and failing to return to employment or turning down employment offers to DWD. DWD already relies on employers to verify information provided by claimants and to bring other eligibility issues to our attention. They may call or write to DWD at any time to raise an eligibility issue, using the Employer Assistance Line and the online Help Center. Any employer that suspects that someone on UI is committing fraud can also report it on DWD's website. DWD reviews all reports and fraud referrals.

It is worth noting that there are confidentiality measures in place that protect identities of claimants required by federal and state law. DWD could provide data on work search investigations to the legislature, but it could not be made available to the public.

AB 152

Similarly, AB 152 is either DWD's current practice, or would not have the intended impact of bolstering Wisconsin's workforce, such as:

- Transfer of Employees to DWD: The existing interagency staff transfer process and intra-agency temporary assignment of staff sufficiently serves DWD's operations. DWD monitors its workload and vacancies to determine if the Department needs to submit a request for interagency staff transfers or to re-assign its staff. Regardless, solely focusing on transferring staff specifically for the UI Division's operations is outdated given the significant recent modernization efforts.
 - Again, the Department is better equipped than ever before to manage an influx in UI claims and calls, which is evident given that Wisconsin ranked fifth in the nation in terms of timeliness in administering UI benefits from July to December 2022. Just last month, 88.64% of claimants received their benefits in three days or less of the weekly claim filing date.
- Education and Informational Materials: UI already has external training and training videos available. There would be a cost involved with providing additional training requirements and complying with the proposed change, for which the bill does not allocate any funding.
- Database Comparisons: This is unnecessary given DWD's multifaceted, modernized approach to detecting and preventing fraud. Not only does the division cross match with death, employment, and inmate records, DWD is also a part of the National Association of State Workforce Agencies' Integrity Data Hub. The data hub provides access to cross-matching verification options, and nationwide databases, to name a few. DWD's Annual Fraud Report contains more detailed information about our detection tools.
- Identity Proofing: DWD is confident in UI's current system using LexisNexis to verify the identity of each claimant. If the identity proofing measures require uploading of identifying documents, this

would be a barrier to users, and additional staff time could be needed to help claimants with additional technological requirements. An initial estimate is that the proposed identity proofing standards would require a significant cost investment in annual vendor costs and technology development costs. Current UI processes already use targeted identification logic to verify the identity of every claimant.

Regarding the changes outlined in AB 152 related to the UI call center, DWD notably upgraded the call center that has significantly improved accessibility and quality of customer service. DWD transitioned to its cloud-based contact center on its NICE CXone platform. The current contact center is enhanced with the following benefits:

- Modern web-based call delivery system that allows agents to work wherever they have an internet connection, providing greater flexibility for agents in taking and responding to calls;
- Scalability of solution in real time to address changing demands (both up and down);
- Ability to customize in-house call processing in real-time;
- Omnichannel approach that allows DWD to introduce other communication channels (e.g., chat, text messaging);
- Better ability to monitor interactions with customers; and
- Enhanced real-time reporting, including number of unique callers.

Call center hours have been extended with the help of advanced technology. Virtual agents are available 24 hours a day, 365 days a year, to answer claimants' common questions in English and Spanish. There is also an online chatbot that can answer questions in English, Spanish, and Hmong. UI staff are then available for extended hours Monday through Friday 6:15 a.m. to 5:30 p.m. and Saturday 7 a.m. to 1:30 p.m. to answer constituents' further, more complex questions. Prior to the pandemic, staff hours were historically Monday through Friday from 7:45 a.m. to 4:30 p.m. and were then extended during the pandemic.

DWD already closely monitors call volume and wait times for the call center. The monitoring mechanisms in place account for predictable increases due to seasonal and/or holiday trends versus unpredictable spikes. This proposed legislation does not account for these predictable trends; therefore, it would inefficiently assign staff.

This bill also does not factor in significant strides DWD has made in terms of modernization and accessibility to ease the unemployment insurance administration process, such as online filing process, secure online messaging with adjudicators, and translation of the UI application into plain language, which has significantly eased the claimant's experience. The Department is better equipped than ever before to manage a sudden influx in UI claims and calls with its new cloud-based contact center.

AB 153

This bill would change the maximum number of weeks that a regular UI claimant who lost their job through no fault of their own could receive benefits. Currently, the maximum number of weeks of regular UI benefits payable to an eligible claimant who is totally unemployed and who earns sufficient wages to qualify for those benefits is fixed at 26 weeks. Under the bill, the maximum number of weeks available to claimants is determined monthly, based upon the unemployment rate using the most recently available federal data. Once a claimant begins a benefit year, the claimant's maximum number of weeks of regular benefits is fixed for that benefit year.

This method of calculating maximum UI benefit duration is concerning because the unemployment rate is volatile and can rise very quickly. During a recession, it can easily increase multiple percentage points month to month. The bill mechanisms will not be responsive to, or reflective of, current economic situations as it looks back to a previous economic situation to determine benefits. It then fixes the maximum duration a claimant can receive benefits for the rest of that year, further perpetuating the disconnect between the duration of benefits and the current economic situation.

Additionally, AB 153 is not sensitive to local employment rates. A brief look at county-by-county unemployment rates shows that unemployment is higher in the northern part of the state and lower in and

around Dane County. The bill could disadvantage individuals in rural areas with fewer local job opportunities by reducing the number of benefit weeks to claimants with eligible employment. The bill is also not sensitive to unemployment rates by industry sector. Re-entering the job market may be easier in some sectors (and in certain times of the year) than others.

Ultimately, the bill is financially untenable and operationally infeasible. Federal unemployment rates are subsequently benchmarked and retroactively adjusted by the U.S. Bureau of Labor Statistics. The unemployment rate in a given month could be retroactively adjusted months later. This bill does not address the ramifications of those adjustments, such as if claw-backs or new payments would be issued, making this change impractical.

Thank you for the opportunity to provide this information.

Date: Wednesday, April 12, 2023

To: Chair Penterman, Vice-Chair Sapik, and Members of the Assembly Committee on Labor and Integrated Employment

From: Department of Workforce Development Secretary-designee Amy Pechacek

Written Testimony Regarding AB 150 and AB 151

Chair Penterman, Vice-Chair Sapik, and Committee Members, thank you for the opportunity to provide written testimony for information only on AB 150 and AB 151, which propose significant changes to Wisconsin's unemployment insurance program and workforce development programs broadly. With more than 130 years of experience analyzing labor market data for employers, policymakers, educational institutions, and job seekers, the Wisconsin Department of Workforce Development is focused on creating and sustaining a thriving economy.

DWD had a record-breaking year in 2022: Wisconsin reached record low unemployment in January through April and reached a new record of only 2.7% in February of this year. Initial and existing weekly unemployment insurance claims are continuing at seasonal, historic lows. Of the \$344.5 million unemployment insurance payments made in 2022, only 0.4% were found to be fraud overpayments. We've also seen a record number of apprentices and youth apprentices. To say that Wisconsinites are not working and are sitting on the sidelines is simply not true.

Wisconsin, like the rest of the Midwest, the nation, and much of the world, is facing a worker quantity shortage. The workforce quantity shortage is a global issue due to demographic trends decades in the making. Baby boomers are retiring, which was exacerbated by the pandemic, birth rates have never been lower, and in the last decade, there has been net zero to negative migration to Wisconsin. DWD has taken a proactive rather than punitive approach to these challenges, working to remove employment barriers and connecting employers with underutilized talent pools.

The Governor's budget supports proactive approaches to workforce needs. He announced a \$200 million investment to continue the successful Workforce Innovation Grant Program to provide long-term solutions for businesses and, in particular, the healthcare industry to find workers and individuals to obtain family-supporting jobs. Other initiatives include a paid Family Medical Leave Program, investing in child care statewide, continued expansion of the apprenticeship program to retain our emerging workforce, further investment in job centers at correctional institutions, among many others that will build the 21st-century workforce and infrastructure Wisconsin needs.

The long-standing process for new legislation regarding the unemployment insurance program is to circulate drafts of proposed policy changes through the Unemployment Insurance Advisory Council. Additionally, regarding UI law, the Department generally sends all proposed changes to the U.S. Department of Labor for conformity review moving forward. Please note that to DWD's knowledge, the proposed bills did not undergo these processes, nor was DWD staff consulted on the need for the policy change.

While DWD appreciates efforts to bolster Wisconsin's workforce, the proposed bills are not in touch with DWD's current operations or labor trends. To the Department, bolstering Wisconsin's workforce means

breaking down barriers for Wisconsinites so they can obtain family-sustaining jobs, unlike the proposed bill that would create additional burdens for folks during a time of need.

AB 150

DWD has significant concerns about this proposal due to the anticipated reporting burden for employers, potential costs, bureaucratic requirements, and lack of sustainable funding. While DWD already is performing several key functions noted in the proposal, other requirements in the bill appear to be based on an inaccurate read of Wisconsin's real labor market challenges.

DWD is already effectively serving job seekers, employers, and employees as DWD's primary responsibilities include providing job services, training, and employment assistance to people looking for jobs while working with employers to find the necessary workers to fill current job openings. DWD's six divisions, Employment and Training Vocational Rehabilitation, Unemployment Insurance, Worker's Compensation, Equal Rights, and Administrative Services, coordinate closely to connect job seekers with employment opportunities; ensure that Wisconsin's diverse workforce is equipped with in-demand skills; and administer funds, including the over \$1.1 billion Unemployment Insurance Trust Fund.

Wisconsin's proactive approach to workforce development already delivers results. Wisconsin's innovative responses and recent investments in workforce development are effectively connecting job seekers with employers and engaging previously underrepresented and underemployment populations with jobs. The Division of Employment and Training's Bureau of Job Service currently functions as a "Reemployment Division," working in the community, connecting online, supporting Department of Corrections job labs, providing services in hard-to-reach locations through the mobile career lab, and working in schools and libraries to help people get their next job. The Job Center of Wisconsin website currently hosts approximately 35,000 resumes and functions to connect job seekers and employers.

Other ways DWD is already performing the functions proposed in the bill include:

- DWD works to prevent layoffs at Wisconsin companies. Through the Work-Share program, instead of laying off workers, a qualified employer can plan to reduce work hours for at least 20 employees, thus aiding the employer to retain its valued, skilled and/or trained employees.
- DWD's Job Service administers the Re-employment Services and Eligibility Assessment (RESEA) program. The program serves 25,000 to 35,000 UI claimants a year with an employment plan, job search assistance, work search review, employment counseling with Job Service licensed career counselors, referrals to training programs, and career exploration.
- Work Registration is already a requirement. UI claimants are required to register for work (including the completion of a resume) with the Wisconsin Job Service online within 14 days of their initial application for UI benefits.
- Re-employment Services are also already a requirement. Again, claimants that are registered with Wisconsin Job Service are required to seek work as well as complete an online orientation and assessment.
- DWD's Job Service is currently undertaking a comprehensive program evaluation of the RESEA program to identify the interventions that provide the best possible employment outcomes and reduce the duration of benefits. The evaluation will continue through 2024.

Creating new and burdensome reporting requirements for employers, erecting more barriers for job seekers, diminishing access to funds invested for people experiencing job loss, and creating more challenges for those suffering from substance abuse disorder as proposed would hinder the state's economic progress, not help. At the same time, establishing complex programs with unsustainable funding, creating additional bureaucratic mandates, shuffling existing division responsibilities, and changing the name of a DWD division would only increase costs with no clear benefits.

AB 151

The Workforce Innovation and Opportunity Act, as amended during the Obama Administration, is marquee federal legislation to improve workforce services for job seekers, including youth and those with historical barriers to unemployment, into high-quality job and careers, as well as helping employers hire and retain

workers. WIOA also requires States and local areas to enhance coordination and partnerships with local entities and supportive service agencies for strengthened service delivery. DWD's WIOA programs are successfully administered in conjunction with its partners, the Workforce Development Boards, the Wisconsin Technical College System, the Department of Public Instruction, the Department of Children and Families, the Wisconsin Economic Development Corporation, employers, employees, job seekers, students, among other partners.

Building off its WIOA programs' successes, DWD already uses the approaches learned through WIOA in other training programs when applicable. For example, DWD has used its WIOA-trained staff to administer the Workforce Innovation Grants under Governor Evers's Workforce Solutions Initiatives. However, not all programs fit into WIOA's structure, and, in fact, some of DWD's state programs have their own statutory requirements that do not necessarily align with the WIOA requirements. For example, the Wisconsin Fast Forward grant program, a long-standing state-funded workforce training program, is designed to award funds to businesses from all Wisconsin industry sectors that reimburse the costs of customized occupational training for unemployed, underemployed, and incumbent workers. The customized, business-driven training will qualify workers for full-time employment, higher level employment, or increased wages. It is available to all industry sectors and companies of any size. The Wisconsin Fast Forward program has its own reporting structure, performance metrics, and compliance requirements set under state law and regulations that would need to be modified under the proposed bill. DWD would like to continue to operate Wisconsin Fast Forward, and other non-WIOA workforce training programs, with flexibility and innovation to best meet local workforce needs.

Thank you for the opportunity to provide this information.

DWD 113.03 Compromise of employer liability.

(1) Under s. 108.10 (8), Stats., the department may compromise the liability of any employer as established in any final determination, decision or action, together with any subsequent collection costs, if all of the following apply:

- (a) The employer makes a sworn application for the compromise of the employer's liability to the department, including a financial statement if requested, in a form prescribed by the department.
- (b) The employer is not a government unit.
- (c) The employer is not a debtor in a case under title 11 of the United States Code with respect to any liability under ch. 108, Stats., which is not dischargeable in bankruptcy unless any of the following apply:
 1. In a case under chapter 7 of title 11 of the United States Code, there are insufficient assets to pay the liability in full under the statutory order of distribution.
 2. In a case under chapter 11 or 12 of title 11 of the United States Code, the confirmed plan of reorganization provides for the sale of or distribution to creditors of all of the property of the employer and there are insufficient assets to pay the liability.
- (d) If the employer is a nonprofit organization that incurred all or part of its liability when it was subject to reimbursement financing status under s. 108.151 (2), Stats., the employer's assurance of reimbursement has either been applied to the liability or the application for compromise provides for such assurance.
- (e) The department finds that the employer is unable to pay the full amount of the contributions or payments in lieu of contributions, interest, penalties and costs. If the employer is still in the same business or operation as when the liability sought to be compromised was incurred, and all of the following apply:
 1. The employer's application for compromise offers payment in an amount not less than the unpaid contributions or unpaid payments in lieu of contributions, including any contributions owed as a successor under s. 108.16 (8) (f), Stats.
 2. The required payment of all interest, penalties or costs would pose an immediate threat to the financial viability of the employer.
 3. The employer is paying all current contributions or payments in lieu of contributions.

(2) If the conditions of sub. (1) are satisfied, the department shall determine the amount that the employer is able to pay and may issue an acceptance of the application for compromise in the determined amount.

(3) Notwithstanding sub. (1) (e), the department may compromise unpaid contributions on wages for domestic service arising under s. 108.02 (13) (d), Stats., for any time period before the effective date of the existence of a fiscal agent or fiscal intermediary under s. ~~46.27 (5) (i)~~, 46.272 (7) (e), or 47.035, Stats.

(4) Notwithstanding sub. (1) (e), in determining the amount of the accepted compromise, the department may consider the following:

- (a) A portion of any interest liability was incurred as a result of undue delay on the part of the department such that there is valid reason to compromise the interest liability.
- (b) In the opinion of the bureau of legal affairs, the employer could have raised valid legal defenses of estoppel or laches against the department.

Date: April 20, 2023
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

**ANALYSIS OF PROPOSED UI RULE CHANGE
Amend Administrative Rules Regarding UI Hearings**

1. Description of Proposed Change

Current law provides that unemployment insurance hearings may be held in-person, by telephone, or by videoconference. Under current DWD § 140.11, an appeal tribunal may conduct a telephone or videoconference hearing “when it is impractical for the appeal tribunal to conduct an in-person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location.” That section also provides that a party may appear in person at the appeal tribunal’s location if the hearing is scheduled by telephone or videoconference. However, the Department’s limited hearing office space and ALJ scheduling make it impractical for a party scheduled for a telephone or video conference hearing to appear in person without advance notice.

Since March 2020, Wisconsin unemployment insurance benefit appeal hearings have virtually all been held by telephone. The Department will continue to hold telephone hearings and will increase videoconferencing capabilities. In the months before the pandemic, about 99.6% of hearings were held by telephone. Even before the pandemic, other states held nearly all their unemployment hearings by telephone:

State	Percent of UI hearings by phone (2019)
Illinois	99.9%
Minnesota	99.9%
Michigan	94%
Iowa	98%
Indiana	96%
Nebraska	99% (2 in-person/year)

Ohio	98%
Kansas	99%

The Department proposes to amend chapter DWD 140 to provide that, while either party to a matter may continue to request in-person hearings, it is the hearing office's discretion, within standards set by the Department, whether to grant that request. The Department also proposes to clarify language in DWD chapter 140 regarding the following: inspection of hearing records under DWD § 140.09; Departmental assistance for people with disabilities at hearings under DWD § 140.19; and postponement requests when the hearing exhibits are not sent timely under DWD § 140.08. Further, the Department seeks to correct minor and technical language in DWD chapter 140.

2. Proposed Rule Changes

If the attached draft scope statement is approved, the Department will draft amendments to DWD chapter 140 and will present that draft to the Council for review before the rule is finalized.

3. Effects of Proposed Change

- a. **Policy:** The proposed change will amend Wisconsin's unemployment insurance administrative rules to ensure that parties have access to hearings, whether in person or by telephone or videoconferencing, while recognizing the limitations on physical space availability for hearings. It will also ensure parties receive records timely in advance of the hearing. Finally, it seeks to comport the language under DWD 140.09 to the confidentiality provisions under ch. DWD 149.
- b. **Administrative:** This proposal will require training of Department staff.
- c. **Fiscal:** This proposal is expected to reduce travel costs for parties and witnesses attending unemployment insurance hearings.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective when the Legislature approves the amended rule.

STATEMENT OF SCOPE

Department of Workforce Development

Rule No: DWD 140

Relating to: Unemployment insurance hearings.

Rule Type: Permanent

Detailed description of the objective of the proposed rule.

The proposed rule will amend sections of ch. DWD 140, Wis. Admin. Code, related to hearing notices; in-person, telephone, and videoconference unemployment insurance hearings procedures; hearing records; and accessibility for attending hearings. The rule will specify the procedure by which a party or witness may request to attend a hearing in-person. The rule will also permit postponement of a hearing if the Department does not send the proposed hearing exhibits in advance of a benefit hearing. The rule will also clarify what unemployment insurance records may be released to a person who is not a party or a party's representative.

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

Currently, ch. DWD 140 (Unemployment Insurance Appeals) specifies the requirements for unemployment insurance hearing notices, the procedures for conducting telephone or videoconference hearings, the treatment of hearing records, and the requirements for the Department to provide assistance to people with disabilities at hearings. Chapter DWD 140 also provides for postponement of hearings in certain circumstances. Furthermore, ch. DWD 140 outlines when parties, parties' representatives, and other persons may access and inspect enumerated types of hearing records.

The Department proposes to amend ch. DWD 140 to require that the hearing notice provide the method of the hearing (in person, telephone, or videoconference). The rule will also identify the process by which a party can request an in-person hearing or a hearing by video-conference. Also, the Department proposes to amend ch. DWD 140 to provide that it is within the discretion of the hearing office whether to hold an in-person hearing or to require the parties to appear by telephone or videoconference and to provide the guidelines under which the hearing office shall make such determinations, such as technological constraints and the need to accommodate individuals with disabilities. Further, the rule will allow a party to request an in-person hearing, subject to the guidelines. Chapter DWD 140 will also be amended to ensure that the Department is timely and efficiently responding to requests for reasonable accommodations and to describe the process by which a party will make such a request.

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

Finally, consistent with ch. DWD 149, the rule will update ch. DWD 140 to provide that certain hearing records are confidential unemployment information and not subject to release to individuals who are not parties or representatives of the parties.

The policy alternative is to do nothing. If the Department does not promulgate the proposed rule, the unemployment insurance appeals process may not be as clear and efficient as it could be.

Detailed explanation of statutory authority for the rule, including the statutory citation and language.

The Department has statutory authority for the proposed rule.

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

“Except as provided in s. 901.05, the manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general department rules, whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure, for determining the rights of the parties.” Wis. Stat. § 108.09(5)(a).

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

The estimated time is 80 hours.

List with description of all entities that may be affected by the proposed rule.

Currently, all employees and employers who appear at unemployment insurance appeal hearings appear by telephone. Before the pandemic, nearly all unemployment insurance appeal hearings were held by telephone. The proposed rule will affect employees and employers who attend unemployment insurance appeal hearings. Employees and employers who previously appeared at unemployment insurance appeal hearings in person will save travel time and costs by appearing by telephone or videoconference. The proposed rule will also standardize the process for requesting an accommodation for hearings for individuals with disabilities who are parties or witnesses for the hearing. The rule changes will better allow parties to prepare for hearing. Finally, the proposed rule will clarify which hearing records, subject to redaction, may be released to non-parties.

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

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

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

The proposed rule is not expected to have an adverse economic impact on any business or small business.

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

DRAFT

Unemployment Insurance Advisory Council

Tentative Schedule

2023-2024

January 19, 2023	Scheduled Meeting of UIAC Discuss Public Hearing Comments
April 20, 2023	Scheduled Meeting of UIAC Introduce Department Proposals
May 18, 2023	Scheduled Meeting of UIAC Discuss Department Proposals Exchange of Labor & Management Law Change 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