



Unemployment Insurance Advisory Council

Meeting Agenda

November 16, 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): 2662 334 5684 Password: DWD1

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

1. Call to order and introductions
2. Approval of minutes of the October 26, 2023 UIAC meeting
3. Department update
4. Trust Fund update – Shashank Partha
5. Quarterly report on UI information technology systems ([7/1/23-9/30/23](#))
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 – Revised
 - D23-05 – Electronic Communication and Filing
7. Rulemaking proposal
 - Proposed scope statement for UI hearings - DWD 140
8. Labor and Management proposals to amend the unemployment insurance law
9. Research requests
10. 2023-2024 UIAC timeline
11. Future meeting dates: Dec. 21, Jan. 18, Feb. 15, Mar. 21, Apr. 18
12. Adjourn

Notice

- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may not address all agenda items or follow the agenda order.
- ❖ The Council members may attend the meeting by teleconference or videoconference.
- ❖ The employee or employer representative members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items listed in this agenda, under Wis. Stat. § 19.85(1)(ee). The Council may then reconvene again in open session after the closed session.
- ❖ This location is accessible to people with disabilities. If you need an accommodation, including an interpreter or information in an alternate format, please contact the UI Division Bureau of Legal Affairs at 608-266-0399 or dial 7-1-1 for Wisconsin Relay Service.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development

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

October 26, 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), David Bohl, Sally Feistel, Corey Gall, Mike Gotzler, Shane Griesbach, Christopher Harris, Scott Manley, Susan Quam, and Kathy Thornton-Bias

Department Staff: Amy Pechacek (Secretary), Jim Chiolino (UI Division Administrator), Andy Rubsam, Jim Moe, Jason Schunk, Linda Hendrickson, Jeff Laesch, Helen Ramsden, Mike Myszewski, Jennifer Wakerhauser (Chief Legal Counsel), Shanin Brown, Arielle Exner, John Dipko, Mike Mosher, and Joe Brockman

Members of the Public: Victor Forberger (Attorney, Wisconsin UI Clinic), Brenda Lewison (Legal Action Wisconsin) and Jon Minneci

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:07 a.m. under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

2. UI Modernization Update – Secretary Amy Pechacek

Secretary Pechacek thanked the Council members for their service and work on the Council.

Secretary Pechacek described the situation the Department's UI Division faced during the Pandemic with a mainframe computer system that was 50 years old. She then described the solutions the Department utilized to deal with a backlog of more than 770,000 claims. Using these solutions, the backlog was eliminated in a matter of weeks.

Secretary Pechacek stated that the Department is now updating the computer system in a series of incremental steps. Among these updates are a new claimant portal, an updated claimant handbook, call center updates, a plain language initiative that makes UI applications more user friendly, and an AI application that answers questions from applicants in three languages. These projects have been paid for with federal ARPA and Tiger Team funds.

Secretary Pechacek stated that the Department issued a Request for Proposal for full modernization of UI's computer system, and a local company, Flexion, was awarded the contract. The project is four years in duration, with two years having been completed. The modernization project will move

the computer system into a modular, cloud-based environment. Accessibility for users has been improved. Staff tools will include a fraud dashboard, an adjudication scheduler, benefits calculator, and a knowledge-based learning tool. The Department is taking a phased approach for completing the updated computer system.

Secretary Pechacek stated that 89% of current claims are paid in three days or less.

Ms. Thornton-Bias asked if there will be a budget to maintain the new system. Secretary Pechacek responded that modernizing the new system will be an ongoing process. Since the new system is cloud based with a modern code, updating the system will a year-by-year continual process. Approximately \$80 million dollars has been set aside for this project.

Ms. Thornton-Bias recommended a quarterly modernization update be provided to a Council committee.

Ms. Knutson responded that quarterly updates will be given to the Council beginning in 2024.

Mr. Gotzler asked what will be next to be completed.

Secretary Pechacek stated that the adjudication scheduler and the employer portal will be next to be completed.

Mr. Gotzler asked for the timeline for project completion.

Secretary Pechacek responded the employer portal will be completed in the first quarter of 2024. There is no set timeline, but the Department is two years into a four-year project.

Mr. Manley stated that he would like to see the process of verifying employment and wages streamlined.

Administrator Chiolino stated that Mr. Manley's requests are being covered in the new employer portal.

3. Approval of Minutes of the May 18, 2023, Meeting

Motion by Mr. Gotzler, second by Mr. Griesbach, to approve the minutes of the September 12, 2023, meeting without correction. The vote was taken by roll call and passed unanimously.

4. Trust Fund Update

Ms. Knutson stated that the September statement is included in members' packets. Ms. Knutson stated that the Trust Fund balance is \$1.5 billion.

5. Legislation Update

Mr. Rubsam stated that the following legislative proposals are contained in members' packets:

- 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

Mr. Rubsam provided a brief explanation of each of the proposed bills.

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

Ms. Knutson stated that copies of the Department's proposals can be found in members' packets.

7. Rulemaking Proposal

- Proposed scope statement for UI Hearings – DWD 140

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

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

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

9. Research Requests

Ms. Knutson stated that there were no research requests.

10. 2023-2024 UIAC Timeline

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

11. Future Meeting Dates

Ms. Knutson stated that the future meeting dates are:

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

Mr. Manley stated that Management will work with Labor to hopefully finalize an agreed upon bill today.

12. DWD Council Meeting/Annual Wisconsin Public Records Law Training

Mr. Manley stated that he would like to defer today's scheduled training to either another time or online in order to maximize the time in caucus.

Mr. Griesbach stated that Labor agrees with Management. The training was deferred.

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

The Council went into closed caucus at 10:51 a.m.

The Council reconvened in open session at approximately 12:55 p.m.

Mr. Griesbach reported that Labor and Management continued to work on the agreed upon bill and hope to arrive at an agreement at the November meeting.

13. Adjourn

The Council adjourned at approximately 1:00 p.m.



State of Wisconsin

Date: Oct. 31, 2023

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

From: Department of Administration Secretary-designee Kathy Blumenfeld 

From: Department of Workforce Development Secretary-designee Amy Pechacek



Subject: 2021 Wisconsin Act 4 Quarterly Report – Third Quarter 2023

Pursuant to 2021 Wisconsin Act 4, under Wis. Stat. s. 108.14(27)(e), this report serves to update you on the progress the Department of Workforce Development (DWD) has made on its project to improve the information technology (IT) systems used for processing and paying claims for unemployment insurance (UI) benefits from July 1 to Sept. 30, 2023. We are pleased to share in this report that DWD has continued to make good progress in its UI modernization efforts.

Unemployment Insurance System Modernization

The Unemployment Insurance (UI) Modernization project is the effort to modernize the UI IT systems from a COBOL-based mainframe system to a cloud-based flexible system able to nimbly adapt to changes in the demands on the agency and changes in the program requirements. The goal of this project is to create a more modern, maintainable, sustainable, and adaptable system to meet current and evolving UI needs. Over time, the project will entirely replace the existing, antiquated mainframe, which has limitations in the availability of the system and directly impacts staffing and recruiting resources.

The future UI system will provide end-to-end services to DWD customers (claimants and employers) in a timely manner. DWD staff will be able to administer programs inclusively and efficiently with modern online tools.

As previously reported, DWD has been working with the Wisconsin-based company Flexion to develop many of the early components of a modernized system. The department is working with Flexion to:

- Establish a cloud-based infrastructure that is modern, secure, and flexible enough to meet the changing demands.
- Transfer claims processing from the legacy system to the modern solution in an agile and iterative approach. This approach allows for continuous improvement of the overall development process to ensure each phase of development meets the needs of UI programs, while allowing the current UI system to continue to operate.

Benefit Calculation and Liability Engine

In Quarter 3, the development process took an innovative approach to identify all the components that need to be developed to accept and process a basic claim in the modern system, known as a "vertical slice" in agile development. A vertical slice breaks down all components needed for the final project and allows the developers to address one component at a time while still demonstrating progress across all areas of the project.

Provided below is a representation of the "vertical slice" approach to accept and process a UI claim:



Figure 1. Vertical Slice Representation. Each vertical bar represents a development phase, and each horizontal bar represents a sample component of the Unemployment Insurance process.

Each phase is meant to deliver a prescribed outcome, such as calculating the benefit amount correctly, displaying that information in the defined screens and format, issuing appropriate notifications to claimants and employers, and creating the necessary data for all reporting needs. Each prescribed outcome is evaluated across all components of the UI process. In some instances, the outcomes require all components to be addressed and, in others, only some components are needed.

Under this approach, coding work is begun for the more basic outcomes and that work is then expanded upon to produce code for more complex outcomes over time. For example, there are many different claimant information details that are collected and can be changed. The first phase may pick up how to address basic demographic information, which will require limited changes to the claim. Future phases could automatically address other changes to the claim, for example, a mistyped social security number or tax withholding preferences, to ensure the correct claimant is paid the correct amount.

The basic types of claims that will first be processed by the modern system are those for which the claimant has no history within UI, has only one employer, and no issues that need to be adjudicated. However, the modern system needs to be able to appropriately process any potential changes on that

claim. Specifically, if the "basic" claims add complexity as they are processed down the "vertical slice," the coding needs to address those issues so the claim can be processed from start to finish. With each subsequent phase, more and more of the functionality is created and tested in a manner that allows the system to be used for more complex claims. Through these incremental development phases, the modern system will address the foundational calculations that determine both the benefit amount and the applicable employer's share of that benefit amount.

During the third quarter, work focused on the vertical slice that provided information relative to a basic claim including: generating required correspondence, displaying and updating the total amount paid and the remaining amount left on the claim, and refining the data displayed to ensure that UI staff have the necessary information to process the claim.

DWD will continue to work through the individual phases until a basic claim can be fully processed. Once the full vertical slice is complete, basic claims' components could be processed in the modern system. Simultaneously, DWD will continue to process complex claims in the legacy system and develop the necessary code for the remaining complex components of claims.

Adjudication Workflow Prototype

When there is a claim dispute, an adjudicator must review the claim and make a formal judgment based on UI law and the facts of the claim. The current adjudication process is manual and requires the adjudicator to complete extensive training and review detailed job aids to ensure that all elements are collected, reviewed, and considered. As a result, these cases are error prone and subject to appeal.

A prototype workflow guide has been created for one common type of issue that requires a formal judgement. The guide walks the adjudicator through the process step by step and prompts the adjudicator to provide the appropriate supporting materials for that item. Additional workflow guides will be created to address other types of common issues.

The workflow guide will assist adjudicators and establish processes to resolve all issues on claims. The guides will ultimately address the steps needed to resolve all issues that require a formal judgement.

Adjudication Scheduler

The current adjudication case scheduling system is critical to meeting UI standards for timeliness, productivity, and quality. The current application requires a high level of maintenance on a daily, weekly, and monthly basis and includes several manual steps.

DWD has completed a modification to the existing adjudication system that allows for an automatic case assignment and routing based on the issue type, adjudicator skill level, and resource availability during any given week. In addition to making the assignments based on the criteria identified, it also has enhanced reporting that allows for improved monitoring and tracking of the work assigned and for management oversight.

The adjudicator tool has been deployed to adjudication staff to use and test with daily applications. Implementation of this tool is expected during October 2023. Future phases will continue to enhance the tool to further improve efficiency and increase transparency of the status of each claim and ensure timely decisions.

Infrastructure

During Quarter 3, work was heavily focused on infrastructure to further improve security and the

corresponding data structures needed to support the application. In essence, DWD is building cloud-based containers to segregate different elements of the system to ensure a secure data structure.

The department also is continuing work to establish a secure and reliable cloud environment. A secure and reliable cloud environment is a required and essential step in the process of transitioning from the legacy main frame application to the modern system.

During the quarter, work on the cloud infrastructure focused on:

- Improving the security of the new system's applications and establishing containers in different parts of the cloud environment. During the quarter, work on the containers was completed, thus providing more security by segregating different components of the system.
- Development of additional security plans.

A secure and reliable cloud environment requires constant attention and review. This work will continue in the quarters to come.

We hope you find this information helpful. We will provide the next quarterly update on the UI modernization project to you in January 2024. In the meantime, please do not hesitate to contact us with questions.

D23-01

Amend Social Security Disability Insurance Disqualification

Date: April 20, 2023

Proposed by: DWD

Prepared by: Bureau of Legal Affairs

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

1. Description of Proposed Change

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

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

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

2. Proposed Statutory Changes

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

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

¹ This calculation is preliminary and subject to revision.

D23-01

Amend Social Security Disability Insurance Disqualification

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

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

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

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

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

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

(title) SOCIAL SECURITY DISABILITY INSURANCE PAYMENTS.

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

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

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

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

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

D23-01

Amend Social Security Disability Insurance Disqualification

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

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

3. Effects of Proposed Change

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

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

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

D23-01

Amend Social Security Disability Insurance Disqualification

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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

UI Trust Fund Impact:

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

IT and Administrative Impact:

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

Trust Fund Methodology:

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

D23-02
Worker Misclassification Penalties

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

ANALYSIS OF PROPOSED UI LAW CHANGE
Worker Misclassification Penalties

1. Description of Proposed Change

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

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

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

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

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

D23-02
Worker Misclassification Penalties

2. Proposed Statutory Changes²

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

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

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

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

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

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

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

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

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

D23-02
Worker Misclassification Penalties

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

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

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

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

3. Effects of Proposed Change

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

D23-02
Worker Misclassification Penalties

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

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

D23-02
Worker Misclassification Penalties

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

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

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

UI Trust Fund Impact:

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

IT and Administrative Impact:

Ongoing administrative impact to the UI program is indeterminate.

D23-03
Discharge for Use of Marijuana

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

ANALYSIS OF PROPOSED UI LAW CHANGE
Discharge for Use of Marijuana

1. Description of Proposed Change

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

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

2. Proposed Statutory Change

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

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

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

D23-03

Discharge for Use of Marijuana

3. Effects of Proposed Change

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

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

c. Fiscal: A fiscal estimate is unavailable.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

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

D23-04
Imposter Penalty

Date: **November 16, 2023**
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Imposter Penalty – Revised November 16, 2023

1. Description of Proposed Change

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

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

The Department proposes to create a new \$5,000 penalty to assess against imposters who make false statements for the purpose of attempting to receive benefits in the name of another person on an initial claim for their own benefit, but who fail to obtain benefits. The policy reason for this proposal is to deter would-be imposters from attempting to file false claims using the credentials of another person for their own benefit.

The prior version of this proposal, which the UIAC approved on September 12, 2023, would have also amended the current penalty for those who obtain benefits in the name of another person by making false statements from an amount equal to the amount of benefits obtained to \$5,000. The Department now recommends retaining the current penalty to ensure that the statute conforms to federal requirements. Consistent with the UIAC's approval of the

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

D23-04
Imposter Penalty

prior version of this proposal, this version also amends “may” to “shall” to clarify that the imposition of the overpayment and penalty are not discretionary.

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

2. Proposed Statutory Changes

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

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

Non-statutory provision:

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

3. Effects of Proposed Change

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

D23-04
Imposter Penalty

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

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 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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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.

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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