



Unemployment Insurance Advisory Council

Meeting Agenda

Oct. 26, 2023, 10 a.m. – 4 p.m.

The public may attend by teleconference.

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)
Meeting number (access code): 2664 504 4229 Password: DWD1

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

1. Call to order and introductions
2. UI modernization update – Secretary Amy Pechacek
3. Approval of minutes of the Sept. 12, 2023 UIAC meeting
4. Trust Fund update
5. Legislation update
 - Investigation and audit of worker misclassification ([AB 473](#))
 - Employee misclassification and providing a penalty ([AB 474](#))
 - Worker misclassification and providing a penalty ([AB 475](#))
 - Delivery network couriers ([AB 477](#))
 - Discharge for use of Marijuana. ([SB 486](#))
 - September 2023 Special Session: SB1 - [Senate Substitute Amendment 1](#)
6. 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
7. Rulemaking proposal
 - Proposed scope statement for UI hearings - DWD 140

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

8. Labor and Management proposals to amend the unemployment insurance law
9. Research requests
10. 2023-2024 UIAC timeline
11. Future meeting dates: Nov. 16, Dec. 21, Jan. 18, Feb. 15, Mar. 21
12. DWD Council Convergence Meeting / Annual WI Public Records Law Training – Secretary Amy Pechacek (noon-1 p.m.)
 - Registration for that event is available here:
<https://www.eventbrite.com/e/dwd-council-convergence-overview-and-training-in-person-and-virtual-tickets-723717958897>
13. Adjourn

Notice

- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may not address all agenda items or follow the agenda order.
- ❖ The Council 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.

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UI Modernization Update

Oct. 26, 2023 | UI Advisory Council

September 2020

- Middle of the COVID-19 pandemic
- Backlog of 770,000 UI claims waiting to be processed
- Like many other states, Wisconsin's UI system was outdated and had been ignored for decades
- People power alone wasn't going to solve the problems
- The methods and language used to communicate with claimants were bureaucratic and full of jargon



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Q **** BPMQ INQUIRY ****          05/MILWAUKEE CALL CENTER  01/23/21  07:19 AM
D: [REDACTED]          BASE: ACTIVE          PAY TYPES: ALL          DETAIL LEVEL: 3

[REDACTED]          TEL: [REDACTED]          MON: 04/28/20
[REDACTED]          BIR: [REDACTED]          VNC: 15/20
[REDACTED]          SEX: [REDACTED]          COND: E          DD BYE: 14/21
[REDACTED]          ERP: 001421          LWC: 31/20 B

K...PAID...WAGES...EMPLOYER...SEQ...DATE..TYPE...REMARKS.....BATCH ITEM
20 176.00          BA4729          1  08/21/20 P  PAID          081820 079776
[REDACTED]          DIRDEP# [REDACTED]
20 10.00          BA4729          1  08/20/20 P  PAID          081820 079776
[REDACTED]          STATE INCOME TAX WITHHELD
20 21.00          BA4729          1  08/20/20 P  PAID          081820 079776
[REDACTED]          FEDERAL INCOME TAX WITHHELD
20 510.00          999153          1  08/20/20 P  PAID - FPUC   081820 079733
[REDACTED]          DIRDEP# [REDACTED]
20 30.00          999153          0  08/20/20 M  PAID - FPUC   081820 079733
[REDACTED]          STATE INCOME TAX WITHHELD
20 60.00          999153          0  08/20/20 M  PAID - FPUC   081820 079733
[REDACTED]          FEDERAL INCOME TAX WITHHELD
20 176.00          BA4729          1  08/21/20 P  PAID          081820 079733
WEEK HELD: 34/19          CLAIMANT HAS SUSPENSIONS, CHECK DCIQ

00 - NEXT WEEK TO BE DISPLAYED          7-MONI 8-DCIQ 12-HELP 18-ESTM
@ : 00.1          02/08
```



OUR RESPONSE

My UI Summary


My UI Home


Profile Settings


File Claim


Message Center **1**


Determinations


Appeals


Handbook


Print Benefit Statements

Payment Information

Last Week Claimed: 02/14/2021 - 02/20/2021
Payment Amount: \$0.00
Status: Not within Benefit Year
Payment Method: Debit Card
Tax Withholding: Federal

Claim Information

Weekly Benefit Amount: \$370.00
Remaining Amount: \$0.00
Benefit Year Start: 01/17/2021
Benefit Year End: 01/15/2022
Paying Program: Regular Unemployment / FPUC
Work Search Status: Waived - work with new employer expected

[More Info](#)

Issues and Determinations

You have no current determinations.
You have a determination preventing payment.

[More Info](#)

Appeals

You have no recent appeals.

Overpayments and Penalties

Overpayment Amount: \$0.00
Benefit Amount Reduction: \$0.00

Other Resources

[Job Center of Wisconsin](#)
[1099-G Tax Information](#)

UI CLAIMANT PORTAL

A person's hands are shown typing on a laptop keyboard. Overlaid on the image are several digital icons: a yellow folder icon, three white document icons with horizontal lines, and a white folder icon. These icons are connected by dashed yellow lines, suggesting a workflow or data flow. The background is a blurred image of a person in a dark blue shirt working on a laptop.

PLAIN LANGUAGE

Making language on UI applications more user-friendly to minimize errors that lead to processing delays.

IMPROVE USER EXPERIENCE



Flexion & NICE CXone



Searching for a job?

Check out how your public library can help [here!](#)



Mattie Moo

Hello, I'm Mattie Moo, your virtual Job Center of Wisconsin (JCW) guide!

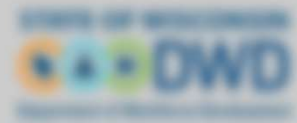
I can help you find answers to your questions about JCW and find helpful data provided by our organization.

How can I assist you today?

I want to find a job.

What services are available to me?

Ask something...



Improving Accessibility



Wisconsin Unemployment Insurance

Wisconsin Unemployment Insurance Benefit Services

Logon to file for unemployment benefits. If you do not have a username and password click on the Sign up link below.

IMPORTANT: If you used our online services in the past and created a username but forgot what the username is, DO NOT create a new username, Click on the forgot username/password link below.

Username

Password

I'm not a robot



Log In

[Forgot your Username/Password?](#)

[Change your Password / Edit Logon Profile](#)

Don't have a username? [Sign up](#)



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Username

Password

I'm not a robot



Log In

[Forgot your Username/Password?](#)

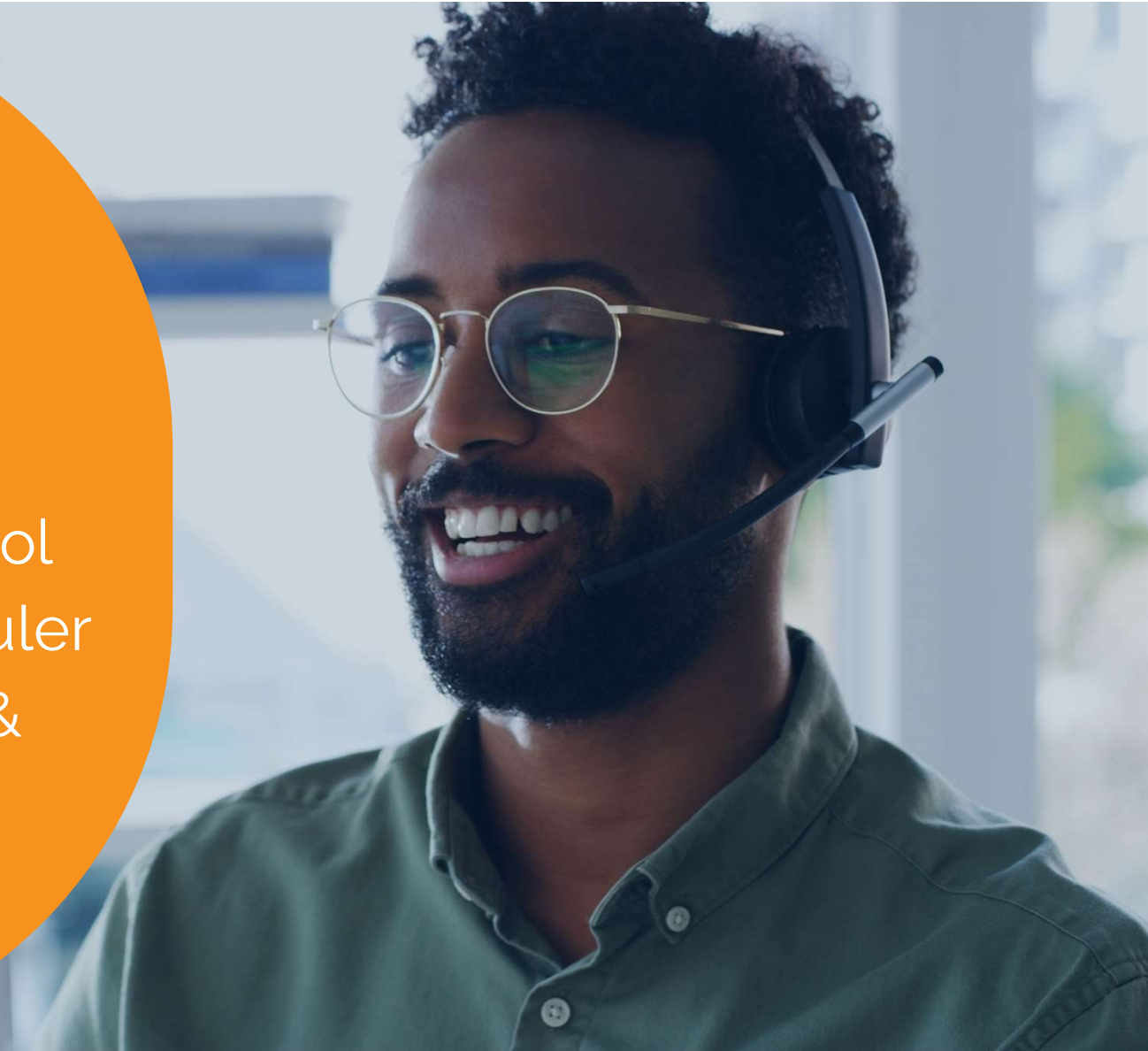
[Change your Password / Edit Logon Profile](#)

Don't have a username? [Sign up](#)



Staff Tools

- UI Fraud Dashboard
- Knowledge Base Tool
- Adjudication Scheduler
- Benefit Calculation & Liability Engine



Adjudication Scheduling Summary

Triage

8/31/2023 - (2)
 9/1/2023 - (1)
 9/6/2023 - (22)
 9/18/2023 - (1)
 9/20/2023 - (19)
 9/21/2023 - (10)
 9/22/2023 - (13)
 9/25/2023 - (22)
 9/27/2023 - (21)
 9/28/2023 - (14)
 9/29/2023 - (13)
 10/2/2023 - (52)

Schedule

9/6/2023 - (2)
 9/7/2023 - (1)
 9/11/2023 - (2)
 9/13/2023 - (2)
 9/14/2023 - (1)
 9/15/2023 - (11)
 9/18/2023 - (2)
 9/19/2023 - (5)
 9/20/2023 - (13)
 9/22/2023 - (1)
 9/25/2023 - (1)
 9/27/2023 - (0)

Active

8/28/2023 - (4)
 8/29/2023 - (1)
 8/30/2023 - (5)
 8/31/2023 - (2)
 9/6/2023 - (3)
 9/7/2023 - (2)
 9/8/2023 - (1)
 9/11/2023 - (1)
 9/12/2023 - (12)
 9/13/2023 - (2)
 9/15/2023 - (2)
 9/18/2023 - (2)

Other

9/5/2023 - (8)
 9/7/2023 - (1)
 9/18/2023 - (5)
 9/19/2023 - (9)
 9/20/2023 - (8)
 9/21/2023 - (16)
 9/22/2023 - (22)
 9/25/2023 - (2)
 9/26/2023 - (12)
 9/27/2023 - (15)
 9/28/2023 - (14)
 9/29/2023 - (8)

Active - 9/18/2023

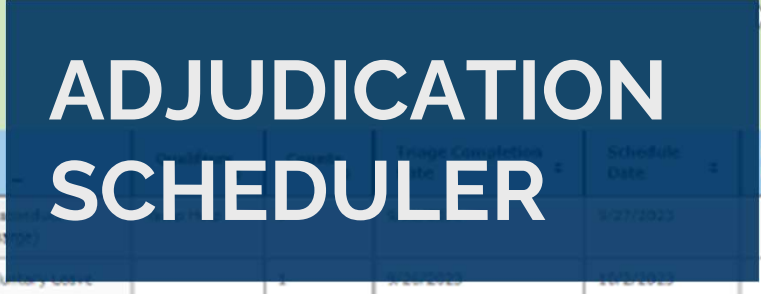
Status Breakout

Description	Count	Percentage
Scheduled	2	100

Adjudicator Code Breakout

Description	Count	Percentage
	1	50
	1	50

Details



Resolved Date	Status	UIBNETUwerId	Adjudicator Code	ClaimIssueScheduleSk
9/27/2023	Scheduled			6621
10/2/2023	Scheduled			6502



Monetary

Benefit Year: 28/23 - 27/24
Monetary Decision Created: 7/14/2023 9:46:06 AM

1 unresolved issue

Qualified for Benefits - Standard ✓

Weekly Benefit Rate (WBR)
\$370.00

Max Benefit Amount (MBA)
\$9,620.00

Wages - Standard Base Period

Account	Employer	2/22	3/22	4/22	1/23	Totals	Liability
> 6878447	*****	\$0.00	\$0.00	\$15,000.00	\$20,000.00	\$35,000.00	100%
Quarterly Total		\$0.00	\$0.00	\$15,000.00	\$20,000.00		
Base Period Wages Total						\$35,000.00	

**BENEFIT CALCULATION
& LIABILITY ENGINE**

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*** MONI MONETARY INQUIRY
BASE: ACTIVE          VNC: 28/23
SSNO: 555 55 5553    CLAIMANT TE

WBR: 370  MBA: 9,620.00 PAID:

PAYING EMPLOYER.....
036497      TEST DEMO EMPLOYER #
PTNC 3/22-480.00  4/22- 0.

036498      TEST DEMO EMPLOYER #
PTNC 3/22- 0.00  4/22-999.

EMPLOYER...SEQ...WBR..HI QTR...
KC0112      01*  $370  1/23  1
036497      TEST DEMO EMPLOYER #
036498      TEST DEMO EMPLOYER #

- END OF DATA
CLEAR-EXIT  F4-MONE  F5-MONO  F6
    
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PHASED APPROACH



QUESTIONS?

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Thank you!

Oct. 26, 2023 | UI Advisory Council

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development

201 E. Washington Avenue, GEF 1, Madison, WI

September 12, 2023

Held In-person and Via Teleconference

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

Members: Janell Knutson (Chair), Corey Gall, Shane Griesbach, Christopher Harris, Scott Manley, David Bohl, Di Ann Fechter, Susan Quam, and Mike Gotzler

Department Staff: Jim Chiolino (UI Division Administrator), Andy Rubsam, Jim Moe, Jennifer Wakerhauser (DWD General Counsel), Shashank Partha, Robert Usarek, Jeff Laesch, Mike Myszewski, and Joe Brockman

Members of the Public: Victor Forberger (Attorney, Wisconsin UI Clinic), Michael Duchek (Legislative Reference Bureau), Anita Krasno (LIRC General Counsel), two anonymous individuals, Wisconsin Eye.

1. Call to Order and Introductions

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

2. Approval of Minutes of the July 20, 2023, Meeting

Motion by Mr. Griesbach, second by Mr. Manley, to approve the minutes of the July 20, 2023, meeting without correction. The vote was taken by roll call and passed unanimously.

3. Department Update

Mr. Chiolino stated that September 30, 2023 is the end of the performance period for several of the Tiger Team grants. Mr. Chiolino stated that work authorized under the Equity Grant is underway. Mr. Chiolino stated that Secretary-designee Amy Pechacek will brief the Council on the Department's modernization project at the October meeting.

4. Trust Fund Update

Mr. Partha reported that, through July of 2023, \$27.5 million more in benefits were paid, an increase of 14.6% from the same period in 2022. Tax receipts increased by \$104.1 million, an increase of 27.9% from the same period in 2022. Rate Schedule D will continue to be in effect for next year. The Trust Fund balance was over \$1.6 billion as of July 2023. The Trust Fund balance increased by 27.2% from the same period last year. The Trust Fund earned \$13.0 million in interest through July 2023, compared to \$9.2 million during the same period in 2022.

5. Quarterly Report on UI information Technology Systems (4/1/23 – 6/30.23)

Ms. Knutson stated that the quarterly report is lengthy and detailed. The report can be found in members' packets. Ms. Knutson stated that Secretary–designee Pechacek will brief the council members on the UI modernization project at the October meeting.

6. Legislation Update

Mr. Rubsam reported that SB 387 has been introduced. Mr. Rubsam stated that AB 398, the Assembly companion bill, has been introduced as well. Under the proposed bills, participants in clinical research trials would not be considered employees for the purposes of Unemployment Insurance, Workers Compensation, and minimum wage laws.

Mr. Manley stated that the Management Caucus has discussed the proposed bill and has no concerns with the proposal. Mr. Griesbach indicated that Labor had no comments at this time.

7. Department Proposals to Amend the Unemployment Insurance Law

Ms. Knutson stated that the Department proposals are contained in members' packets. The proposals are:

- 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 – approval of LRB draft

8. Rulemaking Proposal

- Proposed scope statement for UI Hearings – DWD 140

Ms. Knutson stated a copy of proposed scope statement can be found in members' packets.

9. Labor and Management Proposals to amend the Unemployment Insurance Law

Ms. Knutson stated that Council members will be working on proposals in caucus today.

10. Research Requests

Ms. Knutson stated the Department's response to the research requests from the last meeting can be found on the second to the last page of members' packets.

Ms. Knutson summarized the results of the research request by stating that increasing the wage base from \$14,000 to \$15,500 will increase UI tax revenue by \$36 million annually using 2022 wage data and tax rates. Under Schedule A, UI taxes would increase an estimated \$80 million, Schedule B \$64 million, Schedule C \$54 million, and Schedule D \$43 million, using data from previous years at other tax rates.

11. 2023-2024 UIAC Timeline

Ms. Knutson stated that the timeline is included in members' packets.

12. Future Meeting Dates

Ms. Knutson stated that the future meeting dates are:

- October 26, 2023
- November 16, 2023
- December 21, 2023
- January 18, 2024
- February 15, 2024

Ms. Knutson stated that the goal is to have the agreed upon bill completed by December and sent to the drafter. Following completion of the bill draft, the Council will vote on the bill, and if approved, the bill will be sent to the Legislature.

Motion by Mr. Griesbach, second by Mr. Manley, that the Council convene in closed caucus to deliberate Department proposals, Labor and Management proposals, and other items on the agenda. The vote was taken by roll call and passed unanimously.

The Council went into closed caucus session at 10:22 a.m.

The Council reconvened in open session at 1:45 p.m.

Mr, Manley reported there was agreement on two Department proposals.

First, the Council supports D23-06, the approval of the LRB draft of the Unemployment Administration Fund.

Second, the Council supports D23-04, the imposter penalty, with one change as it relates to the penalty, specifically, changing the word "may" to "shall."

Mr. Manley reported there were encouraging discussions between Labor and Management on the other proposals.

Motion by Mr. Manley, second by Mr. Griesbach, to approve the D23-06, the LRB draft of the Unemployment Administration Fund and to approve D23-04, the imposter penalty, in its entirety with the language change from “may” to “shall.”

The vote was taken by roll call and passed unanimously.

13. Adjourn

Motion to adjourn by Mr. Manley, second by Mr. Griesbach. The motion passed unanimously by voice vote. The Council adjourned at 1:50 p.m.

UI Reserve Fund Highlights

October 26, 2023

- Benefit payments through September 2023 increased by \$36.1 million or 16.6% when compared to benefits paid through September 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	\$253.5	\$217.4	\$36.1	16.6%

- Tax receipts through September 2023 increased by \$102.6 million or 27.0% when compared to taxes receipts through September 2022. Both tax years were rated in Schedule D.

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	\$482.0	\$379.4	\$102.6	27.0%

- The September 2023 Trust Fund ending balance was \$1.59 billion, an increase of 27.3% when compared to the same time last year.

UI Trust Fund Balance	September 2023 <i>(in millions)</i>	September 2022 <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Trust Fund Balance	\$1,590.3	\$1,249.2	\$341.1	27.3%

- Interest earned on the Trust Fund is received quarterly. Interest for the first three quarters of 2023 was \$23.8 million compared to \$14.6 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	\$23.8	\$14.6	\$9.2	63.0%

*All calendar year-to-date (YTD) numbers are based on the September 30, 2023, Financial Statements.

FINANCIAL STATEMENTS

For the Month Ended September 30, 2023



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED September 30, 2023

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
CASH:		
U.I. CONTRIBUTION ACCOUNT	39,998.29	(344,975.87)
U.I. BENEFIT ACCOUNTS	(56,647.57)	(35,469.81)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,644,735,964.26</u>	<u>1,333,793,870.06</u>
TOTAL CASH	<u>1,644,719,314.98</u>	<u>1,333,413,424.38</u>
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	195,888,032.91	208,178,165.70
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(62,424,867.63)</u>	<u>(60,199,893.36)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	133,463,165.28	147,978,272.34
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	35,106,097.70	32,125,939.91
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(16,633,706.22)</u>	<u>(15,881,664.75)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	18,472,391.48	16,244,275.16
OTHER EMPLOYER RECEIVABLES	23,131,081.26	22,036,816.26
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(8,496,703.58)</u>	<u>(8,781,605.22)</u>
NET OTHER EMPLOYER RECEIVABLES	14,634,377.68	13,255,211.04
TOTAL ACCOUNTS RECEIVABLE	<u>166,569,934.44</u>	<u>177,477,758.54</u>
TOTAL ASSETS	<u><u>1,811,289,249.42</u></u>	<u><u>1,510,891,182.92</u></u>
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	108,946,860.00	118,282,877.42
OTHER LIABILITIES	41,683,408.71	53,447,894.31
FEDERAL BENEFIT PROGRAMS	839,755.47	87,316.94
CHILD SUPPORT HOLDING ACCOUNT	7,101.00	6,754.00
FEDERAL WITHHOLDING TAXES DUE	26,500.00	55,714.00
STATE WITHHOLDING TAXES DUE	1,744,330.31	1,513,938.84
DUE TO OTHER GOVERNMENTS (8)	<u>461,697.79</u>	<u>477,013.14</u>
TOTAL LIABILITIES	153,709,653.28	173,871,508.65
EQUITY:		
RESERVE FUND BALANCE	2,801,238,678.64	2,647,650,948.96
BALANCING ACCOUNT	<u>(1,143,659,082.50)</u>	<u>(1,310,631,274.69)</u>
TOTAL EQUITY	<u>1,657,579,596.14</u>	<u>1,337,019,674.27</u>
TOTAL LIABILITIES AND EQUITY	<u><u>1,811,289,249.42</u></u>	<u><u>1,510,891,182.92</u></u>

1. \$284,585 of this balance is for administration purposes and is not available to pay benefits.

2. \$1,287,427 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

3. \$11,708,904 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 33.5%. The allowance for uncollectible delinquent employer taxes is 43.2%. 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 \$804,568. Deferrals for the prior year were \$607,638.

6. \$18,855,190, or 53.7%, of this balance is estimated.

7. \$86,974,172 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$21,972,688 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 \$2,644. The 09/30/2023 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$84,167. 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 September 30, 2023

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	3,268,595,382.55	3,152,504,720.62	3,025,371,200.23
BALANCING ACCOUNT	<u>(1,606,138,143.69)</u>	<u>(1,792,807,841.51)</u>	<u>(1,920,053,262.30)</u>
TOTAL BALANCE	1,662,457,238.86	1,359,696,879.11	1,105,317,937.93
INCREASES:			
TAX RECEIPTS/RFB PAID	1,115,351.97	342,851,142.15	262,003,704.58
ACCRUED REVENUES	(1,752,374.23)	5,184,999.52	3,387,656.30
SOLVENCY PAID	186,341.06	139,116,257.97	117,366,129.84
FORFEITURES	(38.87)	171.13	752.00
BENEFIT CONCEALMENT INCOME	125,814.61	1,844,944.80	1,182,068.29
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	60,000,000.00	60,000,000.00
INTEREST EARNED ON TRUST FUND	10,716,354.09	23,763,566.78	14,638,788.05
FUTA TAX CREDITS	0.00	0.00	1,699.95
OTHER CHANGES	<u>17,744.22</u>	<u>416,057.50</u>	<u>93,934.55</u>
TOTAL INCREASES	10,409,192.85	573,177,139.85	458,674,733.56
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	12,714,410.22	211,222,459.22	164,619,366.65
QUIT NONCHARGE BENEFITS	2,052,755.84	31,747,405.12	19,817,788.65
OTHER DECREASES	(14,563.70)	22,597,579.55	10,031,647.03
OTHER NONCHARGE BENEFITS	<u>534,233.21</u>	<u>9,726,978.93</u>	<u>32,504,194.89</u>
TOTAL DECREASES	15,286,835.57	275,294,422.82	226,972,997.22
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,801,238,678.64	2,801,238,678.64	2,647,650,948.96
BALANCING ACCOUNT	<u>(1,143,659,082.50)</u>	<u>(1,143,659,082.50)</u>	<u>(1,310,631,274.69)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,657,579,596.14</u></u>	<u><u>1,657,579,596.14</u></u>	<u><u>1,337,019,674.27</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,602,272,855 because of non-cash accrual items.

10. \$284,585 of this balance is set up in the Trust Fund in one subaccount to be used for administration purposes and is not available to pay benefits.

11. \$1,287,427 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$11,708,904 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 09/30/2023**

RECEIPTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	\$1,115,351.97	\$342,851,142.15	\$262,003,704.58
SOLVENCY	186,341.06	139,116,257.97	117,366,129.84
ADMINISTRATIVE FEE	11.25	229.36	259.99
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	2,781.52	3,190,540.92	3,123,172.32
UNUSED CREDITS	606,000.43	4,848,387.83	(952,072.71)
GOVERNMENTAL UNITS	703,732.65	6,441,011.72	6,154,322.52
NONPROFITS	888,136.82	6,118,318.45	7,559,142.01
REDA PAID	0.00	0.00	0.00
INTERSTATE CLAIMS (CWC)	247,076.61	3,011,399.25	2,658,490.02
ERROR SUSPENSE	(3,972.63)	(13,156.50)	49,626.85
FEDERAL PROGRAMS RECEIPTS	(712,856.06)	(12,700,092.56)	29,959,742.92
OVERPAYMENT COLLECTIONS	1,953,807.44	25,818,484.38	28,789,963.83
FORFEITURES	(38.87)	171.13	752.00
BENEFIT CONCEALMENT INCOME	125,814.61	1,844,944.80	1,182,068.29
EMPLOYER REFUNDS	(1,664,578.13)	(14,951,854.87)	(95,697,800.83)
COURT COSTS	42,513.68	487,126.93	313,259.36
INTEREST & PENALTY	193,894.63	2,770,252.40	2,829,028.32
CARD PAYMENT SERVICE FEE	4,042.12	34,084.35	19,661.69
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	191,545.36	2,778,439.69	1,626,885.58
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	1,150.00	48,957.80	836.22
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	1,799.22	17,915.59	8,262.24
SPECIAL ASSESSMENT FOR INTEREST	1,743.11	12,395.79	10,355.54
LOST WAGES ASSISTANCE (LWA) ADMIN	0.00	0.00	33,229.41
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	60,000,000.00	60,000,000.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	10,716,354.09	23,763,566.78	14,638,788.05
MISCELLANEOUS	11,602.91	154,038.96	98,819.73
TOTAL RECEIPTS	<u>\$14,612,253.79</u>	<u>\$595,642,562.32</u>	<u>\$441,776,627.77</u>
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	\$14,676,923.60	\$234,602,111.77	\$196,014,859.65
NONPROFIT CLAIMANTS	678,167.77	5,940,293.55	4,176,225.28
GOVERNMENTAL CLAIMANTS	504,042.33	5,992,366.04	2,692,406.04
INTERSTATE CLAIMS (CWC)	180,548.76	2,858,036.82	2,257,404.03
QUITS	2,052,755.84	31,747,405.12	19,817,788.65
OTHER NON-CHARGE BENEFITS	468,020.70	9,959,703.32	(34,617,037.20)
CLOSED EMPLOYERS	(2,816.98)	(15,624.98)	(43.30)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	45,223.41	883,943.29	1,096,328.13
EX-MILITARY (UCX)	7,128.36	141,449.23	211,250.02
TRADE ALLOWANCE (TRA/TRA-NAFTA)	25,231.00	382,857.18	924,191.86
WORK-SHARE (STC)	(756.98)	(2,489,136.79)	986,211.78
FEDERAL PANDEMIC UC (FPUC)	(554,681.51)	(6,974,558.72)	10,278,189.62
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	(31,744.17)	(515,409.73)	3,175,851.64
MIXED EARNERS UC (MEUC)	0.00	1,500.00	36,300.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	(55,786.82)	(1,175,700.11)	3,920,400.88
PANDEMIC EMERGENCY UC (PEUC)	(57,304.51)	(1,584,397.70)	6,910,124.65
PANDEMIC FIRST WEEK (PFW)	(2,188.53)	57,267.97	729,064.89
EMER UC RELIEF REIMB EMPL (EUR)	(15,563.43)	(142,430.55)	2,091,855.76
2003 TEMPORARY EMERGENCY UI (TEUC)	(54.67)	(7,734.19)	(7,113.04)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(11,144.78)	(104,239.75)	(126,542.70)
FEDERAL EMERGENCY UI (EUC)	(82,112.20)	(922,432.13)	(1,060,074.31)
FEDERAL EXTENDED BENEFITS (EB)	(19,536.45)	(77,676.23)	36,356.10
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	0.00	(2,244.53)	(197.52)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	0.00	(3,164.56)	74,782.06
INTEREST & PENALTY	338,164.88	2,823,430.73	2,788,491.10
CARD PAYMENT SERVICE FEE TRANSFER	3,803.63	32,087.90	19,468.47
PROGRAM INTEGRITY	211,828.31	6,033,074.95	4,677,289.17
SPECIAL ASSESSMENT FOR INTEREST	0.00	14,445.72	11,147.53
COURT COSTS	38,825.44	495,331.48	291,505.61
ADMINISTRATIVE FEE TRANSFER	12.69	278.72	252.26
LOST WAGES ASSISTANCE (LWA) ADMIN TRANSFER	0.00	0.00	33,229.41
FEDERAL WITHHOLDING	8,635.00	(26,185.82)	18,696.00
STATE WITHHOLDING	(453,964.00)	(277,856.75)	1,418,142.64
REED ACT & ARRA SPECIAL ADMIN EXPENDITURES	0.00	0.00	1,021,900.43
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	18,914,772.00	0.00
FEDERAL LOAN REPAYMENTS	0.00	0.00	(1,699.95)
TOTAL DISBURSEMENTS	<u>\$17,951,656.69</u>	<u>\$306,561,563.25</u>	<u>\$229,897,005.64</u>
NET INCREASE(DECREASE)	<u>(3,339,402.90)</u>	<u>289,080,999.07</u>	<u>211,879,622.13</u>
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,648,058,717.88	\$1,355,638,315.91	\$1,121,533,802.25
BALANCE AT END OF MONTH/YEAR	<u>\$1,644,719,314.98</u>	<u>\$1,644,719,314.98</u>	<u>\$1,333,413,424.38</u>

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED September 30, 2023

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,605,326,755.53	\$1,303,839,732.39	\$1,048,002,601.08
INCREASES:			
TAX RECEIPTS/RFB PAID	1,115,351.97	342,851,142.15	262,003,704.58
U.I. PAYMENTS CREDITED TO SURPLUS	401,229.06	144,113,773.62	115,758,796.48
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	60,000,000.00	60,000,000.00
INTEREST EARNED ON TRUST FUND	10,716,354.09	23,763,566.78	14,638,788.05
FUTA TAX CREDITS	0.00	0.00	1,699.95
TOTAL INCREASE IN CASH	<u>12,232,935.12</u>	<u>570,728,482.55</u>	<u>452,402,989.06</u>
TOTAL CASH AVAILABLE	<u>1,617,559,690.65</u>	<u>1,874,568,214.94</u>	<u>1,500,405,590.14</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	12,714,410.22	211,222,459.22	164,619,366.65
BENEFITS CHARGED TO SURPLUS	<u>2,587,988.78</u>	<u>42,300,559.19</u>	<u>52,734,377.51</u>
TOTAL BENEFITS PAID DURING PERIOD	15,302,399.00	253,523,018.41	217,353,744.16
REED ACT EXPENDITURES	0.00	0.00	1,021,900.43
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	18,914,772.00	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	<u>(15,563.43)</u>	<u>(142,430.55)</u>	<u>2,091,855.76</u>
ENDING U.I. CASH BALANCE (13) (14) (15)	<u><u>1,602,272,855.08</u></u>	<u><u>1,602,272,855.08</u></u>	<u><u>1,279,938,089.79</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.

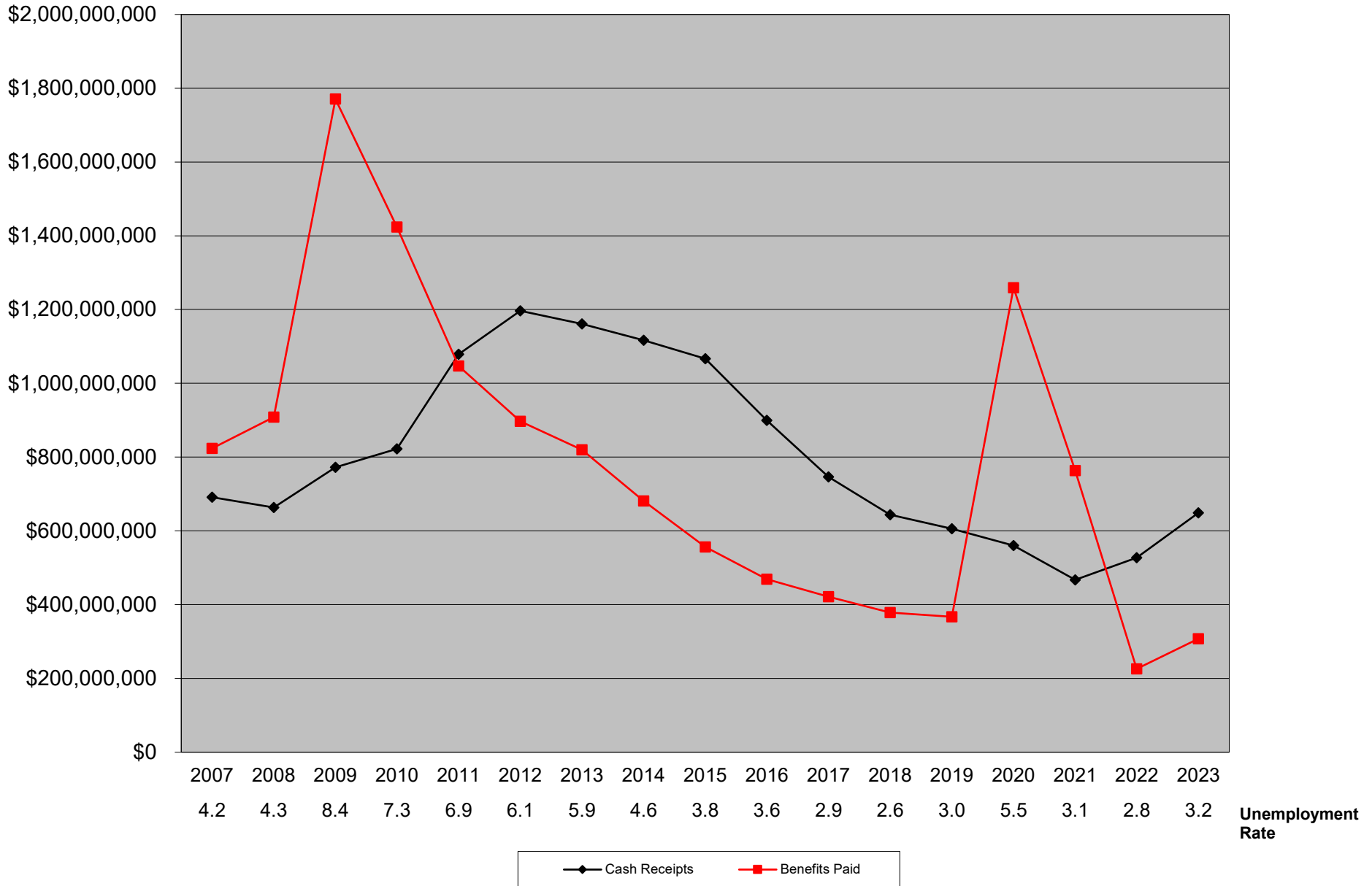
14. \$1,287,427 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

15. \$11,708,904 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.

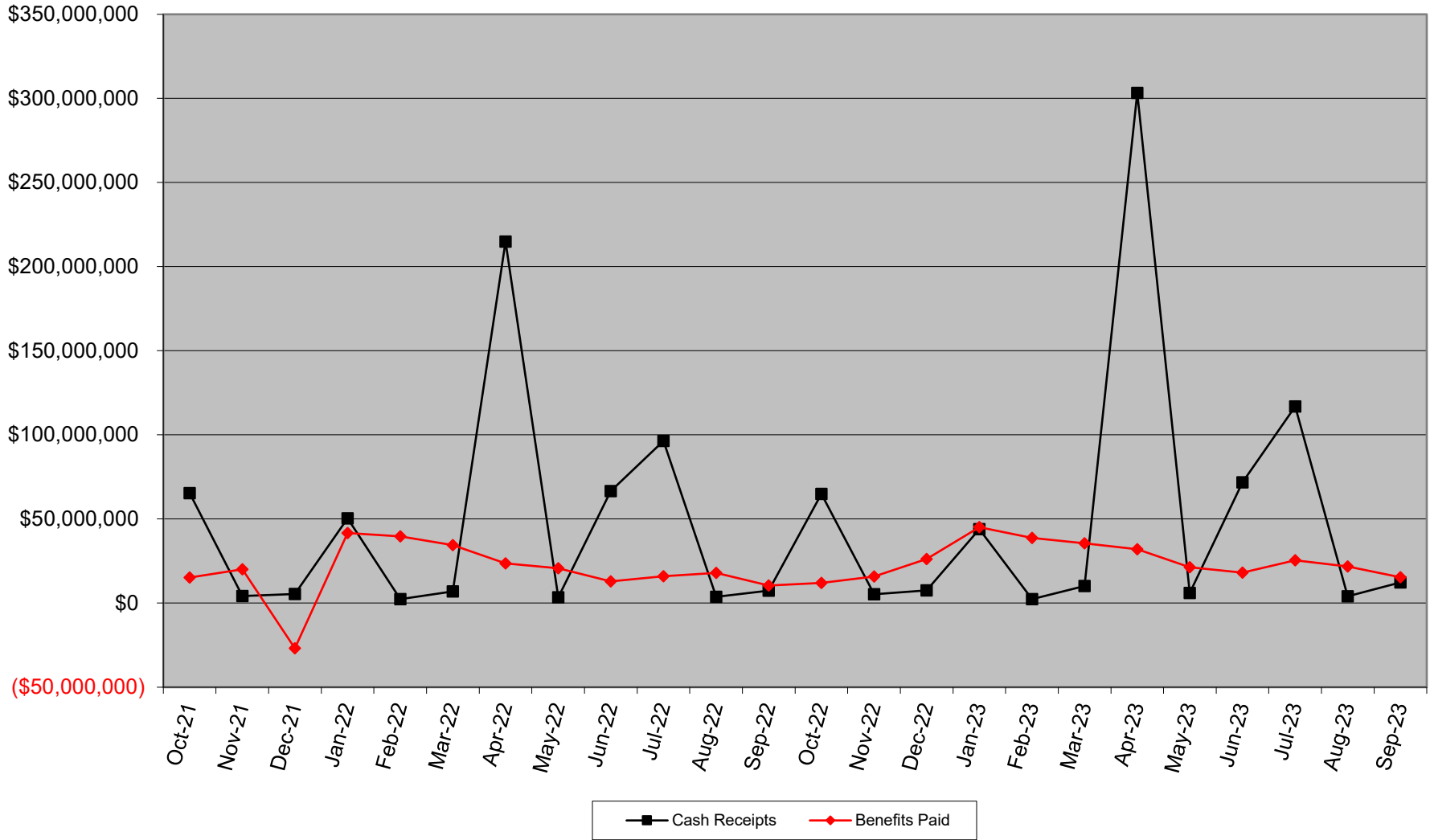
BUREAU OF TAX AND ACCOUNTING
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED September 30, 2023

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$1,207,501,892.51)	(\$1,399,163,452.19)	(\$1,527,719,203.28)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	186,341.06	139,116,257.97	117,366,129.84
FORFEITURES	(38.87)	171.13	752.00
OTHER INCREASES	214,926.87	4,997,344.52	(1,608,085.36)
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	<u>401,229.06</u>	<u>144,113,773.62</u>	<u>115,758,796.48</u>
TRANSFERS BETWEEN SURPLUS ACCTS			
2021 WI ACT 58 TRANSFERS TO TRUST FUND	(9,088.85)	33,393,188.87	25,455,193.33
INTEREST EARNED ON TRUST FUND	0.00	60,000,000.00	60,000,000.00
FUTA TAX CREDITS	10,716,354.09	23,763,566.78	14,638,788.05
	0.00	0.00	1,699.95
TOTAL INCREASES	<u>11,108,494.30</u>	<u>261,270,529.27</u>	<u>215,854,477.81</u>
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	2,052,755.84	31,747,405.12	19,817,788.65
OTHER NON-CHARGE BENEFITS	535,232.94	10,553,154.07	32,916,588.86
BENEFITS CHARGED TO SURPLUS SUBTOTAL	<u>2,587,988.78</u>	<u>42,300,559.19</u>	<u>52,734,377.51</u>
REED ACT EXPENDITURES			
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	0.00	1,021,900.43
EMER UC RELIEF REIMB EMPL EXPENDITURES	0.00	18,914,772.00	0.00
	(15,563.43)	(142,430.55)	2,091,855.76
BALANCE AT THE END OF THE MONTH/YEAR	<u>(1,198,965,823.56)</u>	<u>(1,198,965,823.56)</u>	<u>(1,367,712,859.17)</u>

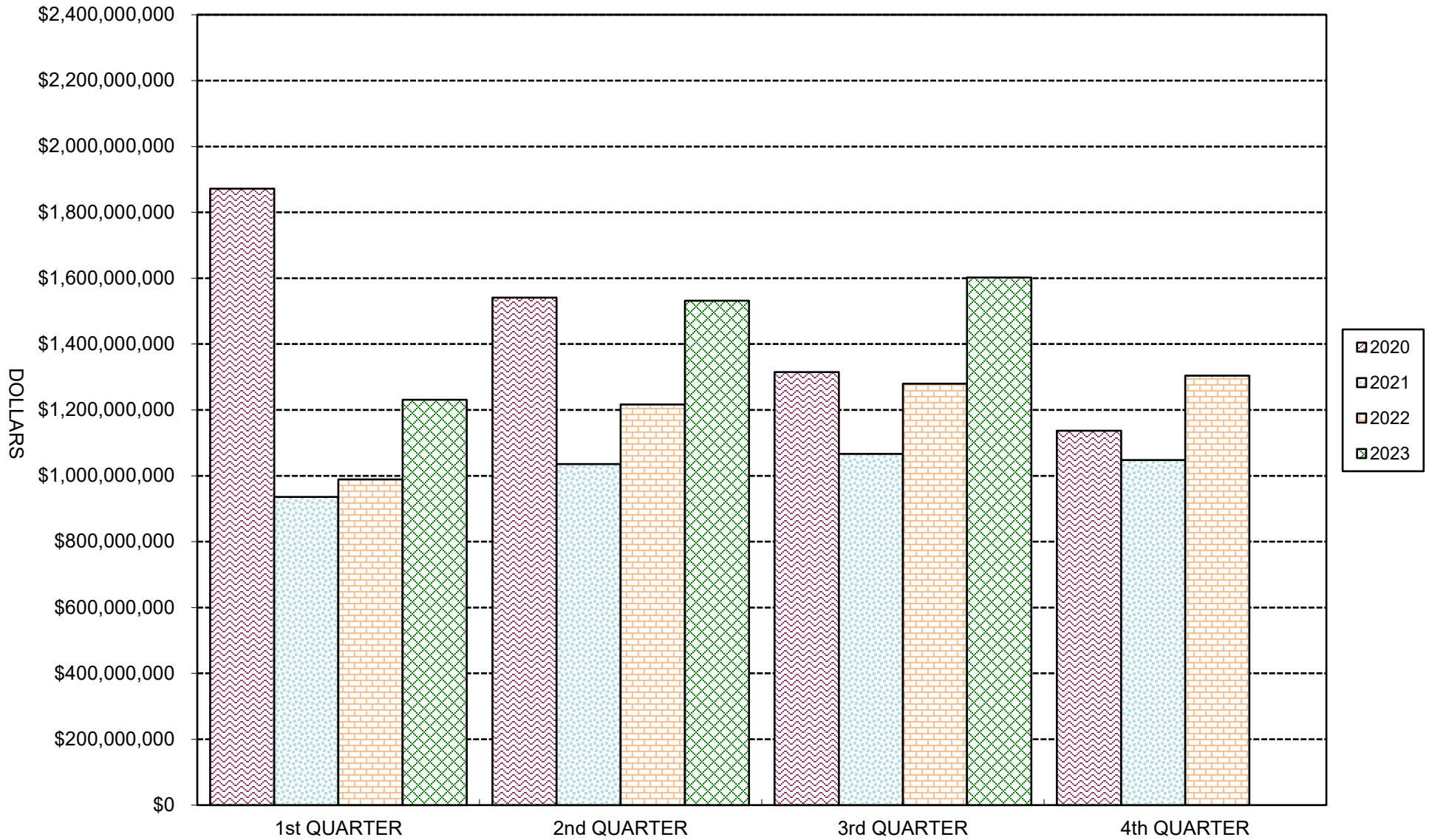
Cash Activity Related to Taxable Employers with WI Unemployment Rate (for all years from October to September)



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

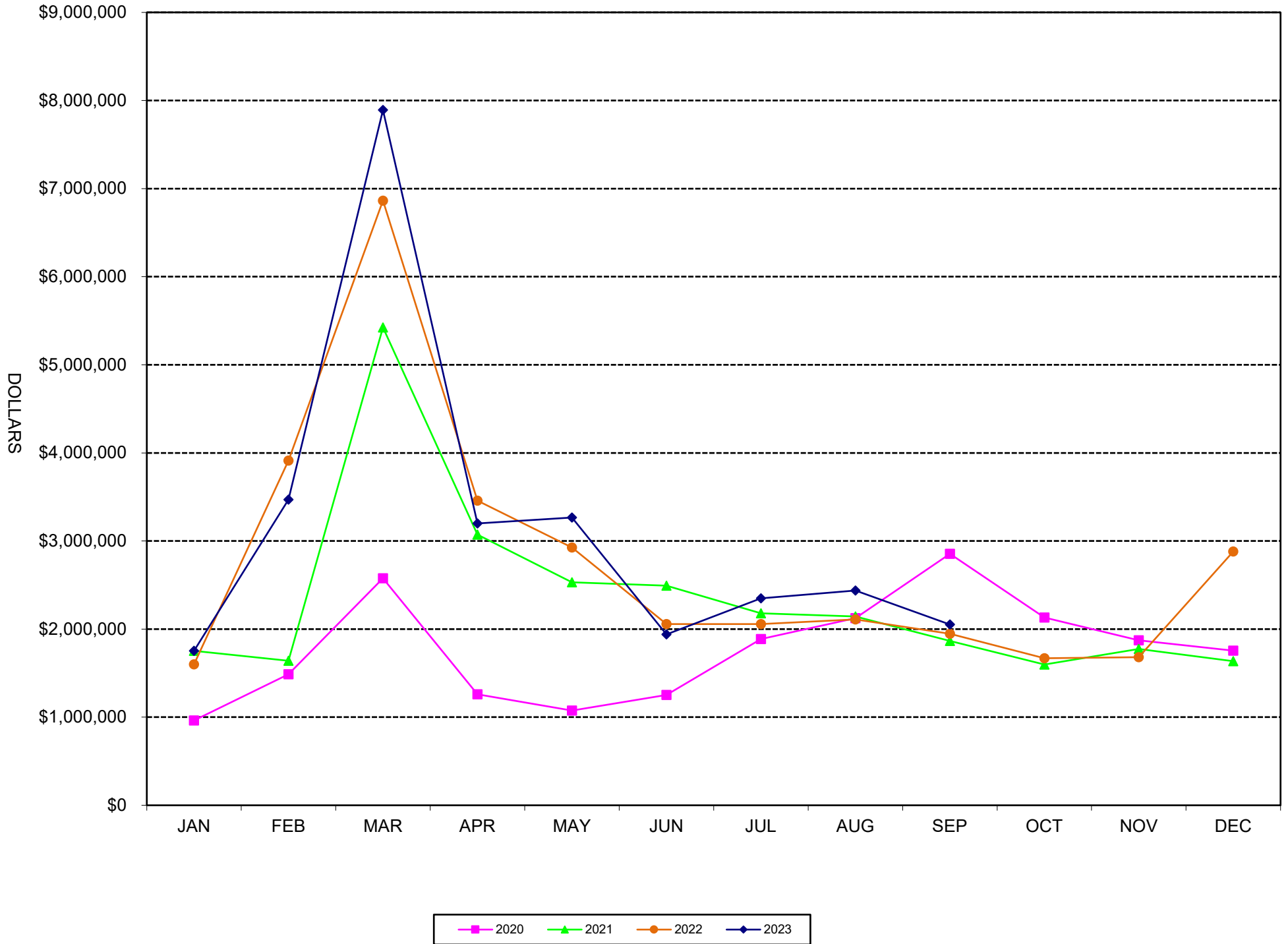


CASH BALANCE RELATED TO TAXABLE EMPLOYERS

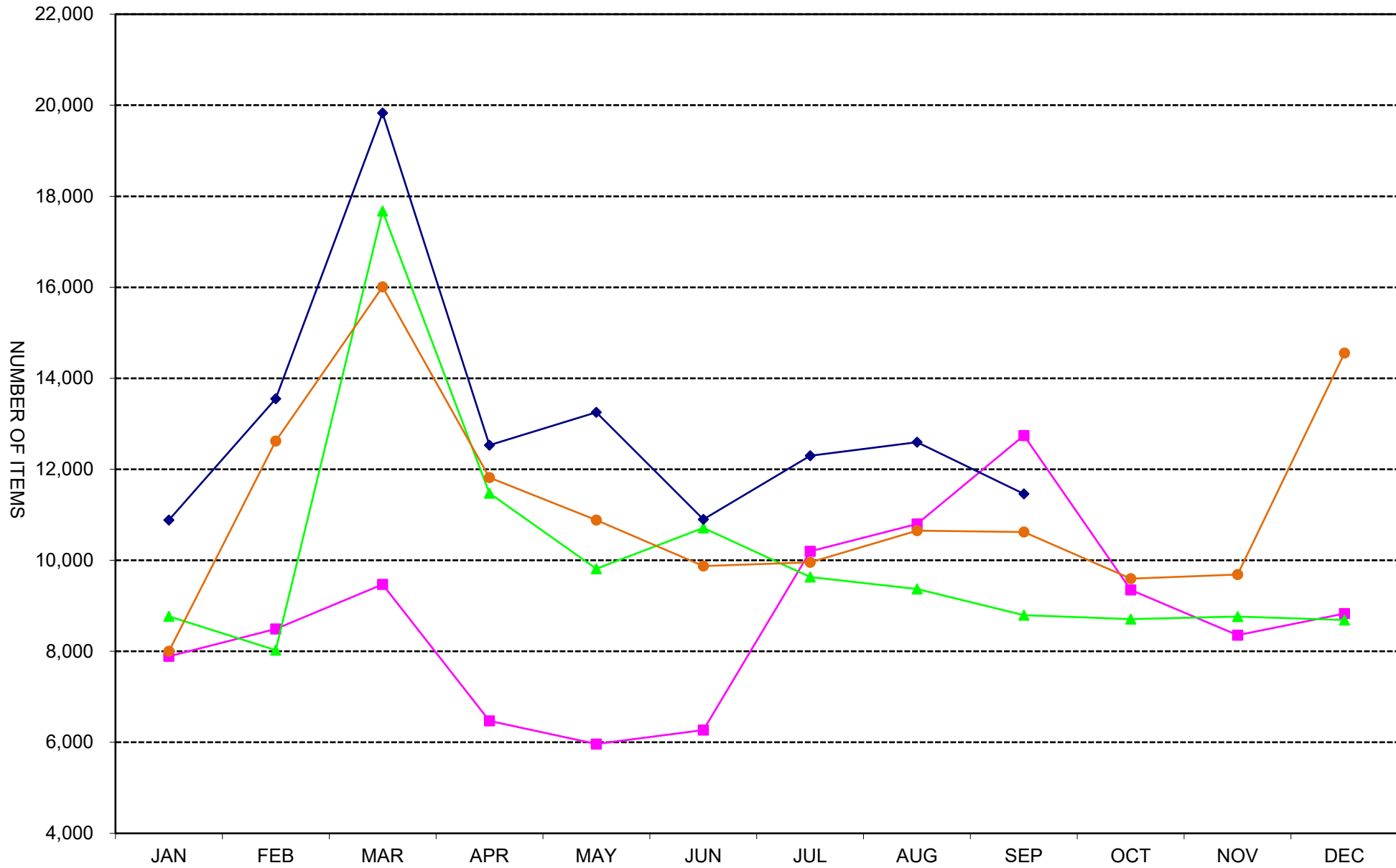


MONTHLY OVERPAYMENT CASH RECEIPTS

(by dollar amount)

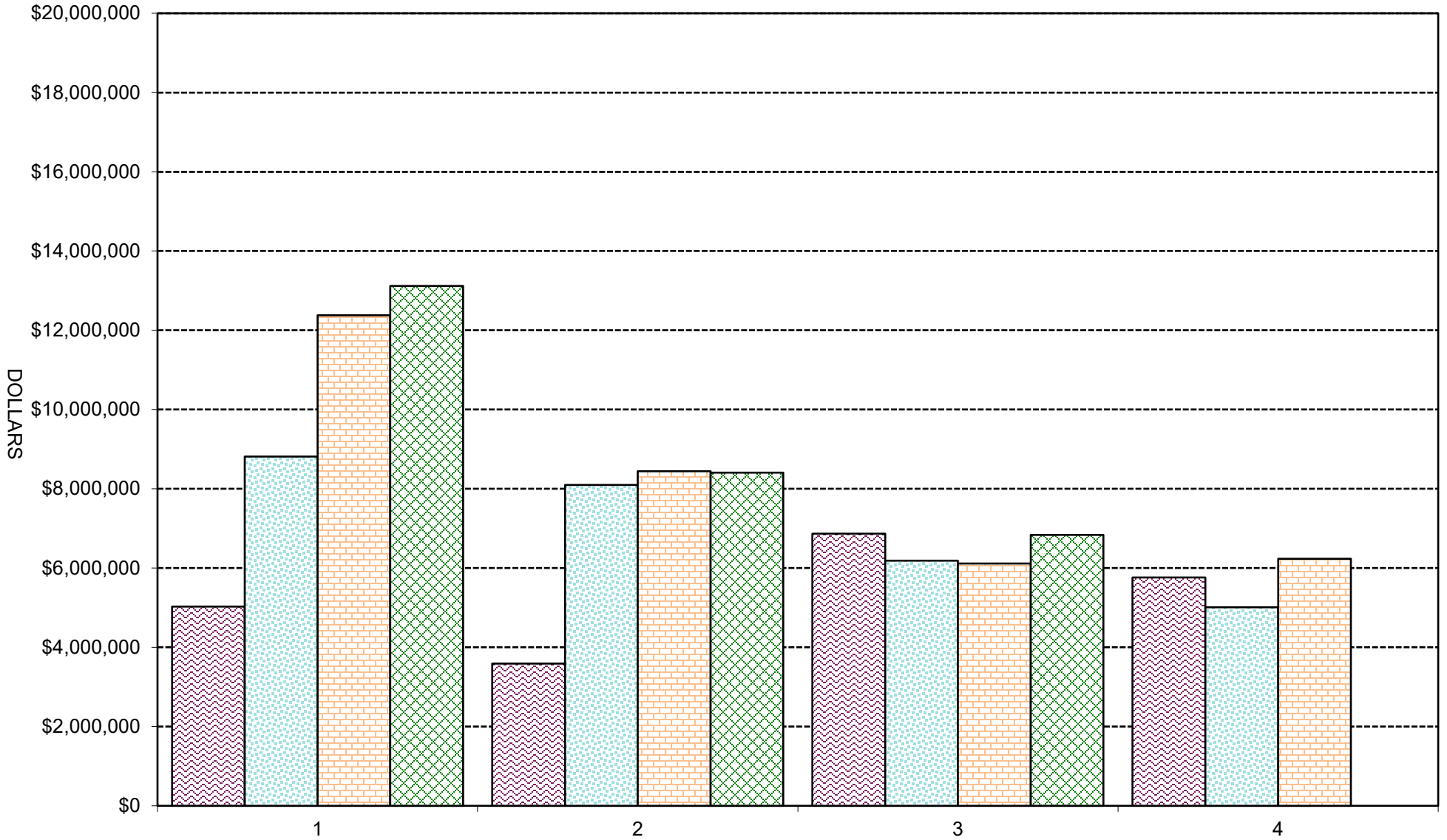


MONTHLY OVERPAYMENT CASH RECEIPTS (by number of items)



■ 2020 ▲ 2021 ● 2022 ◆ 2023

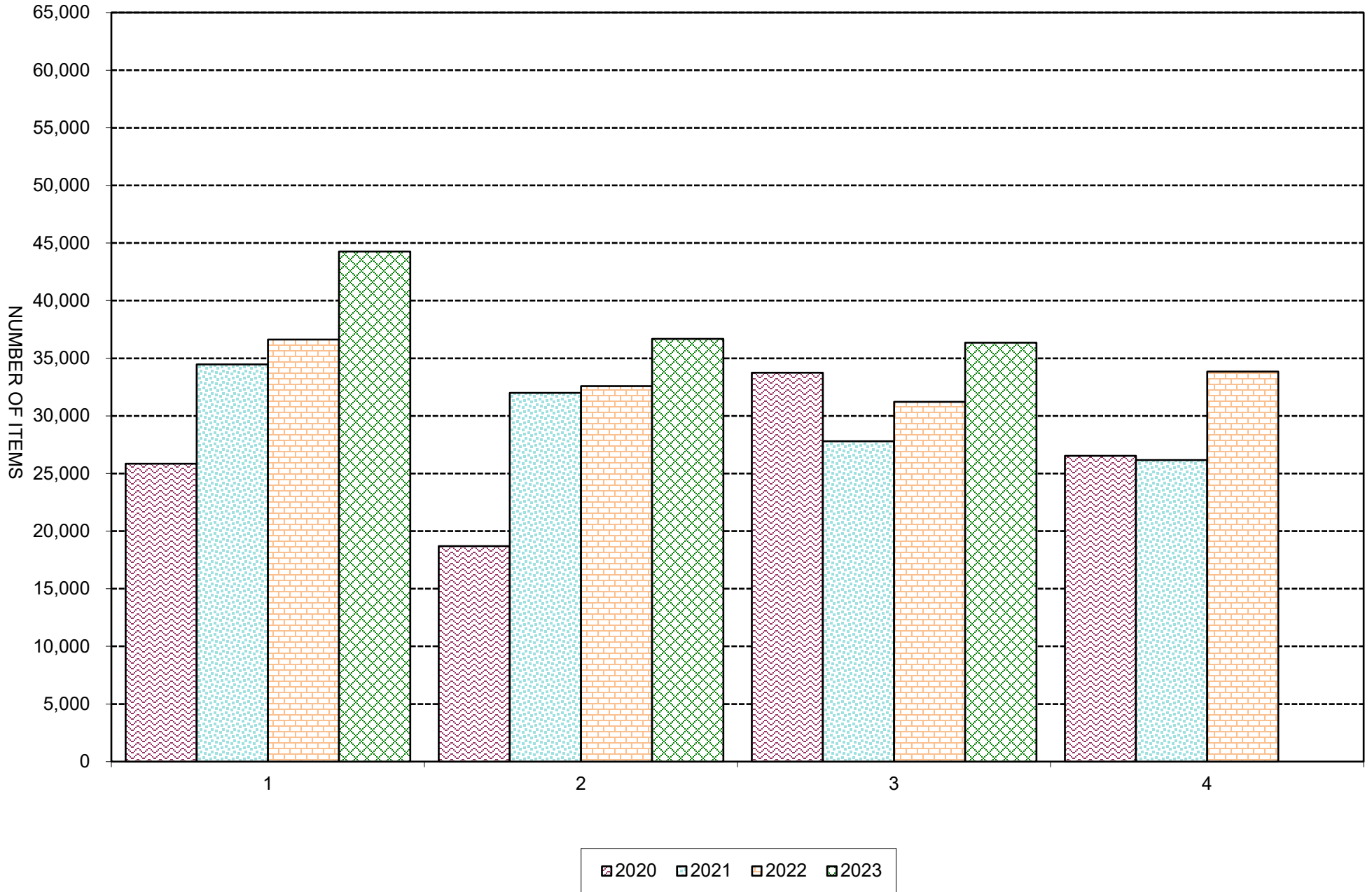
QUARTERLY OVERPAYMENT CASH RECEIPTS
(by dollar amount)



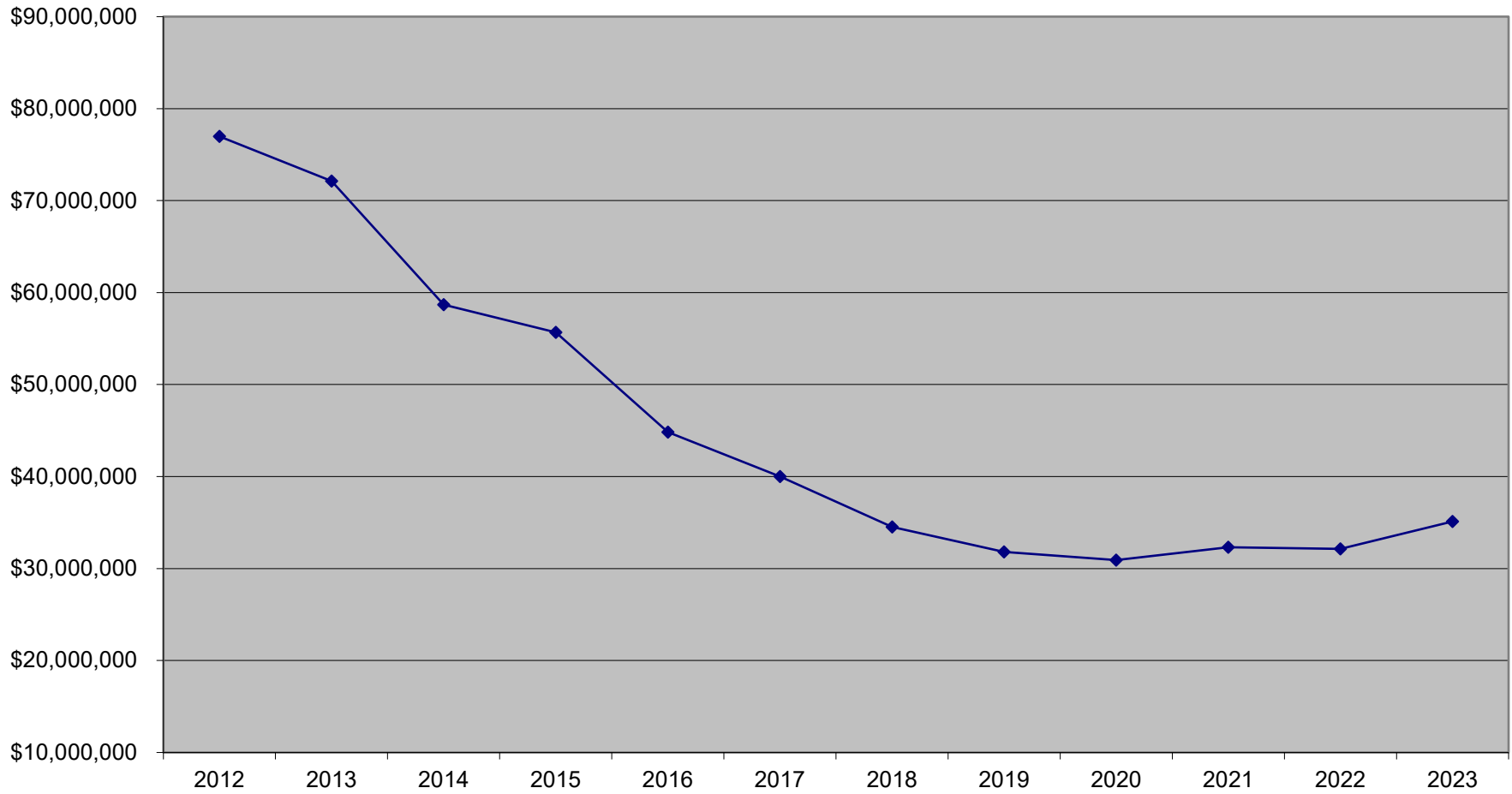
2020 2021 2022 2023

QUARTERLY OVERPAYMENT CASH RECEIPTS

(by number of items)

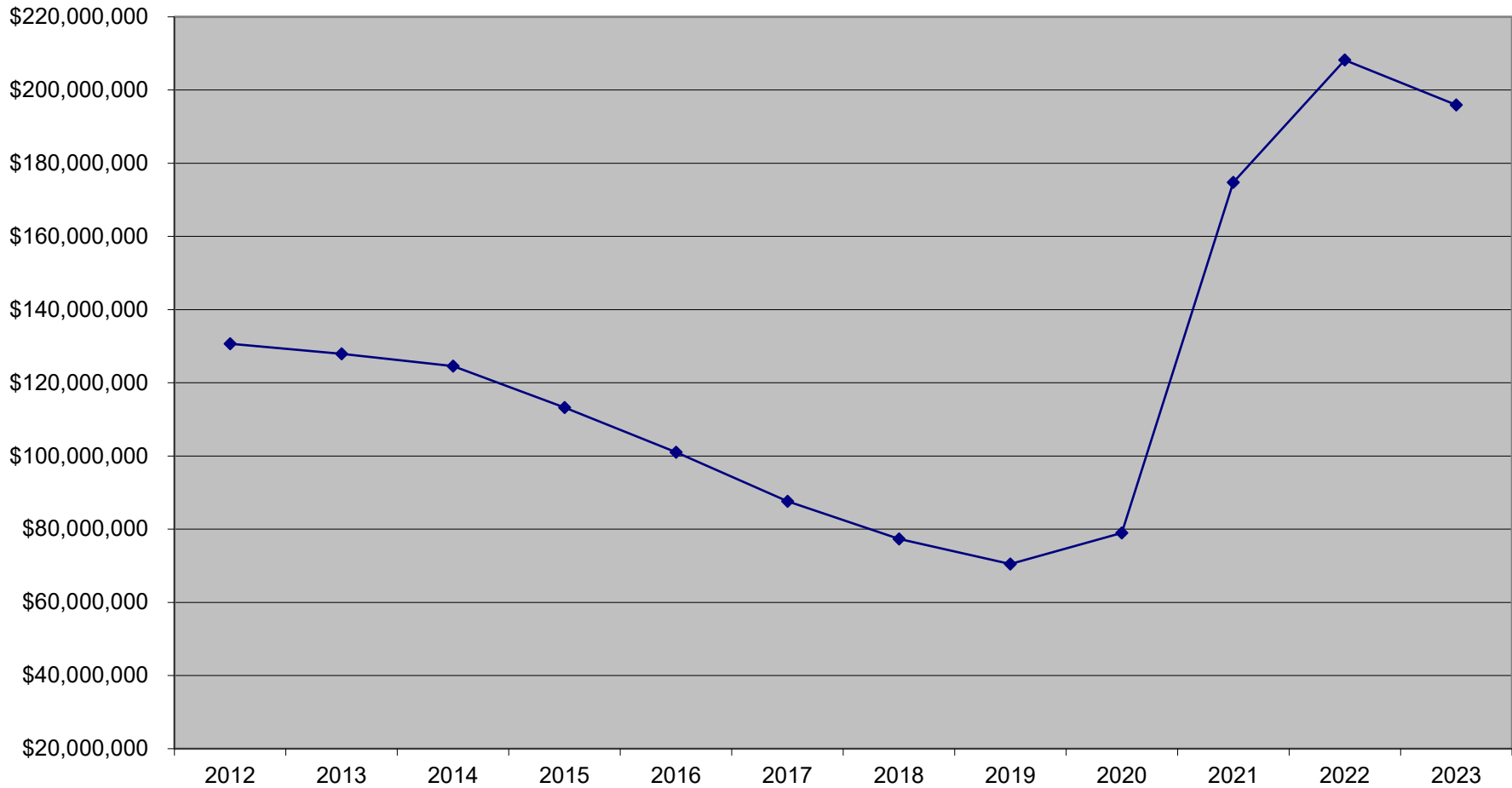


TOTAL TAXABLE EMPLOYER RFB & SOLVENCY RECEIVABLES
(for all years as of September)



Source: Monthly Balance Sheet

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



Source: Monthly Balance Sheet



2023 ASSEMBLY BILL 473

October 11, 2023 - Introduced by Representatives SINICKI, C. ANDERSON, J. ANDERSON, ANDRACA, BALDEH, BARE, BILLINGS, CABRERA, CLANCY, CONLEY, CONSIDINE, DOYLE, DRAKE, EMERSON, GOYKE, HAYWOOD, HONG, JACOBSON, JOERS, MADISON, MCGUIRE, MOORE OMOKUNDE, MYERS, NEUBAUER, OHNSTAD, ORTIZ-VELEZ, PALMERI, RATCLIFF, RIEMER, SHANKLAND, SHELTON, SNODGRASS, STUBBS, SUBECK and VINING, cosponsored by Senators WIRCH, AGARD, CARPENTER, HESSELBEIN, L. JOHNSON, LARSON, ROYS, SMITH, SPREITZER and TAYLOR. Referred to Committee on Labor and Integrated Employment.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT relating to:** investigation and audit of worker misclassification and
2 making an appropriation.

Analysis by the Legislative Reference Bureau

This bill requires the Unemployment Insurance Division in the Department of Workforce Development to coordinate with the Division of Personnel Management in the Department of Administration to review all recruitment and onboarding programs to ensure that auditor positions are correctly classified and the compensation for auditors is comparable to that in the private labor market. The bill also requires DWD to review resources available to investigators and auditors and evaluate potential strategies and improvements that could be implemented by the department. The bill also requires DWD to submit a report to the legislature of its findings no later than January 31, 2025.

Finally, the bill authorizes three full-time positions for DWD to perform investigations and audits regarding worker misclassification.

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

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

3 **SECTION 1. Nonstatutory provisions.**

ASSEMBLY BILL 473**SECTION 1**

1 (1) INVESTIGATION AND ENFORCEMENT OF WORKER CLASSIFICATION. The department
2 of workforce development shall do all of the following before December 31, 2024:

3 (a) Require the unemployment insurance division, in coordination with the
4 division of personnel management in the department of administration, to review all
5 recruitment and onboarding programs to ensure that auditor positions are correctly
6 classified and the compensation for auditors is comparable to that in the private
7 labor market.

8 (b) Review resources available to investigators and auditors and evaluate
9 potential strategies and improvements that could be implemented, including at least
10 all of the following:

11 1. Cross-training all investigators and auditors working in the department.

12 2. Adding bilingual staff.

13 3. Information technology improvements for more efficient exchange of
14 information.

15 (2) REPORTING. By no later than January 31, 2025, the department of workforce
16 development shall submit a report to the chief clerk of each house of the legislature
17 for distribution to the standing committees of the legislature under s. 13.172 (3) with
18 jurisdiction over workforce development. The report shall include the findings of the
19 department under sub. (1) (a) and (b).

SECTION 2. Fiscal changes.

20 (1) INVESTIGATION AND ENFORCEMENT OF WORKER CLASSIFICATION. In the schedule
21 under s. 20.005 (3) for the appropriation to the department of workforce development
22 under s. 20.445 (1) (gc), the dollar amount for fiscal year 2023-24 is increased by
23 \$157,500 to increase the authorized FTE positions for the department by 3.0 PR
24 positions for the purpose of investigating and enforcing worker classification laws
25



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0242/1
MIM&ARG:amn

2023 ASSEMBLY BILL 474

October 11, 2023 - Introduced by Representatives SINICKI, C. ANDERSON, J. ANDERSON, ANDRACA, BALDEH, BARE, BILLINGS, CABRERA, CLANCY, CONLEY, CONSIDINE, DOYLE, DRAKE, EMERSON, GOYKE, HAYWOOD, HONG, JACOBSON, JOERS, MADISON, MCGUIRE, MOORE OMOKUNDE, MYERS, NEUBAUER, OHNSTAD, ORTIZ-VELEZ, PALMERI, RATCLIFF, RIEMER, SHANKLAND, SHELTON, SNODGRASS, STUBBS, SUBECK and VINING, cosponsored by Senators WIRCH, AGARD, CARPENTER, HESSELBEIN, L. JOHNSON, LARSON, ROYS, SMITH, SPREITZER and TAYLOR. Referred to Committee on Labor and Integrated Employment.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to renumber and amend** 108.221 (1) (a) and 108.221 (2); **to amend**
2 102.85 (1) (a), 102.85 (1) (b) and 102.85 (2) (intro.); and **to create** 16.40 (24),
3 102.85 (1) (c), 102.85 (1) (d), 102.85 (2j), 102.85 (2k), 103.005 (4m), 108.221 (1)
4 (a) 2., 108.221 (2) (b), 182.01 (8) and 601.41 (12) of the statutes; **relating to:**
5 employee misclassification and providing a penalty.

Analysis by the Legislative Reference Bureau

Outreach and education regarding employee misclassification

The bill directs the commissioner of insurance to conduct, on at least an annual basis, outreach and education to insurers and other persons regulated by the state insurance laws on how to identify the misclassification of employees and report suspected misclassifications to the appropriate federal and state agencies.

Worker classification notice and posting

The bill requires the Department of Workforce Development to design and make available to employers a notice regarding worker classification laws, requirements for employers and employees, and penalties for noncompliance. Under the bill, all employers in this state must post the notice in a conspicuous place where notices to employees are customarily posted. The bill also provides a penalty of not more than \$100 for an employer that does not post the notice as required.

Website for worker classification laws

Under the bill, DWD must establish and maintain on the department's website information regarding worker classification laws, requirements for employers and

ASSEMBLY BILL 474

employees, penalties for noncompliance, and contact information at each state agency that administers worker classification laws.

Unemployment insurance; worker misclassification penalties

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 bill 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 bill also removes the limitations on the types of employers that the penalties apply to, allowing them to be assessed against any type of employer that violates the above prohibitions.

Worker's compensation; penalties for uninsured employers

Under current law, DWD is required to assess an administrative penalty against an employer who requires an employee to pay for any part of worker's compensation insurance or who fails to provide mandatory worker's compensation insurance coverage. If the employer violates those requirements, for the first 10 days, the penalty under current law is not less than \$100 and not more than \$1,000 for such a violation. If the employer violates those requirements for more than 10 days, the penalty under current law is not less than \$10 and not more than \$100 for each day of such a violation.

The bill provides that the penalty for violations occurring after the second such violation is \$3,000 per violation, or three times the amount of the insurance premium that would have been payable, whichever is greater. The bill also provides that the penalty for violations occurring after the third such violation is \$4,000 per violation, or four times the amount of the insurance premium that would have been payable, whichever is greater.

Also under current law, if an employer who is required to provide worker's compensation insurance coverage provides false information about the coverage to his or her employees or contractors who request information about the coverage, or who fails to notify a person who contracts with the employer that the coverage has been canceled in relation to the contract, DWD is required to assess a penalty of not less than \$100 and not more than \$1,000 for each such violation.

The bill provides that the penalty for violations occurring after the third such violation is \$3,000 per violation, and \$4,000 for violations occurring after the fourth such violation.

ASSEMBLY BILL 474***Worker misclassification outreach***

The bill requires the Department of Administration to direct state agencies, constitutional offices, departments, independent agencies, and societies, associations, and certain other agencies of state government for which appropriations are made by law, to provide educational outreach regarding worker misclassification to employers, workers, and organizations that serve vulnerable populations.

Worker misclassification information

The bill requires the Department of Financial Institutions to provide informational materials and resources on worker misclassification to each person who files with DFI documents forming a business corporation, nonstock corporation, limited liability company, limited liability partnership, or limited partnership.

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.** 16.40 (24) of the statutes is created to read:

2 16.40 (24) WORKER MISCLASSIFICATION OUTREACH. Direct all departments to
3 provide targeted educational outreach regarding worker misclassification in
4 English, Spanish, and other languages spoken by a significant number of individuals
5 in this state, to employers, workers, and organizations that serve vulnerable
6 populations, including individuals with limited English proficiency. The outreach
7 shall emphasize the appropriate departments to contact and the rights of individuals
8 to remain anonymous when reporting worker misclassification.

9 **SECTION 2.** 102.85 (1) (a) of the statutes is amended to read:

10 102.85 (1) (a) ~~An~~ For each act occurring before the date of the first
11 determination of a violation of this subsection, an employer who fails to comply with
12 s. 102.16 (3) or 102.28 (2) for less than 11 days shall forfeit not less than \$100 ~~nor~~ and
13 not more than \$1,000.

14 **SECTION 3.** 102.85 (1) (b) of the statutes is amended to read:

ASSEMBLY BILL 474**SECTION 3**

1 102.85 (1) (b) ~~An~~ For each act occurring after the date of the first or second
2 determination of a violation of this subsection, an employer who fails to comply with
3 s. 102.16 (3) or 102.28 (2) for more than 10 days shall forfeit not less than \$10 ~~nor~~ and
4 not more than \$100 for each day on which the employer fails to comply with s. 102.16
5 (3) or 102.28 (2).

6 **SECTION 4.** 102.85 (1) (c) of the statutes is created to read:

7 102.85 (1) (c) For each act occurring after the date of the 3rd determination of
8 a violation of this subsection, the employer shall be assessed a penalty in the amount
9 of \$3,000 for each act, or 3 times the amount of the premium that would have been
10 payable, whichever is greater.

11 **SECTION 5.** 102.85 (1) (d) of the statutes is created to read:

12 102.85 (1) (d) For each act occurring after the date of the 4th determination of
13 a violation of this subsection, the employer shall be assessed a penalty in the amount
14 of \$4,000 for each act, or 4 times the amount of the premium that would have been
15 payable, whichever is greater.

16 **SECTION 6.** 102.85 (2) (intro.) of the statutes is amended to read:

17 102.85 (2) (intro.) ~~An~~ For each act occurring after the date of the first
18 determination under this subsection, an employer who is required to provide
19 worker's compensation insurance coverage under this chapter shall forfeit not less
20 than \$100 ~~nor~~ and not more than \$1,000 if the employer does any of the following:

21 **SECTION 7.** 102.85 (2j) of the statutes is created to read:

22 102.85 (2j) For each act occurring after the date of the 3rd determination under
23 sub. (2), an employer who is required to provide worker's compensation insurance
24 coverage under this chapter shall forfeit \$3,000 per violation.

25 **SECTION 8.** 102.85 (2k) of the statutes is created to read:

ASSEMBLY BILL 474

1 102.85 **(2k)** For each act occurring after the date of the 4th determination
2 under sub. (2), an employer who is required to provide worker's compensation
3 insurance coverage under this chapter shall forfeit \$4,000 per violation.

4 **SECTION 9.** 103.005 (4m) of the statutes is created to read:

5 103.005 **(4m)** (a) The department shall design and make available to employers
6 a notice regarding worker classification laws, requirements for employers and
7 employees, and penalties for noncompliance.

8 (b) All employers shall post, in one or more conspicuous places where notices
9 to employees are customarily posted, the notice designed by the department under
10 par. (a). Any employer who violates this paragraph shall forfeit not more than \$100
11 for each offense.

12 (c) The department shall establish and maintain on the department's website
13 information regarding worker classification laws, requirements for employers and
14 employees, penalties for noncompliance, and contact information at each state
15 agency that administers worker classification laws.

16 **SECTION 10.** 108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.)
17 and amended to read:

18 108.221 **(1)** (a) (intro.) Any employer ~~described in s. 108.18 (2) (c) or engaged~~
19 ~~in the painting or drywall finishing of buildings or other structures~~ who knowingly
20 and intentionally provides false information to the department for the purpose of
21 misclassifying or attempting to misclassify an individual who is an employee of the
22 employer as a nonemployee shall, for each incident, be assessed a penalty by the
23 department as follows:

ASSEMBLY BILL 474**SECTION 10**

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

4 **SECTION 11.** 108.221 (1) (a) 2. of the statutes is created to read:

5 108.221 (1) (a) 2. For each act occurring after the date of the first determination
6 of a violation of this subsection, the employer shall be assessed a penalty in the
7 amount of \$1,000 for each employee who is misclassified.

8 **SECTION 12.** 108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and
9 amended to read:

10 108.221 (2) (intro.) Any employer ~~described in s. 108.18 (2) (c) or engaged in the~~
11 ~~painting or drywall finishing of buildings or other structures~~ who, through coercion,
12 requires an individual to adopt the status of a nonemployee shall be assessed a
13 penalty by the department as follows:

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

17 **SECTION 13.** 108.221 (2) (b) of the statutes is created to read:

18 108.221 (2) (b) For each act occurring after the date of the first determination
19 of a violation of this subsection, the employer shall be assessed a penalty in the
20 amount of \$2,000 for each individual so coerced.

21 **SECTION 14.** 182.01 (8) of the statutes is created to read:

22 182.01 (8) INFORMATION TO BE PROVIDED WITH BUSINESS FORMATION FILINGS. The
23 department shall provide informational materials and resources on worker
24 misclassification to each person who files with the department any of the following:

ASSEMBLY BILL 474

1 (a) Articles of incorporation under s. 180.0202 or 181.0202.

2 (b) Articles of organization under s. 183.0201.

3 (c) A statement of qualification under s. 178.0901.

4 (d) A certificate of limited partnership under s. 179.0201.

5 **SECTION 15.** 601.41 (12) of the statutes is created to read:

6 601.41 (12) EMPLOYEE MISCLASSIFICATION OUTREACH AND EDUCATION. The
7 commissioner shall, on at least an annual basis, conduct outreach and education to
8 persons subject to regulation under chs. 600 to 655 on how to identify the
9 misclassification of employees as independent contractors and how to report
10 suspected misclassifications to the appropriate federal and state agencies.

11 (END)

Fiscal Estimate Narratives

DFI 10/19/2023

LRB Number	23-0242/1	Introduction Number	AB-0474	Estimate Type	Corrected
Description employee misclassification and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

In order to meet the DFI's requirements for providing misclassification information to the specified business entity filers, DFI would add the new language to a few communication sources including:

- DFI website pages. One or more pages that can be updated by business content authors.
- DFI automated email templates. Entity confirmation emails via CueMail for the 6 entity types specified.
- Select DFI business entity formation forms (domestic and foreign) for the 6 entity types specified.
 - o Currently there are 15 forms for Business formations and conversions/mergers.
 - The One Stop Business (OSB) Portal automated confirmation email template.
 - o Currently there are 5 forms on the Generic Online Forms Repository.
 - All paper forms related to the above would also need to be updated.

IT Labor Costs: Based on the scope of this work, this would be a small one-time project. Adding the required content to the automated email templates would be completed by both DFI IT, and the One Stop Business development team (Tyler Wisconsin). There are also business labor costs to implement the identified changes to forms and other applicable materials.

The IT costs are for 1-2 staff to identify all the locations that need to be updated, make SQL changes, and test before going live.

Business Labor Costs: This includes time for planning, identifying where new content needs to be added, and making manual updates to update standard business forms that are accessed both online and via manual email distribution.

After the one-time project is completed, there may be very small ongoing costs for material, printing, and postage costs when any hard copy communication is required. It is estimated that any increase in material costs is low and would be absorbed.

Total DFI costs to implement the new language across multiple communication sources is \$4,400.

Long-Range Fiscal Implications

None.

Fiscal Estimate Worksheet - 2023 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 23-0242/1	Introduction Number AB-0474
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Description
 employee misclassification and providing a penalty

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Expected costs of \$4,400 for IT and business labor costs.

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		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	\$	\$

NET ANNUALIZED FISCAL IMPACT		
	State	Local
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUE	\$	\$

Agency/Prepared By	Authorized Signature	Date
DFI/ Michael Trepanier (608) 572-4914	Michael Trepanier (608) 572-4914	10/19/2023

Fiscal Estimate Narratives

OCI 10/24/2023

LRB Number	23-0242/1	Introduction Number	AB-0474	Estimate Type	Original
Description employee misclassification and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

The bill mandates that the Office of the Commissioner of Insurance on at least an annual basis, conduct outreach and education to persons subject to regulation under chs. 600 to 655 on how to identify the misclassification of employees as independent contractors and how to report suspected misclassifications to the appropriate federal and state agencies.

The fiscal effect of this proposed legislation on agency resources or staff time is indeterminate.

Long-Range Fiscal Implications



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0244/1
MIM:amn

2023 ASSEMBLY BILL 475

October 11, 2023 - Introduced by Representatives SINICKI, C. ANDERSON, J. ANDERSON, ANDRACA, BALDEH, BARE, BILLINGS, CABRERA, CLANCY, CONLEY, CONSIDINE, DOYLE, DRAKE, EMERSON, GOYKE, HAYWOOD, HONG, JACOBSON, JOERS, MADISON, MCGUIRE, MOORE OMOKUNDE, MYERS, NEUBAUER, OHNSTAD, ORTIZ-VELEZ, PALMERI, RATCLIFF, RIEMER, SHANKLAND, SHELTON, SNODGRASS, STUBBS, SUBECK and VINING, cosponsored by Senators WIRCH, AGARD, CARPENTER, HESSELBEIN, L. JOHNSON, LARSON, ROYS, SMITH, SPREITZER and TAYLOR. Referred to Committee on Labor and Integrated Employment.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to amend* 102.125 (2) and 102.125 (3); and *to create* 102.125 (1m) and
2 943.395 (1) (e) of the statutes; **relating to:** worker misclassification and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, if an insurer or self-insured employer has evidence that a worker's compensation claim is false or fraudulent, the insurer or self-insured employer must generally report the claim to the Department of Workforce Development. If, based on the investigation, DWD has a reasonable basis to believe that criminal insurance fraud has occurred, DWD must refer the matter to the district attorney for prosecution. Also under current law, DWD may request assistance from the Department of Justice to investigate false or fraudulent activity related to a worker's compensation claim. If, based on that investigation, DWD has a reasonable basis to believe that theft, forgery, fraud, or any other criminal violation has occurred, DWD must refer the matter to the district attorney or DOJ for prosecution. The bill extends these requirements to insurers who have evidence that an application for worker's compensation insurance coverage is fraudulent or that an employer has committed fraud by misclassifying employees to lower the employer's worker's compensation insurance premiums.

ASSEMBLY BILL 475

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

1 **SECTION 1.** 102.125 (1m) of the statutes is created to read:

2 102.125 (1m) APPLICATION AND PREMIUM FRAUD. If an insurer has evidence that
3 an application for worker's compensation insurance coverage is fraudulent or that
4 an employer has committed fraud by misclassifying employees to lower the
5 employer's worker's compensation insurance premiums in violation of s. 943.395, the
6 insurer shall report the claim to the department. The department may require an
7 insurer to investigate an allegedly fraudulent application or alleged fraud by
8 misclassification of employees and may provide the insurer with any records of the
9 department relating to that alleged fraud. An insurer that investigates alleged fraud
10 under this subsection shall report the results of that investigation to the department.

11 **SECTION 2.** 102.125 (2) of the statutes is amended to read:

12 102.125 (2) ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce
13 development may request the department of justice to assist the department of
14 workforce development in an investigation under sub. (1) or (1m) or in the
15 investigation of any other suspected fraudulent activity on the part of an employer,
16 employee, insurer, health care provider, or other person related to worker's
17 compensation.

18 **SECTION 3.** 102.125 (3) of the statutes is amended to read:

19 102.125 (3) PROSECUTION. If based on an investigation under sub. (1), (1m), or
20 (2) the department has a reasonable basis to believe that a violation of s. 943.20,

ASSEMBLY BILL 475

1 943.38, 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the
2 department shall refer the results of the investigation to the department of justice
3 or to the district attorney of the county in which the alleged violation occurred for
4 prosecution.

5 **SECTION 4.** 943.395 (1) (e) of the statutes is created to read:

6 943.395 (1) (e) Presents an application for worker's compensation insurance
7 coverage that is false or fraudulent or that falsely or fraudulently misclassifies
8 employees to lower worker's compensation insurance premiums.

9 (END)



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-2041/1
MM/KRP/AG/MED:cdc

2023 ASSEMBLY BILL 477

October 12, 2023 - Introduced by Representatives DALLMAN, BROOKS, DITTRICH, DRAKE, ORTIZ-VELEZ, RETTINGER, ROZAR, SNYDER, TITTL, WITTKE and WICHGERS, cosponsored by Senators BRADLEY and MARKLEIN. Referred to Committee on State Affairs.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 102.07 (8) (a) and 108.02 (12) (a); and **to create** 102.01 (2) (ae),
2 102.01 (2) (an), 102.01 (2) (ann), 102.01 (2) (anp), 102.01 (2) (dc), 102.01 (2) (ds),
3 102.01 (2) (gh), 102.07 (8) (bs), 103.08, 104.01 (2) (b) 6., 108.02 (12) (ds), 224.55
4 and 632.985 of the statutes; **relating to:** delivery network couriers and
5 transportation network drivers, Department of Financial Institutions'
6 approval to offer portable benefit accounts, providing for insurance coverage,
7 modifying administrative rules related to accident and sickness insurance, and
8 granting rule-making authority.

Analysis by the Legislative Reference Bureau

DELIVERY AND TRANSPORTATION NETWORK COMPANIES

General

This bill provides that under specific circumstances, delivery network couriers and drivers for transportation network companies (application-based drivers) are not employees of the delivery network companies and transportation network companies (network companies) for the purposes of worker's compensation insurance, minimum wage laws, and unemployment insurance. In the bill, "application-based driver" is defined as a delivery network courier or participating

ASSEMBLY BILL 477

driver who provides services through the online-enabled application, software, or system of a network company.

Under the bill, if a network company does not engage in all of the following practices, an application-based driver is not an employee of the company: 1) prescribe specific dates, times of day, or a minimum number of hours during which the driver must be logged into the network company's online-enabled application, software, or system; 2) terminate the contract of the driver for not accepting a specific request for transportation or delivery service request; 3) restrict the driver from performing services through other network companies except while performing services through that network company; and 4) restrict the driver from working in any other lawful occupation or business.

Portable benefit accounts

Under the bill, if certain conditions are satisfied, a financial institution or other person may obtain approval from the Department of Financial Institutions to offer portable benefit accounts. A "portable benefit account" is an account administered by such an approved financial institution or other person (portable benefit account provider) from which an individual may receive distributions for the purposes described below. A network company may contribute to a portable benefit account of an application-based driver who meets certain eligibility requirements (eligible driver) a percentage of the driver's earnings, and the driver may also contribute to the portable benefit account. An eligible driver may receive a distribution from a portable benefit account for the following purposes: 1) to compensate for lost income due to an illness or accident or loss of work due to certain other events; 2) to transfer the money to an individual retirement account; or 3) to pay health insurance premiums. A portable benefit account provider may include an income replacement benefit to be made available to eligible drivers upon the occurrence of an event under 1) above.

Insurance coverage

The bill provides that a network company may carry, provide, or otherwise make available group or blanket accident and sickness insurance for its application-based drivers. A network company that purchases such a policy must provide a copy of the policy to the Department of Safety and Professional Services no later than 30 days after the commencement of the policy. In addition, the network company must notify DSPS at least five days prior to the effective date of the policy's cancellation or nonrenewal, and DSPS is treated as a certificate holder for purposes of receiving the notice. The bill specifies that the state's worker's compensation laws do not apply to such a policy.

The bill also provides that a network company may carry, provide, or otherwise make available group or blanket occupational accident insurance to cover the medical expenses and lost income resulting from an injury suffered by an application-based driver while engaged on the network company's online-enabled application, software, or system. The bill requires that the policy provide, in aggregate, at least \$1,000,000 of coverage for the medical expenses, short-term disability, long-term disability, and survivor benefits. The bill allows the policy to prohibit stacking the coverage limit under the policy with coverage limits under

ASSEMBLY BILL 477

policies provided by other network companies to increase the coverage limit available for a particular injury. The bill provides that if a claim is covered by occupational accident insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to a contribution for the pro rata share of coverage attributable to one or more other network companies.

Under the bill, any benefit provided to an application-based driver under an occupational accident insurance policy is treated as amounts payable under a worker's compensation law or disability benefit for the purpose of determining amounts payable under uninsured or underinsured motorist coverage.

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

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

- 1 **SECTION 1.** 102.01 (2) (ae) of the statutes is created to read:
- 2 102.01 (2) (ae) "Application-based driver" means a delivery network courier
- 3 or participating driver who provides services through the online-enabled
- 4 application, software, or system of a network company.
- 5 **SECTION 2.** 102.01 (2) (an) of the statutes is created to read:
- 6 102.01 (2) (an) "Delivery network company" means a business that maintains
- 7 an online-enabled application, software, or system to facilitate delivery services
- 8 within this state.
- 9 **SECTION 3.** 102.01 (2) (ann) of the statutes is created to read:
- 10 102.01 (2) (ann) "Delivery network courier" means an individual who provides
- 11 delivery services through a delivery network company's online-enabled application,
- 12 software, or system.
- 13 **SECTION 4.** 102.01 (2) (anp) of the statutes is created to read:
- 14 102.01 (2) (anp) "Delivery services" means the fulfillment of a delivery request
- 15 by picking up from any location any item and delivering the item, by using a

ASSEMBLY BILL 477**SECTION 4**

1 passenger vehicle, a bicycle, a scooter, public transportation, or other similar means
2 of transportation or by walking, to a location selected by the customer that is
3 typically located within 50 miles of the pickup location. “Delivery services” includes
4 the selection, collection, or purchase of items by a delivery network courier, as well
5 as other tasks incidental to the delivery.

6 **SECTION 5.** 102.01 (2) (dc) of the statutes is created to read:

7 102.01 (2) (dc) “Network company” means a delivery network company or a
8 transportation network company.

9 **SECTION 6.** 102.01 (2) (ds) of the statutes is created to read:

10 102.01 (2) (ds) “Participating driver” has the meaning given in s. 440.40 (3).

11 **SECTION 7.** 102.01 (2) (gh) of the statutes is created to read:

12 102.01 (2) (gh) “Transportation network company” has the meaning given in
13 s. 440.40 (6).

14 **SECTION 8.** 102.07 (8) (a) of the statutes is amended to read:

15 102.07 (8) (a) Except as provided in pars. (b) ~~and~~, (bm), and (bs), every
16 independent contractor is, for the purpose of this chapter, an employee of any
17 employer under this chapter for whom he or she is performing service in the course
18 of the trade, business, profession or occupation of such employer at the time of the
19 injury.

20 **SECTION 9.** 102.07 (8) (bs) of the statutes is created to read:

21 102.07 (8) (bs) An application-based driver is not an employee of a network
22 company if the company refrains from doing all of the following:

23 1. Prescribing specific dates, times of day, or a minimum number of hours
24 during which the application-based driver must be logged into the network
25 company’s online-enabled application, software, or system.

ASSEMBLY BILL 477

1 2. Terminating the contract of the application-based driver for not accepting
2 a specific delivery service request or request for transportation, except as prohibited
3 by s. 440.45 (2).

4 3. Restricting the application-based driver from performing services through
5 other network companies except while performing services through that network
6 company.

7 4. Restricting the application-based driver from working in any other lawful
8 occupation or business.

9 **SECTION 10.** 103.08 of the statutes is created to read:

10 **103.08 Application-based drivers; portable benefits accounts. (1)**

11 DEFINITIONS. In this section:

12 (a) “Application-based driver” has the meaning given in s. 102.01 (2) (ae).

13 (b) “Delivery network company” has the meaning given in s. 102.01 (2) (an).

14 (c) “Earnings” means all moneys paid directly to an application-based driver,
15 including incentives and bonuses, by a delivery network company or a transportation
16 network company, or remitted to the application-based driver from a payment
17 facilitated by a delivery network company or transportation network company, but
18 not including amounts charged for fees, taxes, or other similar charges. “Earnings”
19 does not include any payments for gratuities.

20 (d) “Eligible driver” means an application-based driver whose earnings from
21 an individual delivery network company or transportation network company totaled
22 at least \$750, without combining earnings from delivery and rideshare services
23 provided through the same company, during a calendar quarter.

24 (e) “Network company” means a delivery network company or a transportation
25 network company.

ASSEMBLY BILL 477**SECTION 10**

1 (f) “Portable benefit account” means an account from which an individual may
2 withdraw money for a permissible use under sub. (3) that is administered by a
3 portable benefit account provider.

4 (g) “Portable benefit account provider” means a financial institution or other
5 person authorized under s. 224.55 (3) to offer and administer portable benefit
6 accounts.

7 (h) “Transportation network company” has the meaning given in s. 440.40 (6).

8 **(2) CONTRIBUTIONS.** (a) A network company may contribute to a portable
9 benefit account of an eligible driver a percentage of an eligible driver’s earnings in
10 the preceding calendar quarter that the driver earned through that company.

11 (b) A network company may allow an eligible driver to elect to contribute to the
12 eligible driver’s portable benefit account, and may deduct the amount elected by the
13 eligible driver from the individual’s earnings and designate such amount for
14 contribution to the portable benefit account.

15 **(3) QUALIFYING EVENTS.** An eligible driver who has money in a portable benefit
16 account may receive a distribution of amounts for any of the following:

17 (a) To compensate for lost income due to an illness or accident of the driver, loss
18 of work due to the birth or adoption of a child of the driver, or loss of work due to a
19 declared federal or local state of emergency.

20 (b) To transfer the money to an individual retirement account.

21 (c) To pay premiums for health insurance coverage in the individual market.

22 **(4) ELIGIBILITY DURATION.** An eligible driver shall remain an eligible driver of
23 the delivery network company or transportation network company for 2 calendar
24 quarters following the initial quarter of eligibility, regardless of the amount of
25 earnings the application-based driver has during those 2 quarters.

ASSEMBLY BILL 477

1 **SECTION 11.** 104.01 (2) (b) 6. of the statutes is created to read:

2 104.01 **(2)** (b) 6. An individual excluded under s. 102.07 (8) (bs).

3 **SECTION 12.** 108.02 (12) (a) of the statutes is amended to read:

4 108.02 **(12)** (a) “Employee” means any individual who is or has been performing
5 services for pay for an employing unit, whether or not the individual is paid directly
6 by the employing unit, except as provided in par. (bm), (c), (d), (dm), ~~or (dn)~~, or (ds).

7 **SECTION 13.** 108.02 (12) (ds) of the statutes is created to read:

8 108.02 **(12)** (ds) Paragraph (a) does not apply to an individual who is
9 performing services for an employing unit other than a government unit, an Indian
10 tribe, or a nonprofit organization and who is excluded under s. 102.07 (8) (bs).

11 **SECTION 14.** 224.55 of the statutes is created to read:

12 **224.55 Portable benefit accounts. (1)** In this section:

13 (a) “Eligible driver” has the meaning given in s. 103.08 (1) (d).

14 (b) “Financial institution” has the meaning given in s. 214.01 (1) (jn).

15 (c) “Portable benefit account” has the meaning given in s. 103.08 (1) (f).

16 (d) “Qualifying event” means an event described in s. 103.08 (3) (a).

17 **(2)** A financial institution or other person may request approval from the
18 department to offer portable benefit accounts. If the financial institution or other
19 person demonstrates to the satisfaction of the department that the manner in which
20 the financial institution or other person will administer the portable benefit account
21 will be consistent with s. 103.08 (2) and (3), and the financial institution or other
22 person satisfies any applicable rule under sub. (5), the department shall approve the
23 request.

24 **(3)** A financial institution or other person approved by the department under
25 sub. (2) may offer and administer portable benefit accounts.

ASSEMBLY BILL 477**SECTION 14**

1 (4) A financial institution or other person authorized to offer and administer
2 portable benefit accounts under sub. (3) may include an income replacement benefit
3 to be made available to eligible drivers upon the occurrence of any qualifying event.

4 (5) The department may promulgate rules related to the process and
5 requirements for the department's approval under sub. (2).

6 **SECTION 15.** 632.985 of the statutes is created to read:

7 **632.985 Insurance coverage provided by network companies. (1)**

8 DEFINITIONS. In this section:

9 (a) "Application-based driver" has the meaning given in s. 102.01 (2) (ae).

10 (b) "Network company" means a delivery network company, as defined in s.
11 102.01 (2) (an), or a transportation network company, as defined in s. 440.40 (6).

12 **(2) ACCIDENT AND SICKNESS INSURANCE.** (a) A network company may carry,
13 provide, or otherwise make available group or blanket accident and sickness
14 insurance coverage for application-based drivers who provide covered services
15 through the network company's network.

16 (b) No later than 30 days after the commencement of a policy under this
17 subsection, a network company that purchases an insurance policy described in par.
18 (a) shall provide to the department of safety and professional services a copy of the
19 group or blanket insurance policy. At least 5 days prior to the effective date of a
20 cancellation or nonrenewal of the policy, the network company shall file with the
21 department of safety and professional services a notice of the cancellation or
22 nonrenewal, and the secretary of safety and professional services shall be treated as
23 a certificate holder for purposes of receiving the notice.

24 (c) Chapter 102 does not apply to a group or blanket accident and sickness
25 insurance policy described in par. (a).

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1 **(3) OCCUPATIONAL ACCIDENT INSURANCE.** (a) A network company may carry,
2 provide, or otherwise make available group or blanket occupational accident
3 insurance to cover the medical expenses and lost income resulting from an injury
4 suffered by an application-based driver while engaged on the network company's
5 online-enabled application, software, or system. For purposes of this paragraph, an
6 application-based driver is engaged on the network company's online-enabled
7 application, software, or system during the time beginning when the
8 application-based driver accepts a rideshare request or delivery request and ending
9 when the application-based driver completes that rideshare request or delivery
10 request.

11 (b) A policy under this subsection shall provide, in aggregate, at least
12 \$1,000,000 of coverage for the medical expenses, short-term disability, long-term
13 disability, and survivor benefits.

14 (c) If a claim is covered by occupational accident insurance maintained by more
15 than one network company, the insurer of the network company against whom a
16 claim is filed shall be entitled to a contribution for the pro rata share of coverage
17 attributable to one or more other network companies.

18 (d) A policy issued or maintained by a network company may provide that,
19 regardless of the number of policies involved, claims made, premiums shown on the
20 policy, or premiums paid, the limits for any coverage under the policy may not be
21 added to the limits for similar occupational accident insurance coverage provided by
22 another network company to determine the limit of occupational accident insurance
23 coverage available arising from any one injury.

24 (e) Any benefit provided to an application-based driver under an occupational
25 accident insurance policy described in par. (a) shall be treated as amounts payable

ASSEMBLY BILL 477

1 under a worker's compensation law or disability benefit for the purpose of
2 determining amounts payable under insurance provided under s. 632.32 (4) or (4m).

3 **SECTION 16.** INS 3.14 (6) (intro.), (a), (b) and (c) of the administrative code are
4 amended to read:

5 INS 3.14 (6) (intro.) ELIGIBLE GROUPS. In accordance with s. 600.03 (23), Stats.,
6 an eligible group includes any of the following:

7 (a) The members of the board of directors of a corporation ~~are eligible to be~~
8 covered under a group accident and sickness policy issued to such ~~corporation,~~
9 corporation.

10 (b) The individual members of member organizations of an association, as
11 defined in s. 600.03 (23), Stats., ~~are eligible to be~~ covered under a group accident and
12 sickness policy issued to such association insuring employees of such association and
13 employees of member organizations of such association, ~~and.~~

14 (c) The individuals supplying raw materials to a single processing plant and
15 the employees of such processing plant ~~are eligible to be~~ covered under a group
16 accident and sickness policy issued to such processing plant.

17 **SECTION 17.** INS 3.14 (6) (d) of the administrative code is created to read:

18 INS 3.14 (6) (d) Application-based drivers, as defined in s. 632.985 (1) (a),
19 Stats., of a network company, as defined in s. 632.985 (1) (b), Stats., covered under
20 a group accident and sickness policy issued to the network company.

21 **SECTION 18.** INS 3.15 (4) (a) of the administrative code is amended to read:

22 INS 3.15 (4) (a) In accordance with the provisions of s. 600.03 (4), Stats., the
23 following are eligible for blanket accident and health insurance: 1. Volunteer fire
24 departments, 2. National guard units, 3. Newspaper delivery carriers, 4. Dependents
25 of students, 5. Volunteer civil defense organizations, 6. Volunteer auxiliary police

ASSEMBLY BILL 477

1 organizations, 7. Law enforcement agencies, 8. Cooperatives organized under ch.
2 185, Stats., on a membership basis without capital stock, 9. Registered guests in a
3 motel, hotel, or resort, 10. Members or members and advisors of fraternal
4 organizations including women's auxiliaries of such organizations and fraternal
5 youth organizations, 11. Associations of sports officials, 12. Purchasers of protective
6 athletic equipment, 13. Migrant workers, 14. Participants in racing meets, 15.
7 Patrons or guests of a recreational facility or resort, 16. Application-based drivers,
8 as defined in s. 102.01 (2) (ae), Stats., of a network company, as defined in s. 632.985
9 (1) (b), Stats.

10 **SECTION 19. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) The treatment of administrative rules takes effect as provided in s. 227.265.

13 (END)



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4470/1
CMH/JK/MCP/JPC:cjs

2023 SENATE BILL 486

October 9, 2023 - Introduced by Senators AGARD, L. JOHNSON, CARPENTER, HESSELBEIN, LARSON, PFAFF, ROYS, SMITH, SPREITZER and TAYLOR, cosponsored by Representatives MADISON, SHELTON, OHNSTAD, J. ANDERSON, C. ANDERSON, BALDEH, BARE, CLANCY, CONLEY, CONSIDINE, DRAKE, EMERSON, GOYKE, HAYWOOD, HONG, JACOBSON, JOERS, MOORE OMOKUNDE, MYERS, NEUBAUER, ORTIZ-VELEZ, PALMERI, RATCLIFF, SINICKI, SNODGRASS and STUBBS. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to repeal* 94.55 (2t), 961.11 (4g), 961.14 (4) (t), 961.32 (2m), 961.38 (1n),
2 961.41 (1) (h), 961.41 (1m) (h), 961.41 (1q), 961.41 (3g) (e), 961.571 (1) (a) 7.,
3 961.571 (1) (a) 11. e., 961.571 (1) (a) 11. k. and L. and 967.055 (1m) (b) 5.; **to**
4 *renumber and amend* 115.35 (1), 961.01 (14) and 961.34; **to amend** 20.115
5 (7) (gc), 49.148 (4) (a), 49.79 (1) (b), 59.54 (25) (title), 59.54 (25) (a) (intro.),
6 66.0107 (1) (bm), 111.35 (2) (e), 114.09 (2) (bm) 1. (intro.), 114.09 (2) (bm) 4.,
7 157.06 (11) (i), 175.35 (2g) (c) 4. a., 289.33 (3) (d), 349.02 (2) (b) 4., 961.41 (1r),
8 961.41 (1x), 961.41 (3g) (c), 961.41 (3g) (d), 961.41 (3g) (em), 961.47 (1), 961.48
9 (3), 961.48 (5), 961.49 (1m) (intro.), 961.571 (1) (a) 11. (intro.), 971.365 (1) (a),
10 971.365 (1) (b), 971.365 (1) (c) and 971.365 (2); and **to create** 16.282, 20.115 (7)
11 (gc), 20.192 (1) (t), 20.255 (2) (r), 20.395 (5) (db), 20.435 (1) (s), 20.437 (3) (r),
12 20.505 (1) (t), 20.566 (1) (bn), 20.835 (2) (eq), 25.316, 48.47 (20), 66.04185, 73.17,
13 77.54 (71), 94.56, 94.57, 100.145, 108.02 (18r), 108.04 (5m), 111.32 (9m), 111.32
14 (11m), subchapter IV of chapter 139 [precedes 139.97], 157.06 (11) (hm), 175.35

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1 (2g) (b) 3., 238.139, 250.22 and subchapter VIII of chapter 961 [precedes 961.70]
2 of the statutes; **relating to:** legalizing the possession of marijuana; medical
3 marijuana; regulating the production, processing, and sale of marijuana;
4 expunging or redesignating past convictions for marijuana-related crimes;
5 equity grants; making an appropriation; and providing a penalty.

*Analysis by the Legislative Reference Bureau***MARIJUANA LEGALIZATION AND REGULATION**

Under this bill, a person who is at least 21 years old may legally possess marijuana for recreational purposes. A person of any age may possess marijuana for medical purposes. Under the bill, a person may produce, process, or sell marijuana if the person has a permit. This bill creates an excise tax for the privilege of producing, processing, distributing, or selling marijuana in this state, and 60 percent of the revenue collected from the tax is deposited into a segregated fund called the “community reinvestment fund.” Under the bill, a person who may possess medical marijuana is not subject to sales or excise taxes on the purchase or use of the marijuana. The bill does not affect federal law, which generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

Legalizing the possession of marijuana

Current law prohibits a person from manufacturing, distributing, or delivering marijuana; possessing marijuana with the intent to manufacture, distribute, or deliver it; possessing or attempting to possess marijuana; using drug paraphernalia; or possessing drug paraphernalia with the intent to produce, distribute, or use a controlled substance. The bill changes state law to allow a person who is at least 21 to possess not more than five ounces of marijuana. The bill also allows a qualifying patient to possess marijuana for medical purposes. Under the bill, a qualifying patient is an individual of any age who has been diagnosed by a physician as having or undergoing a debilitating medical condition or treatment. The bill also eliminates the prohibition on possessing or using drug paraphernalia that relates to marijuana consumption.

Under the bill, a person who is at least 21 who possesses more than five ounces of marijuana is subject to a penalty, which varies depending on the amount of overage. Under the bill, if the overage is not more than one ounce, the person is subject to a forfeiture of not more than \$100; if the overage is more than one ounce but not more than 16 ounces, the person is guilty of a misdemeanor and subject to a fine of not more than \$500; and if the overage is more than 16 ounces, the person is guilty of a misdemeanor and subject to a fine of not more than \$1,000 or a sentence of imprisonment for not more than 90 days or both. In the last described case, the person is guilty of a Class I felony if the person also takes action to hide the amount

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of marijuana he or she has and has in place a security system to alert him or her to the presence of law enforcement or a method to intimidate, or a system that could injure or kill, a person approaching the area containing the marijuana.

Under the bill, a person who is under 21 who possesses marijuana is subject to a penalty, which varies depending on the amount possessed. If the violation involves not more than one-quarter of an ounce, the person is subject to a forfeiture of not more than \$50; if the violation involves more than one-quarter of an ounce but not more than five ounces, the person is subject to a forfeiture of not more than \$100; and if the violation involves more than five ounces, the person is subject to a forfeiture of not more than \$200.

Regulating the production, processing, and selling marijuana

Under the bill, with certain exceptions, no person may sell or distribute, or possess with the intent to sell or distribute, marijuana unless the person has a permit from the Department of Revenue. The penalties for violating the prohibition vary depending on the recipient, the age of the violator, and the amount of marijuana involved.

If a person who is at least 21 violates the prohibition on selling, or possessing with the intent to sell, marijuana, the person is guilty of a misdemeanor and subject to a fine of not more than \$500 if the violation involves not more than one ounce of marijuana, the person is guilty of a misdemeanor and subject to a fine of not more than \$1,000 if the violation involves more than one ounce but not more than 10 ounces, the person is guilty of a misdemeanor and subject to a fine of not more than \$5,000 if the violation involves more than 10 ounces but not more than 15 ounces, and the person is guilty of a Class I felony if the violation involves more than 15 ounces. If a person who is at least 21 violates the prohibition on selling, or possessing with the intent to sell, marijuana and the recipient is under 21 and at least three years younger than the person, then the person is guilty of a misdemeanor and subject to fine of not more than \$1,000 or imprisonment for up to 90 days or both if the violation involves not more than five ounces and is guilty of a Class H felony if the violation involves more than five ounces. If a person who is under 21 violates the prohibition on selling, or possessing with the intent to sell, marijuana, the person is subject to a forfeiture of not more than \$100 if the violation involves not more than five ounces, guilty of a misdemeanor and subject to a fine of not more than \$500 if the violation involves more than five ounces but not more than 20 ounces, and guilty of a misdemeanor and subject to a fine of not more than \$1,000 or imprisonment for not more than 90 days or both if the violation involves more than 20 ounces. The prohibition on sales does not apply to a sale of not more than one-quarter of an ounce to a person who is at least 21 if the compensation the seller receives for the sale is less than or equal to the amount the seller paid for the marijuana.

If a person who is at least 21 violates the prohibition on distributing, or possessing with the intent to distribute, marijuana, the person is subject to a forfeiture of not more than \$250 if the violation involves not more than five ounces of marijuana, and the person is guilty of a misdemeanor and subject to a fine of not more than \$500 if the violation involves more than five ounces. If a person who is at least 21 violates the prohibition on distributing, or possessing with the intent to

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distribute, marijuana and the recipient is under 21 and at least three years younger than the person, then the person is guilty of a misdemeanor and subject to a fine of not more than \$1,000 or imprisonment for up to 90 days or both if the violation involves not more than five ounces and is guilty of a Class H felony if the violation involves more than five ounces. If a person who is under 21 violates the prohibition on distributing, or possessing with the intent to distribute, marijuana, the person is subject to a forfeiture of not more than \$100 if the violation involves not more than five ounces, guilty of a misdemeanor and subject to a fine of not more than \$500 if the violation involves more than five ounces but not more than 20 ounces, and guilty of a misdemeanor and subject to a fine of not more than \$1,000 or imprisonment for not more than 90 days or both if the violation involves more than 20 ounces. The prohibition on distribution does not apply if the distribution involves not more than one-quarter of an ounce and is to a person who is at least 21 or if the distribution involves less than five ounces and is made to a person who cohabitates with the distributor.

The bill requires a person to obtain separate permits from DOR to produce, process, distribute, or sell marijuana or to sell marijuana for on-premises consumption (marijuana lounge), and requires marijuana producers and processors to obtain additional permits from the Department of Agriculture, Trade and Consumer Protection. The requirements for obtaining these permits differ based on whether the permit is issued by DOR or DATCP but, in general, a person may not obtain such a permit if he or she is not a state resident, is under the age of 21, or has been convicted of certain crimes or committed certain offenses. In addition, a person may not operate under a DOR or DATCP permit within 500 feet of a school, playground, recreation facility, child care facility, public park, public transit facility, or library, and a person may not operate a marijuana lounge unless the municipality or county in which the marijuana lounge is located has enacted an ordinance authorizing such operation. A person who holds a permit from DOR must also comply with certain operational requirements.

Under the bill, a permit applicant with 20 or more employees may not receive a permit from DATCP or DOR unless the applicant certifies that the applicant has entered into a labor peace agreement with a labor organization. The labor peace agreement prohibits the labor organization and its members from engaging in any economic interference with persons doing business in this state, prohibits the applicant from disrupting the efforts of the labor organization to communicate with and to organize and represent the applicant's employees, and provides the labor organization access to areas in which the employees work to discuss employment rights and the terms and conditions of employment. Current law prohibits the state and any local unit of government from requiring a labor peace agreement as a condition for any regulatory approval. The permit requirements under the bill are not subject to that prohibition.

The bill also requires DATCP and DOR to use a competitive scoring system to determine which applicants are eligible to receive permits. Each department must issue permits to the highest scoring applicants that it determines will best protect the environment; provide stable, family-supporting jobs to local residents; ensure

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worker and consumer safety; operate secure facilities; and uphold the laws of the jurisdictions in which they operate. Each department may deny a permit to an applicant with a low score.

The bill prohibits a DOR permittee from selling, distributing, or transferring marijuana to a minor and from allowing a minor to be on premises for which a permit is issued. If a permittee violates one of those prohibitions, the permittee may be subject to a civil forfeiture of not more than \$500 and the permit may be suspended for up to 90 days.

Under the bill, a minor, except a minor who is a qualifying patient, who does any of the following is subject to a forfeiture of not more than \$250: procures or attempts to procure marijuana from a permittee; falsely represents his or her age or falsely represents that he or she is a qualifying patient to receive marijuana from a permittee; or knowingly enters any premises for which a permit has been issued without being accompanied by his or her parent, guardian, or spouse who is at least 21 years of age.

Under the bill, an individual may cultivate as many as six marijuana plants. Only a person who has a permit from DATCP may produce or process more marijuana plants. A person without a permit who possesses more than six but not more than 12 marijuana plants that have reached the flowering stage is subject to a forfeiture not to exceed twice the permitting fee (\$250 under the bill). If the person possesses more than 12 plants that have reached the flowering stage, the person is guilty of a misdemeanor and subject to a fine not to exceed \$1,000 or imprisonment not to exceed 90 days or both. The person is guilty of a Class I felony if the person also takes action to hide the number of plants he or she has and the person also has in place a security system to alert him or her to the presence of law enforcement or a method to intimidate, or a system that could injure or kill, a person approaching the area containing the plants.

The bill requires DOR to create and maintain a medical marijuana registry program whereby a person who is a qualifying patient may obtain a registry identification card and purchase marijuana from a retail establishment without having to pay the sales or excise taxes imposed on that sale. A “qualifying patient” is a person who has been diagnosed by a physician as having a debilitating medical condition such as cancer, glaucoma, AIDS, or another specified condition or is undergoing a debilitating medical treatment.

Previous convictions relating to marijuana

The bill requires the director of state courts to review records of acts that have been decriminalized under the bill. If a record is for a conviction for an act that the bill decriminalizes or lessens the penalty for, the sentencing court must be notified. If the act was a misdemeanor, the court must dismiss the conviction and expunge the record or, if applicable, redesignate it to a lesser crime. If the act was a felony, the court must determine if it is in the public interest to dismiss the conviction and expunge the record or, if applicable, redesignate it to a lesser crime. The presumption is that such actions are in the public interest unless there is clear and convincing evidence that the actions would create a risk to public safety. If the felony is expunged or redesignated to a misdemeanor or civil forfeiture, the sentencing court

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must determine if there is good cause to restore the person's right to possess a firearm. Finally, if the record is for an arrest or a charge for an act that the bill decriminalizes or lessens the penalty for, the director of state courts must expunge such records.

Registration for THC testing labs

The bill requires DATCP to register entities as tetrahydrocannabinols (THC)-testing laboratories. The laboratories must test marijuana for contaminants; research findings on the use of medical marijuana; and provide training on safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana, security and inventory accountability, and research on medical marijuana.

Discrimination based on marijuana use

Under the fair employment law, no employer or other person may engage in any act of employment discrimination against any individual on the basis of the individual's use or nonuse of lawful products off the employer's premises during nonworking hours, subject to certain exceptions, one of which is if the use impairs the individual's ability to undertake adequately the job-related responsibilities of that individual's employment. The bill specifically defines marijuana as a lawful product for purposes of the fair employment law, such that no person may engage in any act of employment discrimination against an individual because of the individual's use of marijuana off the employer's premises during nonworking hours, subject to those exceptions.

Under current law, an individual may be disqualified from receiving unemployment insurance benefits if he or she is terminated because of misconduct or substantial fault. The bill specifically provides that an employee's use of marijuana off the employer's premises during nonworking hours does not constitute misconduct or substantial fault unless termination for that use is permitted under one of the exceptions under the fair employment law.

Unless federal law requires otherwise, the bill prohibits a hospital, physician, organ procurement organization, or other person from determining the ultimate recipient of an anatomical gift on the sole basis of a positive test for the use of marijuana by a potential recipient.

Drug screening and testing

The bill exempts THC, including marijuana, from drug testing for certain public assistance programs. Currently, a participant in a community service job or transitional placement under the Wisconsin Works program (W2) or a recipient of the FoodShare program, also known as the food stamp program, who is convicted of possession, use, or distribution of a controlled substance must submit to a test for controlled substances as a condition of continued eligibility. The Department of Health Services is currently required to request a waiver of federal Medicaid law to require drug screening and testing as a condition of eligibility for the childless adult demonstration project in the Medical Assistance program. Current law also requires DHS to promulgate rules to develop and implement a drug screening, testing, and treatment policy for able-bodied adults without dependents in the FoodShare employment and training program. The bill exempts THC from all of those drug-testing requirements and programs. In addition, because THC is not a

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controlled substance under state law under the bill, the requirement under current law that the Department of Children and Families promulgate rules to create a controlled substance abuse screening and testing requirement for applicants for the work experience program for noncustodial parents under W2 and the Transform Milwaukee Jobs and Transitional Jobs programs does not include THC.

Under current law, the Department of Workforce Development must establish a program to test claimants who apply for unemployment insurance benefits for the presence of controlled substances, as defined under federal law. If a claimant tests positive for a controlled substance, the claimant may be denied UI benefits, subject to certain exceptions and limitations. The bill excludes THC for purposes of this testing requirement. As such, under the bill, an individual who tests positive for THC may not be denied UI benefits.

Equity grants and program for law enforcement training

The bill provides for a number of grants to be paid from the revenue generated from the excise tax on marijuana that is deposited into the community reinvestment fund. For example, the bill requires the Department of Administration to provide grants to public, private, and nonprofit entities in this state that promote diversity and advance equity and inclusion, including promoting the inclusion of women and racial and ethnic minorities in the production and sale of marijuana. In addition, the bill directs DHS to award grants to community organizations to implement community health worker care models. The bill also directs DHS to award grants to community organizations and local or tribal health departments to hire health equity strategists and to implement health equity action plans in small geographic areas.

The bill appropriates \$125,000 in fiscal year 2023-24 and \$250,000 in fiscal year 2024-25 for the Department of Transportation's Drug Evaluation and Classification Program. The program provides training for law enforcement officers and others in the recognition of drug influence and impairment.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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.** 16.282 of the statutes is created to read:

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1 (6). The department shall revoke the permit of any permittee who violates s. 100.30
2 3 or more times within a 5-year period.

3 **SECTION 25.** 94.57 of the statutes is created to read:

4 **94.57 Testing laboratories.** The department shall register entities as
5 tetrahydrocannabinols testing laboratories. The laboratories may possess or
6 manufacture tetrahydrocannabinols or drug paraphernalia and shall perform the
7 following services:

8 (1) Test marijuana produced for the medical use of tetrahydrocannabinols for
9 potency and for mold, fungus, pesticides, and other contaminants.

10 (2) Collect information on research findings and conduct research related to
11 the medical use of tetrahydrocannabinols, including research that identifies
12 potentially unsafe levels of contaminants.

13 (3) Provide training on the following:

14 (a) The safe and efficient cultivation, harvesting, packaging, labeling, and
15 distribution of marijuana for the medical use of tetrahydrocannabinols.

16 (b) Security and inventory accountability procedures.

17 (c) The most recent research on the use of tetrahydrocannabinols.

18 **SECTION 26.** 100.145 of the statutes is created to read:

19 **100.145 Recreational marijuana logotype.** The department shall design
20 an official logotype appropriate for including on a label affixed to recreational
21 marijuana under s. 139.973 (10) (a).

22 **SECTION 27.** 108.02 (18r) of the statutes is created to read:

23 108.02 (18r) MARIJUANA. "Marijuana" has the meaning given in s. 111.32 (11m).

24 **SECTION 28.** 108.04 (5m) of the statutes is created to read:

SENATE BILL 486

1 108.04 **(5m)** DISCHARGE FOR USE OF MARIJUANA. (a) Notwithstanding sub. (5),
2 “misconduct,” for purposes of sub. (5), does not include the employee’s use of
3 marijuana off the employer’s premises during nonworking hours or a violation of the
4 employer’s policy concerning such use, unless termination of the employee because
5 of that use is permitted under s. 111.35.

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

10 **SECTION 29.** 111.32 (9m) of the statutes is created to read:

11 111.32 **(9m)** “Lawful product” includes marijuana.

12 **SECTION 30.** 111.32 (11m) of the statutes is created to read:

13 111.32 **(11m)** “Marijuana” means all parts of the plants of the genus Cannabis,
14 whether growing or not; the seeds thereof; the resin extracted from any part of the
15 plant; and every compound, manufacture, salt, derivative, mixture, or preparation
16 of the plant, its seeds or resin, including tetrahydrocannabinols.

17 **SECTION 31.** 111.35 (2) (e) of the statutes is amended to read:

18 111.35 **(2)** (e) Conflicts with any federal or state statute, rule or regulation.
19 This paragraph does not apply with respect to violations concerning marijuana or
20 tetrahydrocannabinols under 21 USC 841 to 865.

21 **SECTION 32.** 114.09 (2) (bm) 1. (intro.) of the statutes is amended to read:

22 114.09 **(2)** (bm) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall
23 order the person violating sub. (1) (b) 1. or 1m. to submit to and comply with an
24 assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for
25 examination of the person’s use of alcohol, tetrahydrocannabinols, controlled



State of Wisconsin
2023 - 2024 LEGISLATURE

September 2023 Special Session

LRBs0124/1
ALL:all

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 1**

October 13, 2023 – Offered by Senator LEMAHIEU.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 89.073 (1), 89.073 (2) (b), 89.073 (2m), 106.276, 440.09 (1),
2 440.09 (2) (b), 440.09 (2m), 440.094 (1) (b), 440.992 (6), 452.10 (2) and 456.07
3 (1) and (3); *to renumber* 252.14 (1) (ar) 14., 440.08 (2) (d), 440.08 (2) (e), 440.09
4 (2) (intro.), 440.09 (2) (d), 448.978 (1), 448.978 (2) (d) 1. and 2., 457.16 (1) and
5 457.25 (1); *to renumber and amend* 71.07 (9g) (b), 108.04 (2) (a) 4., 108.04 (15)
6 (a) 2., 440.03 (13) (c), 440.08 (2) (a) 1. to 72., 440.08 (2) (c), 440.09 (2) (a), 440.09
7 (2) (c), 440.09 (2) (f), 440.09 (3), 440.09 (4) and (5), 446.025 (3) (a), 446.026 (3)
8 (a), 448.015 (4) (am) 2m., 448.974 (2), 448.978 (2) (d) (intro.), 457.12 and 459.24
9 (3m); *to consolidate, renumber and amend* 108.04 (15) (a) (intro.) and 1.; *to*
10 *amend* 15.405 (7c) (a) 1., 15.405 (7c) (a) 2., 15.405 (7c) (a) 3., 15.405 (7c) (a) 4.,
11 15.405 (7c) (am) 1., 15.405 (7c) (am) 3., 15.405 (7c) (c), 45.40 (1g) (a), 46.297 (2)
12 (a), 46.298, 46.90 (4) (ab) 4., 48.56 (2), 48.561 (2), 49.45 (9r) (a) 7. e., 49.45 (30j)
13 (a) 1., 51.03 (6) (a), 55.043 (1m) (a) 4., 71.05 (6) (b) 49. h., 71.05 (6) (b) 49. i., 71.06

1 (1q) (c), 71.06 (2) (i) 3., 71.06 (2) (j) 3., 89.073 (title), 89.073 (2) (c), 89.073 (2) (f),
2 97.67 (5m) (a) 3., 101.022, 108.04 (2) (a) 3., 108.133 (2) (a) (intro.), 108.133 (2)
3 (am), 118.2925 (1) (f), 146.81 (1) (eu), 146.81 (1) (hg), 146.81 (1) (hm), 146.89 (1)
4 (r) 6., 146.89 (1) (r) 7., 146.997 (1) (d) 4., 146.997 (1) (d) 11., 146.997 (1) (d) 12.,
5 154.01 (3) (b), 155.01 (1g) (c), 155.01 (7), 180.1901 (1m) (f), 252.14 (1) (ar) 7.,
6 252.14 (1) (ar) 8., 252.15 (1) (er), 253.10 (2) (f), 256.215 (2) (b), 257.01 (1) (a),
7 257.01 (1) (b), 303.08 (1) (f), 440.03 (9) (a) (intro.), 440.03 (9) (a) 2., 440.03 (13)
8 (b) (intro.), 440.03 (14) (am), 440.03 (14) (c), 440.03 (15), 440.032 (5), 440.043
9 (1), 440.08 (2) (title), 440.08 (2) (a) (intro.), 440.08 (2) (b), 440.08 (4) (a), 440.09
10 (title), 440.09 (1m) (c) 1., 440.094 (title), (1) (c) (intro.), 3., 4. and 5. and (2),
11 440.094 (1) (c) 14., 440.094 (3), 440.15, 440.26 (3), 440.26 (5m) (b), 440.313 (1),
12 440.415 (2) (a), 440.71 (3), 440.88 (4), 440.905 (2), 440.91 (1) (c), 440.91 (1m) (c),
13 440.91 (4), 440.92 (1) (c), 440.972 (2), 440.974 (2), 440.98 (6), 440.983 (1),
14 440.9935, 441.06 (3), 441.10 (6), 441.15 (3) (b), 442.083 (1), 442.083 (2) (a),
15 443.015 (1e), 443.07 (6), 443.08 (3) (b), 443.10 (2) (e), 443.10 (5), 445.06 (1),
16 445.07 (1) (a) and (b), 445.095 (1) (c), 445.105 (3), 446.01 (1v) (m), 446.02 (1) (b),
17 446.02 (4), 446.025 (3) (b), 446.026 (3) (b), 447.05 (1) (a), 447.055 (1) (a), 447.055
18 (1) (b) 1., 447.055 (1) (b) 2., 447.056 (1) (intro.), 447.056 (3), 447.058 (2) (b),
19 448.07 (1) (a), 448.08 (4), 448.13 (1) (a) 1., 448.13 (1) (a) 2., 448.13 (1m), 448.55
20 (2), 448.65 (2) (intro.), 448.665, 448.67 (4), 448.86 (2), 448.9545 (1) (a), 448.9545
21 (1) (b) (intro.), 448.955 (1), 448.955 (2) (a), 448.955 (3) (a), 448.956 (1) (c),
22 448.964 (1), 448.967 (2), 448.9703 (3) (a), 448.9706 (2), 448.971 (2), 448.972 (1),
23 448.973 (2), 448.974 (title), 448.974 (2) (am) 1., 448.978 (2) (intro.), 448.978 (2)
24 (a), 448.978 (2) (g), 449.06 (1), 449.06 (2m), 450.08 (1), 450.08 (2) (a), 450.08 (2)
25 (b), 450.085 (1), 450.10 (3) (a) 5., 450.10 (3) (a) 10., 450.10 (3) (a) 11., 451.04 (4),

1 452.05 (1) (d), 452.12 (1), 452.12 (5) (a), 452.12 (5) (c), 452.132 (2) (c), 454.06 (8),
2 454.08 (9), 454.23 (5), 454.25 (9), 455.06 (1) (a), 455.065 (7), 456.07 (2), 456.07
3 (5), chapter 457 (title), 457.01 (intro.), 457.01 (1c), 457.01 (1g), 457.01 (1r),
4 457.01 (1w), 457.01 (2r), 457.01 (7), 457.01 (10), 457.02 (intro.), (1), (2), (3), (4),
5 (5), (5m) and (6) (c), 457.03 (1), (1m) and (2), 457.033, 457.035 (1) and (2), 457.04
6 (1), (2), (3), (4), (5) (a) and (b), (6) and (7), 457.06 (intro.), 457.09 (2) (b) and (4)
7 (b) 1. and 2., 457.12 (title), 457.13 (1) (c), 457.14 (1) (f), 457.15 (3), 457.20 (1) and
8 (2), 457.20 (2), 457.22 (2), 457.24 (1), 457.26 (1) and (2) (intro.) and (h), 458.085
9 (3), 458.09 (3), 458.11, 458.13, 458.33 (5), 459.09 (1) (intro.), 459.09 (1) (b),
10 459.22 (2) (b), 459.24 (1) (a), 459.24 (1) (b), 459.24 (5) (intro.), 459.24 (5) (b),
11 459.34 (2) (intro.), 459.34 (2m) (a) (intro.), 459.34 (2m) (b), 459.34 (2m) (c),
12 459.34 (3), 460.07 (2) (intro.), 460.10 (1) (a), 462.02 (2) (e), 462.04, 462.05 (1),
13 466.04 (3) (a) (intro.), 470.045 (3) (b), 470.07, 480.08 (5), 632.89 (1) (e) 4., 632.895
14 (16) (b) 1. a., 800.035 (2m), 895.48 (1m) (a) (intro.), 905.04 (1) (bm), 905.04 (1)
15 (dm), 905.04 (1) (g), 971.14 (4) (a) and 990.01 (27s); **to repeal and recreate**
16 16.417 (1) (e) 3m., 252.15 (1) (am), 448.13 (title), 456.07 (title) and 632.89 (1)
17 (dm); and **to create** 13.0963, 14.835, 14.896, 14.8965, 14.897, 15.407 (19), 38.04
18 (34), 39.381, 71.05 (6) (b) 49. L., 71.07 (9g) (b) 2., 71.07 (9g) (c) 5., 89.073 (2) (g)
19 and (h), 106.276, 108.01 (2m), 108.04 (2) (a) 4. c., 108.04 (2) (a) 5., 108.04 (15)
20 (a) 2. b., 108.04 (15) (am) and (ao), 108.14 (8o), 108.14 (30), 111.335 (4) (jm),
21 440.023, 440.03 (11m) (c) 2c., 440.03 (11m) (c) 2u., 440.03 (11m) (c) 2ub., 440.03
22 (11m) (c) 2w., 440.03 (13) (bp), (bt) and (bx), 440.03 (13) (c) 1. i., 440.03 (13) (c)
23 1. ic., 440.03 (13) (c) 1. id., 440.03 (13) (c) 1. ie., 440.08 (2) (a) 1n., 2n., 3n. and
24 4n., 440.08 (2) (ag) (intro.), 440.08 (2) (ar), 440.08 (2r) (title), 440.08 (2r) (b),
25 440.08 (3m), 440.09 (1m) (title), 440.09 (1m) (b) 6. and 7., 440.09 (2g), 440.09

1 (2r), 440.094 (1) (c) 9g., 9m., 17. and 19., (d), (e) and (f), 440.094 (4), 440.20 (6),
2 440.88 (3) (d), 441.16 (3m), 443.015 (1c), 446.025 (3) (a) 2., 446.026 (3) (a) 2.,
3 448.05 (6) (av), 448.964 (3), 448.971 (1L), 448.971 (1m), 448.974 (1m), 448.974
4 (2) (bm), subchapter XIII of chapter 448 [precedes 448.988], 450.04 (4),
5 subchapter I (title) of chapter 457 [precedes 457.01], 457.01 (1t), 457.01 (5g),
6 457.01 (5m), 457.01 (5r), 457.01 (12), 457.08 (4m), 457.12 (1m) (bm) and (2m)
7 to (4m), 457.125, 457.16 (1) (b), 457.18, 457.25 (1g), subchapter II of chapter 457
8 [precedes 457.50], subchapter III of chapter 457 [precedes 457.70], 459.20 (2k),
9 459.20 (2m), 459.20 (3v), 459.24 (3c), 459.24 (3e), 459.30 and subchapter III of
10 chapter 459 [precedes 459.70] of the statutes; **relating to:** fall workforce
11 package; modifying administrative rules; extending the time limit for
12 emergency rule procedures; providing an exemption from emergency rule
13 procedures; and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Income tax rates

Beginning with the 2023 tax year, this bill decreases the individual income tax rate in the third tax bracket from 5.3 percent to 4.40 percent.

Under current law, there are four income tax brackets for single individuals, certain fiduciaries, heads of households, and married persons, and the brackets are indexed for inflation. The rate of taxation under current law for the lowest bracket for single individuals, certain fiduciaries, heads of households, and married persons is 3.50 percent of taxable income. The rate for the second bracket is 4.40 percent. The rate for the third bracket is 5.3 percent. And the rate for the highest bracket is 7.65 percent. Before bracket indexing, the four brackets for individuals, certain fiduciaries, and heads of households, to which the above rates apply, are as follows: 1) taxable income from \$0 to \$7,500; 2) taxable income exceeding \$7,500 but not exceeding \$15,000; 3) taxable income exceeding \$15,000 but not exceeding \$225,000; and 4) taxable income exceeding \$225,000.

Child and dependent care tax credit

Under current law, an individual who is eligible to claim the federal child and dependent care tax credit may claim a state income tax credit equal to 50 percent of the amount the individual may claim as a federal income tax credit. However, the

amount of employment-related expenses that an individual may claim to determine the amount of the federal credit is limited to \$3,000 if the individual has only one qualifying dependent, and \$6,000 if the individual has two or more qualifying dependents.

The bill increases the amount of the state credit that an individual may claim by increasing the employment-related expense limitation to \$10,000 for one qualifying dependent and \$20,000 for two or more qualifying dependents, and by allowing an individual to claim a state income tax credit equal to the full amount that the individual could claim for the federal child and dependent care credit determined using the individual's employment-related expenses.

Private school tuition deduction

Under current law, an individual, when computing income for income tax purposes, may deduct the tuition paid during the year to send his or her dependent child to private school. The maximum deduction is \$4,000 for an elementary school pupil and \$10,000 for a secondary school pupil.

This bill increases the maximum deduction to \$5,070 for an elementary school pupil and \$12,660 for a secondary school pupil. The bill also increases the amounts by the annual percentage change in the consumer price index for future tax years.

Reciprocal credentials

This bill creates a process for certain individuals who hold a license, certification, registration, or permit that was granted by another state to apply for and receive a reciprocal credential in this state. Under current law, an individual may not engage in certain professions or assume certain titles in this state unless the individual holds a credential issued by a department, examining board, or credentialing board with authority to oversee the profession or practice. Current law requires the Department of Safety and Professional Services, the Veterinary Examining Board, and any credentialing board attached to DSPS, with certain exceptions, to issue a reciprocal credential to a service member, former service member, or the spouse of a service member or former service member who resides in this state if certain conditions are met, including that the individual holds a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that qualifies the individual to perform the acts authorized under an appropriate credential granted in this state and that the individual's certification, registration, or permit is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual such a license, certification, registration, or permit.

The bill expands who may apply for reciprocal credentials to include all individuals and adds the further requirements that to receive a reciprocal credential in this state an individual may not have an arrest or conviction record; may not have any limitation, restriction, or other encumbrance on any credential issued by a governmental authority in another state that qualifies the individual to perform acts authorized under the appropriate reciprocal credential granted in this state; and may not be under investigation in another state related to any credential possessed by the individual that qualifies the individual to perform acts authorized under the appropriate reciprocal credential granted in this state. The bill does not allow

individuals to receive a reciprocal credential from the Accounting Examining Board or the Real Estate Examining Board that would grant the holder of the credential a limited right to practice law in this state, unless the applicant is licensed to practice law in this state.

Investigations of conviction records by DSPS

Current law prohibits employment discrimination on the basis of a conviction record and prohibits DSPS and the credentialing boards attached to DSPS from discriminating against applicants for credentials on the basis of a conviction record. However, current law allows DSPS and the credentialing boards attached to DSPS to refuse, bar, or terminate a credential due to a prior arrest, conviction, or other offense if the circumstances of the arrest, conviction, or offense are substantially related to the circumstances of the licensed activity. The bill allows DSPS to complete its investigation as to whether the circumstances of an arrest, conviction, or other offense are substantially related to the circumstances of a credentialed activity without reviewing the specific circumstances of the arrest, conviction, or other offense if the arrest, conviction, or other offense is a certain violation of state or local law, including all of the following:

1. A first conviction for a violation of a law or local ordinance that prohibits driving or operating a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance, or a controlled substance analog, or a combination of those, or of any drug that renders the person incapable of safely driving, if that first conviction occurred more than five years before the applicant applied for the credential.

2. A violation of a law or local ordinance that prohibits underage procurement, possession, or consumption of alcohol.

3. A minor, nonviolent ordinance violation, as determined by DSPS.

Further, the bill allows DSPS to accept, in lieu of completing its own investigation, a determination made by an applicant's employer or by a contracted entity on behalf of an applicant's employer that the applicant does not have an arrest, conviction, or other offense record or that the circumstances of an arrest, conviction, or other offense are not substantially related to the licensed activity. The bill requires that an applicant's employer, or a contracted entity on behalf of an applicant's employer, must attest that the determination was made to the best of the employer's or entity's knowledge and with a reasonable degree of certainty. Under the bill, DSPS must accept or reject such a determination within 30 days of receipt. Within the 30 days following receipt of a determination by an applicant's employer or a contracted entity on behalf of an applicant's employer that the applicant does not have an arrest, conviction, or other offense record, DSPS may review the determination and request additional information from the applicant before accepting or rejecting the determination. Finally, the bill provides that neither DSPS nor any credentialing board attached to DSPS may be subject to suit or found liable for damages resulting from acceptance of an employer's or entity's determination.

Prohibiting statutes and rules examinations for certain professions

The bill prohibits DSPS, the Board of Nursing, the Medical Examining Board, the Occupational Therapists Affiliated Credentialing Board, the Pharmacy

Examining Board, and the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board from requiring an applicant to pass a statutes and rules examination as a condition of licensure or certification for all of the following professions:

1. Substance abuse counselors, clinical substance abuse counselors, and substance abuse counselors-in-training.
2. Advanced practice nurse prescribers.
3. Respiratory care practitioners.
4. Occupational therapists and occupational therapy assistants.
5. Pharmacists.
6. Professional counselors.

The bill allows DSPS and the examining and credentialing boards to require an applicant for a credential to practice any of the professions listed above to affirm that the applicant has read and understands the statutes and rules that apply to the applicant's practice.

Credential renewal periods

Under current law, a two-year renewal period applies to many health and business credentials administered by DSPS or a credentialing board. The renewal date for each two-year period is specified by statute. The bill revises each two-year renewal period in the health and business professions to four-year renewal periods and makes various changes related to continuing education requirements for these credentials.

Current law requires DSPS to grant a temporary state credential to a health care provider who is credentialed in good standing in another state, pending an application for a permanent credential. The provider must apply for the temporary credential within 30 days of first providing services in Wisconsin and attest that the person is in good standing under the out-of-state credential and has applied for a permanent credential. The health care provider's employer must notify DSPS within 10 days of the person first providing services in Wisconsin and attest that the provider's credential and good standing have been confirmed to a reasonable degree of certainty. An employer's notification and attestation are not required if the person is only providing telehealth services.

To be in good standing under a credential from another state, the provider must hold a valid, unexpired credential and must not be under investigation or have any active restrictions or limitations on the person's credential. While practicing in Wisconsin under the temporary credential, a health care provider is subject to all responsibilities and limitations in the applicable practice.

The bill expands this process from health care providers to also include persons classified in the business professions with credentials in good standing in another state or territory. The bill revises the terminology for all health care and business profession applicants from a "temporary" credential to a "preliminary" credential. If an individual with a valid, unexpired credential from another state or territory applies for a preliminary credential under the process described above, the individual may provide health care or business services for an employer, under the preliminary credential, while an application for a permanent credential is pending.

While providing services under the preliminary credential, the person is subject to all responsibilities and limitations of the applicable state-issued credential.

The bill also adds the following health care professions that may apply for a preliminary credential, who are not included in current law: dental hygienists, expanded function dental auxiliaries, genetic counselors, radiographers, and naturopathic doctors.

Reciprocal credential information

Under current law, for health and business credentials administered by DSPS or a credentialing board, a specific reciprocal credential standard is typically specified for each credential, which establishes the eligibility criteria for issuing a reciprocal credential. A reciprocal credential is a credential issued to a person who already possesses a similar credential in another jurisdiction. Also known as licensure by endorsement, the process for granting a reciprocal credential typically allows an applicant who is already credentialed in another jurisdiction to receive a credential without having to provide all of the documentation or satisfy all of the criteria that would otherwise be required to be granted a credential. A commonly used standard specifies that a reciprocal credential may be granted if the other state's credentialing requirements are "substantially equivalent" to Wisconsin's credentialing requirements for the profession.

The bill requires DSPS to determine, for each health care provider credential, whether the profession's reciprocity standard requires an examination of the equivalence, comparability, or similarity of a prior issuing state's or territory's credentialing requirements. For each health care provider credential that DSPS determines applies this reciprocity standard, DSPS must review all other states' and territories' health care provider credentialing requirements, in consultation with the appropriate credentialing boards, to determine whether each other state's or territory's laws qualify for purposes of granting a reciprocal health care provider credential under state law.

DSPS must post the results of its review on its website and must update the review at least every four years.

Audiology and Speech-Language Pathology Interstate Compact

This bill ratifies and enters Wisconsin into the Audiology and Speech-Language Pathology Interstate Compact, which allows a speech-language pathologist or audiologist licensed in one member state to obtain a "compact privilege" to practice in a remote state without obtaining a license in that remote state.

PA Licensure Compact

This bill ratifies and enters Wisconsin into the PA Licensure Compact, which provides for the ability of a physician assistant to become eligible to practice in other compact states.

Social Work Licensure Compact

This bill ratifies and enters Wisconsin into the Social Work Licensure Compact, which provides for the ability of a social worker to become eligible to practice in other compact states.

Counseling Compact

This bill ratifies and enters Wisconsin into the Counseling Compact, which provides for the ability of a professional counselor to become eligible to practice in other compact states.

Decennial review of occupational licensure requirements

This bill establishes a decennial process for review of the state's occupational licensure requirements.

The bill creates the Occupational License Review Council. The council is created in DSPS and consists of the following members:

1. Four members appointed by the governor to serve at the pleasure of the governor.
2. Two members of the senate appointed by the senate majority leader.
3. Two members of the assembly appointed by the speaker of the assembly.
4. The secretary of safety and professional services or his or her designee, who serves as the council's chair. The secretary or designee is a nonvoting member, except that he or she may vote in the case of a tie.

The council must submit a report by December 31, 2024, to the governor, the chief of the Legislative Reference Bureau, and the legislature that includes the council's recommendations for the elimination of occupational licenses in this state, or the modification of laws and rules governing occupational licenses, and the reduction or elimination of occupational license—continuing and other education requirements. The council's recommendations for the elimination of occupational licenses must take into account a number of considerations, including any statement or analysis provided by the agency or board administering an occupational license and including an evaluation of whether the unregulated practice of the profession, occupation, or trade can clearly harm or endanger the health, safety, or welfare of the public.

Under the bill, the LRB must prepare legislation based on the council's recommendations, and the proposed legislation must be introduced without change and referred to the appropriate standing committee of each house. The legislature must take final action on the proposed legislation no later than June 30, 2025.

The bill provides that a new council convenes every 10 years to repeat the process described above.

Under the bill, for purposes of the council's functions, the term "occupational license" means any license, permit, certification, registration, or other approval granted by DSPS or a board under DSPS and any other license, permit, certification, registration, or approval granted to a person by this state in order that the person may engage in a profession, occupation, or trade or use one or more titles in association with his or her profession, occupation, or trade.

Reports on proposed legislation requiring occupational and business licenses

This bill requires the Department of Administration to prepare a report containing certain information on any bill that is introduced in the legislature that requires an individual to obtain a license in order to engage in a particular profession or occupation or that requires that a license be obtained in order for a particular type

of business to be owned or operated. The LRB must submit to DOA any bill to which the requirement applies, and the report must be distributed before certain actions are taken on the bill in the legislature.

Provider Assistance for Licensing

The bill requires the Wisconsin Economic Development Corporation, no later than March 1, 2024, to request the Joint Committee on Finance to supplement an appropriation for child care to be used for the Provider Assistance for Licensing program (PAL). Under the bill, PAL is a program to assist unregulated providers of child care in becoming certified child care providers or licensed child care centers through methods including grant funding; waiver of licensure fees; and assistance with compliance with regulations, training and certification, and completing background checks.

Apprenticeship grants for technical college and tribal college students

This bill creates grant programs under which the Technical College System Board and Higher Educational Aids Board may award grants of up to \$1,500 to technical college students and tribal college students, respectively, who have undertaken an apprenticeship program in conjunction with their course of instruction at the technical college or tribal college. These grants may be awarded only to pay for the students' actual materials expenses, such as the cost of tools, equipment, and clothing, associated with the apprenticeship program. Among the requirements for a student to be eligible for a grant, the student must be enrolled in the apprenticeship program in the semester in which the grant is made and in the following semester.

Commercial driver's license training grants

This bill requires the Department of Workforce Development to establish a commercial driver training grant program. Under the program, DWD provides grants to persons or other entities that provide training leading to an individual who resides in this state receiving a commercial driver's license (CDL) in this state. The training must, in order to qualify for a grant, satisfy entry-level driver training requirements established by the Federal Motor Carrier Safety Administration (FMCSA), including that the grant applicant be listed on the FMCSA's registry of approved training providers. The bill further requires that a grant applicant have a facility in this state that is listed in the registry, and that the training be provided at or through that facility. Grants under the bill may not exceed, for each individual trained, 50 percent of the costs of training the individual in the operation of commercial motor vehicles or \$3,000, whichever is less. DWD may not award grants for applications to participate in the training program received after June 30, 2025.

Unemployment insurance; general qualifying requirements

Under current law, a claimant for unemployment insurance (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 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.

Unemployment insurance; 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.

Unemployment insurance; 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.

Unemployment insurance; 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.

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

1 **SECTION 1.** 13.0963 of the statutes is created to read:

2 **13.0963 Review of bills creating occupational licenses. (1) DEFINITION.**

3 In subs. (2) and (3), “license” includes any permit, certificate, approval, registration,
4 charter, or similar form of permission.

5 **(2) REPORT ON BILLS CREATING OCCUPATIONAL LICENSES.** (a) If any bill that is
6 introduced in either house of the legislature creates a requirement that an individual
7 obtain a license in order to engage in a particular profession or occupation or a
8 requirement that a license be obtained in order for a particular type of business to
9 be owned or operated, the department of administration shall prepare and issue an
10 occupational license report on the bill within 30 business days after it is introduced.
11 The department shall request information from any individual or business that the
12 department considers likely to be affected by the proposed licensure requirement
13 and shall request a statement or analysis from the agency that would be required to

1 2m. The applicant has a facility in this state that is listed in the Training
2 Provider Registry described in subd. 2., and the training described in subd. 1. is
3 provided at or through that facility.

4 3. The individual for whom the applicant provides training under subd. 1.
5 obtains an initial commercial driver license, as defined in s. 340.01 (7m), in this state
6 after the effective date of this subdivision ... [LRB inserts date].

7 4. The application is received by the department before July 1, 2025.

8 (d) The department may award grants to eligible applicants under par. (c). The
9 amount of a grant under this section with regard to each individual trained may not
10 exceed 50 percent of the costs of training the individual in the operation of
11 commercial motor vehicles or \$3,000, whichever is less.

12 **(2)** Before July 1 of each year, the department shall prepare a report
13 summarizing the number and amount of grants awarded under sub. (1). The
14 department shall submit the report to the appropriate standing committees of the
15 legislature under s. 13.172 (3).

16 **SECTION 46.** 106.276 of the statutes, as created by 2023 Wisconsin Act ... (this
17 act), is repealed.

18 **SECTION 47.** 108.01 (2m) of the statutes is created to read:

19 108.01 **(2m)** The federal Social Security Act requires that, in order for an
20 individual to be eligible for reemployment assistance benefits, the individual must
21 be able to work, available to work, and actively seeking work. The unemployment
22 insurance program in Wisconsin should enact and focus on policies that complement
23 individuals' efforts to find employment.

24 **SECTION 48.** 108.04 (2) (a) 3. of the statutes is amended to read:

1 108.04 (2) (a) 3. The claimant conducts a reasonable search for suitable work
2 during that week and provides verification of that search to the department. The
3 search for suitable work must include at least 4 actions per week that constitute a
4 reasonable search as prescribed by rule of the department. The department shall
5 require, for the 3rd or subsequent week of the claimant's benefit year, that at least
6 2 actions per week be direct contacts with potential employing units, as prescribed
7 by rule of the department. In addition, the department may, by rule, require a
8 claimant to take more than 4 reasonable work search actions in any week. The
9 department shall require a uniform number of reasonable work search actions for
10 similar types of claimants. The department may require a claimant to apply for one
11 or more of the potential opportunities provided to the claimant under sub. (15) (a) 1.
12 and may refer a claimant to opportunities with a temporary help company as part
13 of the required search for suitable work under this subdivision.

14 **SECTION 49.** 108.04 (2) (a) 4. of the statutes is renumbered 108.04 (2) (a) 4.
15 (intro.) and amended to read:

16 108.04 (2) (a) 4. (intro.) If the claimant is claiming benefits for a week other
17 than an initial week, the claimant ~~provides~~ does all of the following:

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

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

23 **SECTION 50.** 108.04 (2) (a) 4. c. of the statutes is created to read:

1 108.04 (2) (a) 4. c. Submits and keeps posted on the department's job center
2 website a current resume, if the claimant resides in this state.

3 **SECTION 51.** 108.04 (2) (a) 5. of the statutes is created to read:

4 108.04 (2) (a) 5. The claimant completes any reemployment counseling session
5 required of the claimant under sub. (15) (ao) 1.

6 **SECTION 52.** 108.04 (15) (a) (intro.) and 1. of the statutes are consolidated,
7 renumbered 108.04 (15) (a) 1. and amended to read:

8 108.04 (15) (a) 1. Except as provided in par. (b), the department ~~may do any of~~
9 ~~the following shall~~, for the purpose of assisting claimants to find or obtain work: ~~1.~~
10 ~~Use, use the information or, materials, and resume~~ provided under sub. (2) (a) 4. to
11 assess a claimant's efforts, skills, and ability to find or obtain work and to develop
12 a list of potential opportunities for ~~a~~ the claimant to obtain suitable work. ~~A~~
13 ~~claimant who otherwise satisfies the requirement under sub. (2) (a) 3. is not required~~
14 ~~to apply for any specific positions on the list in order to satisfy that requirement~~ The
15 department shall provide each claimant, prior to the claimant filing a weekly claim
16 for benefits, with at least 4 such potential opportunities each week, one or more of
17 which may be opportunities with a temporary help company.

18 **SECTION 53.** 108.04 (15) (a) 2. of the statutes is renumbered 108.04 (15) (a) 2.
19 a. and amended to read:

20 108.04 (15) (a) 2. a. ~~Require~~ Except as provided in par. (b), the department shall
21 require a claimant whom the department identifies as likely to exhaust regular
22 benefits to participate in a public employment office workshop or training program
23 or in similar reemployment services that do not charge the claimant a participation
24 fee and that offer instruction to improve the claimant's ability to obtain suitable
25 work.

1 **SECTION 54.** 108.04 (15) (a) 2. b. of the statutes is created to read:

2 108.04 (15) (a) 2. b. Except as provided in par. (b), in addition to the claimants
3 described in subd. 2. a., the department may require other claimants to participate
4 in the reemployment services described in subd. 2. a., but the department shall
5 prioritize claimants who are more likely to have difficulty obtaining reemployment.

6 **SECTION 55.** 108.04 (15) (am) and (ao) of the statutes are created to read:

7 108.04 (15) (am) In carrying out this state's program of reemployment services
8 and eligibility assessments using grant funds awarded under 42 USC 506, the
9 department shall, except as provided in par. (b), provide reemployment services to
10 all claimants receiving benefits, including benefits under ss. 108.141 and 108.142,
11 including by doing all of the following for each such claimant:

12 1. Requiring the claimant to complete an online assessment aimed at
13 identifying the claimant's skills, abilities, and career aptitude.

14 2. Coordinating with the claimant to develop an individualized employment
15 plan for the claimant.

16 3. Requiring the claimant to participate in the services described under par. (a)
17 2. a. as needed pursuant to the individualized employment plan described in subd.
18 2.

19 (ao) Except as provided in par. (b), the department shall, when a claimant's
20 remaining benefit entitlement under s. 108.06 (1) is 3 or less times the claimant's
21 weekly benefit rate under s. 108.05 (1), do all of the following:

22 1. Require the claimant to participate in a live, one-on-one reemployment
23 counseling session between the claimant and an employee of the department.

24 2. Provide the claimant information about services and benefits that are
25 available to the claimant pursuant to the federal Workforce Innovation and

1 Opportunity Act of 2014, 29 USC 3101 to 3361, once the claimant exhausts his or her
2 benefit entitlement.

3 **SECTION 56.** 108.133 (2) (a) (intro.) of the statutes is amended to read:

4 108.133 (2) (a) (intro.) ~~Promulgate~~ Immediately promulgate rules to establish
5 the program. The department shall do all of the following in the rules promulgated
6 under this paragraph:

7 **SECTION 57.** 108.133 (2) (am) of the statutes is amended to read:

8 108.133 (2) (am) ~~Promulgate~~ Immediately promulgate rules identifying
9 occupations for which drug testing is regularly conducted in this state. The
10 department shall notify the U.S. department of labor of any rules promulgated under
11 this paragraph.

12 **SECTION 58.** 108.14 (8o) of the statutes is created to read:

13 108.14 (8o) The department shall act to continue to receive grants for
14 reemployment services and eligibility assessments under 42 USC 506.

15 **SECTION 59.** 108.14 (30) of the statutes is created to read:

16 108.14 (30) (a) The department shall, on at least a weekly basis, perform a
17 comparison of recipients of benefits under this chapter against all of the following for
18 the purpose of detecting fraud or erroneous payments:

19 1. Nationally recognized databases that contain information on death records,
20 including the federal social security administration's death master file.

21 2. The National Association of State Workforce Agencies' integrity data hub.

22 3. The national directory of new hires maintained by the office of child support
23 enforcement in the U.S. department of health and human services.

24 4. Prisoner databases maintained by the department of justice, the department
25 of corrections, and the U.S. department of justice.

1 unregulated providers of child care in becoming certified child care providers under
2 s. 48.651 or licensed child care centers under s. 48.65 through methods including
3 grant funding; waiver of licensure fees; and assistance with compliance with
4 regulations, training and certification, and completing background checks under s.
5 48.686.

6 **SECTION 9150. Nonstatutory provisions; Workforce Development.**

7 (1) UNEMPLOYMENT INSURANCE; WORK SEARCH. The department of workforce
8 development shall submit a notice to the legislative reference bureau for publication
9 in the Wisconsin Administrative Register when the department determines that the
10 department has any rules in place that are necessary to implement the treatment of
11 s. 108.04 (2) (a) 3. by this act.

12 **SECTION 9328. Initial applicability; Legislature.**

13 (1) OCCUPATIONAL LICENSE REPORTS. The treatment of s. 13.0963 first applies to
14 a bill introduced on the effective date of this subsection.

15 **SECTION 9350. Initial applicability; Workforce Development.**

16 (1) UNEMPLOYMENT INSURANCE; WORK SEARCH. The treatment of s. 108.04 (2) (a)
17 3. first applies with respect to weeks of unemployment beginning on the effective
18 date of this subsection.

19 (2) UNEMPLOYMENT INSURANCE; VARIOUS CHANGES. The renumbering and
20 amendment of s. 108.04 (2) (a) 4. and (15) (a) 2., the consolidation, renumbering, and
21 amendment of s. 108.04 (15) (a) (intro.) and 1., and the creation of s. 108.04 (2) (a)
22 4. c. and 5. and (15) (a) 2. b., (am), and (ao) first apply with respect to weeks of
23 unemployment beginning on the effective date of this subsection.

24 **SECTION 9400. Effective dates; general.** Except as otherwise provided in

25 SECTIONS 9428 to 9450 of this act, this act takes effect on the day after publication.

1 (title) and (b), and (3m), 440.20 (6), 443.015 (1c), 446.025 (3) (a) 2., and 446.026 (3)
2 (a) 2. take effect on the 6th month beginning after publication.

3 **SECTION 9450. Effective dates; Workforce Development.**

4 (1) COMMERCIAL DRIVER'S LICENSE TRAINING GRANTS. The repeal of s. 106.276
5 takes effect on July 1, 2025.

6 (2) UNEMPLOYMENT INSURANCE; WORK SEARCH. The treatment of s. 108.04 (2) (a)
7 3. and SECTION 9350 (1) of this act take effect on the Sunday after the notice under
8 SECTION 9150 (1) of this act is published in the Wisconsin Administrative Register or
9 on December 31, 2023, whichever occurs first.

10 (3) UNEMPLOYMENT INSURANCE; VARIOUS CHANGES. The treatment of ss. 108.01
11 (2m), 108.133 (2) (a) (intro.) and (am), and 108.14 (8o) and (30), the renumbering and
12 amendment of s. 108.04 (2) (a) 4. and (15) (a) 2., the consolidation, renumbering, and
13 amendment of s. 108.04 (15) (a) (intro.) and 1., and the creation of s. 108.04 (2) (a)
14 4. c. and 5. and (15) (a) 2. b., (am), and (ao) and SECTIONS 9150 (1) and 9350 (2) of this
15 act take effect on the first Sunday after publication.

16 (END)

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.

D23-05
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.

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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.

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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,~~

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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~~

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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.

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 Reform Ideas for 2023-2024 Session

Program Integrity Measures

- **Work Search Verification** - Require the Department to verify work search information reported by at least 50% of claimants to ensure the work searches are legitimate.
- **Ghosting Portal for Employers** – Create an online portal that allows employers to report to the Department a job applicant’s refusal of work, a refusal of an offer to attend a job interview, a no-show for a scheduled job interview with an applicant, or a no-show for their first day of work.
- **Federal Unemployment Funds** – Require the Legislature and Governor to approve an increase in federally-funded unemployment benefits.
- **Identity Verification** – Require the Department to verify an applicant’s identity prior to awarding benefits. Require multi-factor identification to ensure validity of applicants. Match applicant data against death records, inmate records, employment records, and current UI recipients to prevent fraudulent benefits. In addition, require department staff to flag benefit applications with duplicate, out-of-state, or foreign I.P. addresses for further review, as well as applicants who use the same bank account or mailing address.

Other Items

- **Union Referral Service Reporting Requirement** – Require union hiring halls/referral services to report to the Department within 24 hours each instance where a worker refuses an offer of work.
- **Definition of Employee vs. Independent Contractor** – Establish a clear, consistent and objective standard to define the difference between an employee and an independent contractor. The definition should apply universally across all chapters of the statutes (e.g. UI, Workers Compensation, Wage & Hour, Equal Rights, DOR tax administration, etc.), and should account for new “gig economy” economic opportunities. Specific language attached.
- **Quit Good Cause Revision** – Repeal the quit good cause exception under s. 108.04(7)(e).

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

- **Link Benefit Eligibility Weeks to Unemployment Rate** – Under current law individuals that are eligible for unemployment are generally entitled to 26 weeks of benefits. The average benefit duration has historically been about 14 weeks. This proposal would reduce the weeks of unemployment eligibility as follows, based upon the unemployment rate.

State Unemployment Rate	Weeks of Benefit Eligibility
Less than or equal to 5.0%	16
5.0% to 6.0%	18
6.1% to 7.0%	20
7.1% to 8.0%	22
8.0% to 10%	24
Greater than 10%	26

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

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

Misconduct & Substantial Fault Clarification – Draft Language

(5) DISCHARGE FOR MISCONDUCT. An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for

misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, "misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer. In addition, "misconduct" includes:

- (a) A violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee:
 1. Had knowledge of the alcohol beverage or controlled substance policy; and
 2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.
- (b) Theft or unauthorized possession of an employer's property or services with intent to deprive the employer of the property or services permanently, theft or unauthorized distribution of an employer's confidential or proprietary information, use of an employer's credit card or other financial instrument for an unauthorized or non-business purpose without prior approval from the employer, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes the destruction of an employer's records or substantial damage to his or her employer's property.
- (c) Conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for his or her employer.
- (d) One or more threats or acts of harassment, assault, or other physical violence instigated by an employee at the workplace of his or her employer.
- (e) Absenteeism or tardiness by an employee that constitutes any of the following, unless the employee provides his or her employer with both advance notice and one or more valid reasons for each instance of absenteeism or tardiness:
 1. More than 2 occasions absences within the 120-180-day period before the date of the employee's termination; or
 2. One or more occasions absences if prohibited by unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature; or
 3. More than 3 instances of excessive tardiness by an employee in violation of the employer's normal business hours or a policy of the employer that has been communicated to the employee; if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.
- (f) Unless directed by an employee's employer, falsifying business records of the employer.
- (g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has

been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

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

(5g) DISCHARGE FOR SUBSTANTIAL FAULT.

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

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.
2. One or more inadvertent errors made by the employee, unless the error violates a written policy of the employer, endangers the safety of the employee or another person, causes bodily harm to the employee or another person, or the error is repeated after the employer warns the employee about the error.
3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

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

Worker Classification Proposed Language

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

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

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

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

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

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

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

1. With the exception of the exercise of control necessary to ensure compliance with statutory, regulatory, licensing, permitting, contractual or other similar obligations, or to protect persons and/or property, or to protect a franchise brand, the person has the right to control the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work. This provision is satisfied even though the employer may provide orientation, information, guidance, or suggestions about the employer's products, business, services, customers and operating systems, and training otherwise required by law.
2. Except for an agreement with the employer relating to final completion or final delivery time or schedule, range of work hours, or the time entertainment is to be presented if the work contracted for is entertainment, the person has control over the amount of time personally spent providing services.
3. Except for services that can only be performed at specific locations, the person has control over where the services are performed.
4. The person is not required to work exclusively for one employer unless:
 - i. A law, regulation or ordinance prohibits the person from providing services to more than one employer; or
 - ii. A license or permit that the person is required to maintain in order to perform the work limits the person to working for only one employer at a time or requires identification of the employer.
5. The person is free to exercise independent initiative in soliciting others to purchase his or her services.
6. The person is free to hire employees or to contract with assistants, helpers, and/or substitutes to perform all or some of the work.

7. The person cannot be required to perform additional services without a new or modified contract.
8. The person obtains a license or other permission from the employer to utilize any workspace of the employer in order to perform the work for which the person was engaged.
9. The employer has been subject to an employment audit by the Internal Revenue Service or the department and the IRS or the department has not reclassified the person to be an employee or has not reclassified the category of workers to be employees.
10. The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications or permits required to perform the services.

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

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

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

2023 UIAC Proposal Exchange

- 1.) Increase the weekly benefit rate for UI Claimants
 - a.) Many states including Wisconsin base their UI maximum benefit rate off the average weekly wage for that state.
 - b.) A few examples of our bordering states are as follows: (estimates)
 - 1.) Minnesota is based off 66% of a weekly rate of \$1341.
 - 2.) Illinois is based off 54% of a weekly rate of \$1399.
 - 3.) Indiana is based off 37% of a weekly rate of \$1117.
 - 4.) Iowa is based off 59% of a weekly rate of \$1103.
 - 5.) Wisconsin is based off 33% of a weekly rate of \$1139.
 - c.) Minnesota sets their percentage to index annually while Wisconsin's rate is fixed.
 - d.) Propose to raise Wisconsin's maximum benefit rate percentage to 47% in 2023 and then in 2024 adjust the rate to 55%. (Example = $\$1139 \times 47\% = \535.00)
- 2.) Currently the one week waiting period is only applicable once per benefit year. Propose to limit the one-week waiting period to be used only once every three benefit years prospectively.
- 3.) Increase the UI Wage Base.
 - a.) The current wage base is set at \$14,000. Create a one-time increase of \$1,500 for Jan 1, 2025, which would bring base to \$15,500.

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



COUNCIL CONVERGENCE

Oct. 25-26, 2023

Governor's Council on Migrant Labor

Governor's Council on Workforce
Investment (CWI)

Health Care Provider Advisory
Committee (HCPAC)

Self-Insurers Council

Unemployment Insurance Advisory
Council (UIAC)

Veteran's Employment Council

WI Agriculture Education & Workforce
Development Council (WAEWDC)

WI Apprenticeship Advisory Council

WI Rehabilitation Council (WRC)

Workers Compensation Advisory
Council (WCAC)

Today's Agenda



- **Welcome and Update**
Amy Pechacek, DWD Secretary
- **Council Roles and Responsibilities**
Pam McGillivray, DWD Deputy Secretary
- **Wisconsin Apprenticeship Council**
Elizabeth Pusch, DWD Bureau of Apprenticeship Standards Deputy Director
- **Governor's Council on Migrant Labor**
Katie Mueller, DWD Migrant & Seasonal Farmworker Program Section Chief
- **2023 Wisconsin Public Records Training**
Jennifer Wakerhauser, DWD Chief Legal Counsel





Workforce Development Advisory Councils



Divisions:

- Administrative Services
- Vocational Rehabilitation
- Employment and Training
- Equal Rights
- Worker's Compensation
- Unemployment Insurance



Disability Employment Services



Registered & Youth Apprenticeship



Unemployment Insurance Benefits



Veterans Employment Services



Civil Rights & Labor Standards



Worker's Compensation



65.8%

Labor Force
Participation

Record High

3M+

Nonfarm Jobs
**3 months in
a row!**

3.1%

Low
Unemployment



Worker Quantity **Challenge**

Innovative
Solutions





Wisconsin's Workforce Development Boards and DWD present:

WINNING WITH WISCONSIN'S WORKFORCE

Southeastern Works · Employ Milwaukee, Inc. · WOW Workforce Development Board · Fox Valley Workforce Development Board · Bay Area Workforce Development Board · North Central Wisconsin Workforce Development Board · Northwest Wisconsin Workforce Investment Board · West Central Works · Western Wisconsin Workforce Development Board · Workforce Development Board of South Central Wisconsin · Southwest Wisconsin Workforce Development Board



**Governor's Task
Force on Workforce
& Artificial Intelligence**



Council Roles & Responsibilities



DWD Agency Responsibilities





Wisconsin Apprenticeship Advisory Council

Where We've Been



- Registered Apprenticeship (RA) started in Wisconsin in 1911 with a law that required apprentices to be registered with the state.
- RA spurred the development of our current Wisconsin Technical College System, originally called the Wisconsin Vocational, Technical and Adult Education system.



Wisconsin First



- First registered apprenticeship program in the country.
- Started with a patternmaker in 1912 who was registered with the state making \$0.10 per hour.
- The federal model of apprenticeship was based on Wisconsin's model and started in 1937.



Where We're Going



- Today, we have over 15,000 apprentices participating in our Wisconsin Apprenticeship system:
 - Training in more than 200 different apprenticeship occupations.
 - Includes new occupations in healthcare, IT, and transportation.
- Wisconsin had a record number of Youth Apprenticeship (YA) participants in the 2021-22 school year with over 6,400.
 - More than 4,400 employers sponsored YA participants.
- 165 YA participants bridged into RA after graduation.

The Council



- Wisconsin Apprenticeship Advisory Council
- Advisory to the Bureau of Apprenticeship Standards (BAS)
- 22 Members

9 members
representing
employers,
1 co-chair

9 members
representing
labor,
1 co-chair

2 public
members

1 DPI
representative

1 WTCS
representative

Council Activities



- Revised the state apprenticeship manual in 2021.
- Assisted in leading the implementation of the Wisconsin pre-apprenticeship program.
- Helped lead the BAS outreach campaign.
- Currently working with BAS on building mentoring strategy and resources for sponsors to better mentor their apprentices.
- Assist BAS in the continued expansion and upkeep of the Wisconsin apprenticeship system.



James Cook, NECA-IBEW



James Cook serves as Statewide Apprenticeship Coordinator and Training Director for Wisconsin NECA-IBEW.

James has served on the Council since 2016.

The background of the slide is a photograph of agricultural workers in a field. In the foreground, a person wearing blue jeans and brown work boots is walking through rows of green plants. In the background, other workers are visible, some using tools. The sky is overcast. A large blue circular graphic is overlaid on the bottom right of the image, containing the title text.

Governor's Council on Migrant Labor

Wisconsin Migrant Labor Law



- Provides protections for seasonal agricultural migrant labor.
- These protections cover more than 5,000 migrant agricultural workers annually.
- This seasonal agricultural workforce is essential to Wisconsin and the nation's food supply chain.

Governor's Council on Migrant Labor



- Required as part of Wisconsin's migrant labor law.
- Representation from migrant advocacy groups, employers of migrant workers, and legislators.
- Advise DWD on any matter affecting migrant workers:
 - Housing
 - Work conditions
 - Transportation
 - Recruitment
 - Unemployment Insurance

UI Navigator Grant



- Employers and advocates worked together.
- Recommended additional Unemployment Insurance (UI) assistance to seasonal agricultural migrant workers.
- Department applied for and received the UI Navigator Grant.
- Grantee, United Migrant Opportunity Services (UMOS), is providing outreach and UI assistance to seasonal agricultural migrant workers and other underrepresented populations.



Jose Martinez of UMOS, Inc.

Jose Martinez is the Chief Operating Officer at UMOS.

Jose is currently serving his second term on the Governor's Council on Migrant Labor.

A Desire to Serve: Why?



- Ability to make valuable contributions
- Unique skills, experiences, perspectives
- Understand the importance of being actively involved in shaping policies and initiatives that impact the lives of individuals and families in Wisconsin
- Passion for public service

A Desire to Serve: Other Factors



- Attended the council's meetings and witnessed the positive impact
- Became convinced of the potential for meaningful change through my involvement
- Felt compelled to seize this opportunity to shape the future of our state
- Belief in the power of collective action to drive change

A Desire to Serve: Cementing My Decision



- Recognized the value of having a variety of perspectives and experiences represented
- Driven by a deep sense of responsibility
- Opportunity to leverage my skills and experiences to make a meaningful difference in people's lives
- Fulfills my duty as a responsible and engaged member of society to foster progress, equality, and prosperity for all

My Journey as a Council Member



- Appointed to serve in June 2020; reappointed in June 2023
- Addressed the unique challenges migrant workers face, striving to create a more equitable and inclusive environment for them
- Collaborated with stakeholders and recommended policies and initiatives to improve living and working conditions for migrant laborers in Wisconsin

Final Thoughts



- Interacted directly with Farmworkers via public hearings, listening to their experiences, concerns, and aspirations
- Worked toward fostering stronger partnerships with employers and industries that heavily rely on mobile Farmworkers
- Aimed to build understanding and encourage responsible business practices to create a win-win for employers and laborers

Final Thoughts



- Actively participated in conferences, seminars, and workshops related to migrant labor issues
- Aimed to develop innovative solutions and strategies to address the ever-evolving challenges faced by migrant workers
- I am eager to build upon the progress made during my first term and strive for a future where all individuals, regardless of their background, can thrive and prosper



2023 Wisconsin Public Records Training

Wisconsin Public Records Law



- Wis. Department of Justice – Office of Open Government, October 2019: www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf
- Wis. Stat. § 19.31: The public records law “shall be construed in every instance with a **presumption of complete public access, consistent with the conduct of government business.** Denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”

Retention v. Disclosure



- “The public records law addresses the duty to disclose records; it does not address the duty to retain records.”

State ex rel. Gehl v. Connors, 2007 WI App 238, ¶ 15, 306 Wis. 2d 247, 257, 742 N.W.2d 530, 535.

- Retention requirements are outlined in Wis. Stat. § 16.61 and the Records Disposition Authority or RDA applicable to your council, board, or committee.

Must Produce Records Upon Request



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

Wis. Stat. § 19.32(2)

Not a “Record”



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

Materials Stored on Private Accounts



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

Sufficient Request



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

Response



As soon as practicable, without delay:

- Provide records;
- Deny or give partial denial; or
- Respond that there are no records.

Is it a Public Records Request?



- Someone calls you and asks for all minutes of meetings held by your council during 2022.
- Is that a public records request?

Is it a Public Records Request?



- Someone calls you and asks for all minutes of meetings held by your council during 2022.
- Is that a public records request?

Yes, because it's a specific request for a government record.

Is it a Public Records Request?



- What if, you receive a different call, later in the day, asking if your council held any meetings in 2022.
- Is that a public records request?

Is it a Public Records Request?



- What if, you receive a different call, later in the day, asking if your council held any meetings in 2022.
- Is that a public records request?

No, because the individual did not ask for a record.

If You Receive a Records Request



- DWD will assist with the response.
- Do not delay – forward the request to DWD Legal:
OpenRecords@dwd.wisconsin.gov
- Note, you may need to search for responsive records.



2023 Wisconsin Public Records Q&A

Q: If you have a public record, how long do you have to keep it?



- A. Until you run out of room in your office.
- B. As long as required by the retention schedule.
- C. Forever.
- D. Six years.

Q: If you have a public record, how long do you have to keep it?

- A. Until you run out of room in your office.
- B. As long as required by the retention schedule.**
- C. Forever.
- D. Six years.

Q: How soon must an agency respond to a public records request?



- A. Within five days.
- B. Immediately.
- C. Once staff can get to it after completing all their other responsibilities.
- D. As soon as practical and without delay.

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Q: Must a person who wishes to submit a public records request put it in writing?



- Yes
- No

Q: Must a person who wishes to submit a public records request put it in writing?



Yes

No

Public records requests can be delivered verbally or in writing.

Q: Text messages or emails on your personal devices that discuss government business are public records.



- True
- False

Q: Text messages or emails on your personal devices that discuss government business are public records.



- True
- False

Please direct all public records questions to:



Jennifer Wakerhauser

DWD Chief Legal Counsel

JenniferL.Wakerhauser@dwd.wisconsin.gov



Questions?