



Unemployment Insurance Advisory Council

Meeting Agenda

December 5, 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 078 1362 Password: DWD1

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

1. Call to order and introductions
2. Approval of minutes of the November 16, 2023 UIAC meeting
3. Department update
4. Trust Fund update – Shashank Partha
5. 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
6. LRB draft of D23-04 and D23-05 Department proposals
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: Jan. 18, Feb. 15, Mar. 21, Apr. 18, May 16, June 20
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

November 16, 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, DiAnn Fechter, Corey Gall, Mike Gotzler, Shane Griesbach, Christopher Harris, Scott Manley, Susan Quam, and Kathy Thornton-Bias

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

Members of the Public: Victor Forberger (Attorney, Wisconsin UI Clinic), Anita Krasno (LIRC General Counsel), and Cindy Buchko (Construction Business Group).

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:04 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 October 26, 2023, UIAC Meeting

Motion by Mr. Manley, second by Mr. Gall, to approve the minutes of the October 26, 2023, meeting without correction. The vote was taken by roll call and passed unanimously.

3. Department Update

No Department update was provided at this meeting.

4. Trust Fund Update

Ms. Knutson stated that the Trust Fund financial statement has not been completed. Ms. Knutson stated that Director Shashank Partha was available to answer members' questions.

5. Quarterly Report on UI Information Technology Systems (7/1/23 – 9/30/23)

Ms. Knutson stated that the quarterly update can be found in members' packets.

Ms. Thornton-Bias stated that she would like the Department to review with the Council the Benefits Key Performance Indicators on a quarterly basis.

Ms. Knutson stated that she will have an update on the Benefits Key Performance Indicators available for Council members at a future meeting.

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.

Ms. Knutson stated that D23-04, the Imposter Penalty, was approved by the Council at the September meeting with one amendment. Ms. Knutson requested that Council revisit D23-04 and approve a change in the language to provide that the penalty for known imposters that receive fraudulent benefits remains the same as in the current law in order to conform to federal requirements.

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 suggested that Council members would 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 listed on the agenda.

Both Mr. Manley and Mr. Gall stated that they would be unavailable for the December 21, 2021 meeting.

Motion by Mr. Manley, second by Mr. Gotzler, that the Council convene in closed caucus 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 10:13 am

The Council reconvened in open session at 12:39 pm

Mr. Manley stated that Management and Labor reached agreement on the requested changes to D23-04 Imposter Penalty and D23-05 Electronic Communication and Filing proposals.

Motion by Mr. Manley, second by Mr. Griesbach, to approve the requested changes to the D23-04 proposal and to approve proposal D23-05.

The vote was taken by roll call and passed unanimously.

Mr. Manley stated that Labor and Management are working on the remaining proposals. Mr. Manley stated that it is the desire of both Labor and Management to reach agreement at the next meeting.

Mr. Manley stated that Labor and Management agreed to reconvene on Tuesday, December 5, 2023, at 10:00 am, leaving open a virtual option for those members unable to attend in person. Ms. Knutson confirmed that the next Council meeting would be on Tuesday, December 5, 2023, at 10:00 am.

13. Adjourn

Motion by Ms. Feistel, second by Ms. Quam to adjourn. The motion passed by a unanimous voice vote.

The Council adjourned at 12:42 pm.

UI Reserve Fund Highlights

December 5, 2023

- Benefit payments through October 2023 increased by \$42.8 million or 18.7% when compared to benefits paid through October 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	\$272.1	\$229.3	\$42.8	18.7%

- Tax receipts through October 2023 increased by \$111 million or 24.9% when compared to tax receipts through October 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	\$555.9	\$444.9	\$111.0	24.9%

- The October 2023 Trust Fund ending balance was \$1.65 billion, an increase of 26.4% when compared to the same time last year.

UI Trust Fund Balance	October 2023 <i>(in millions)</i>	October 2022 <i>(in millions)</i>	Change <i>(in millions)</i>	Change <i>(in percent)</i>
Trust Fund Balance	\$1,645.6	\$1,302.2	\$343.4	26.4%

- 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 October 31, 2023 Financial Statements.

FINANCIAL STATEMENTS

For the Month Ended October 31, 2023



Unemployment Insurance Division

Bureau of Tax and Accounting

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

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
CASH:		
U.I. CONTRIBUTION ACCOUNT	2,716,837.25	3,069,465.62
U.I. BENEFIT ACCOUNTS	(328,039.02)	(878,955.03)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,697,626,583.67</u>	<u>1,384,984,336.24</u>
TOTAL CASH	1,700,015,381.90	1,387,174,846.83
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	195,437,239.36	208,835,787.50
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(62,223,878.97)</u>	<u>(59,814,284.07)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	133,213,360.39	149,021,503.43
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	31,574,036.57	29,431,692.09
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(16,497,914.50)</u>	<u>(15,788,618.22)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	15,076,122.07	13,643,073.87
OTHER EMPLOYER RECEIVABLES	22,781,031.32	21,630,971.31
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(8,208,169.12)</u>	<u>(8,602,368.65)</u>
NET OTHER EMPLOYER RECEIVABLES	14,572,862.20	13,028,602.66
TOTAL ACCOUNTS RECEIVABLE	<u>162,862,344.66</u>	<u>175,693,179.96</u>
TOTAL ASSETS	<u><u>1,862,877,726.56</u></u>	<u><u>1,562,868,026.79</u></u>
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	108,345,792.62	118,228,595.59
OTHER LIABILITIES	42,071,025.76	54,656,630.15
FEDERAL BENEFIT PROGRAMS	1,106,117.77	269,923.70
CHILD SUPPORT HOLDING ACCOUNT	14,159.00	20,910.00
FEDERAL WITHHOLDING TAXES DUE	60,255.00	91,079.00
STATE WITHHOLDING TAXES DUE	485,938.30	387,927.56
DUE TO OTHER GOVERNMENTS (8)	<u>1,050,588.87</u>	<u>1,002,097.01</u>
TOTAL LIABILITIES	153,133,877.32	174,657,163.01
EQUITY:		
RESERVE FUND BALANCE	2,874,847,915.04	2,731,694,922.08
BALANCING ACCOUNT	<u>(1,165,104,065.80)</u>	<u>(1,343,484,058.30)</u>
TOTAL EQUITY	<u>1,709,743,849.24</u>	<u>1,388,210,863.78</u>
TOTAL LIABILITIES AND EQUITY	<u><u>1,862,877,726.56</u></u>	<u><u>1,562,868,026.79</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. \$11,719,265 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 \$178,062. Deferrals for the prior year were \$139,286.
6. \$16,787,556, or 53.2%, of this balance is estimated.
7. \$86,395,572 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$21,950,221 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.
8. This balance includes SAFI Payable of \$4,860. The 10/31/2023 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$87,179. 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 October 31, 2023

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	3,255,540,174.61	3,152,504,720.62	3,025,371,200.23
BALANCING ACCOUNT	<u>(1,597,960,578.47)</u>	<u>(1,792,807,841.51)</u>	<u>(1,920,053,262.30)</u>
TOTAL BALANCE	1,657,579,596.14	1,359,696,879.11	1,105,317,937.93
INCREASES:			
TAX RECEIPTS/RFB PAID	55,369,370.52	398,220,512.67	310,131,794.10
ACCRUED REVENUES	(3,410,109.57)	1,774,889.95	901,843.27
SOLVENCY PAID	18,559,906.48	157,676,164.45	134,739,711.39
FORFEITURES	0.00	171.13	752.00
BENEFIT CONCEALMENT INCOME	159,886.61	2,004,831.41	1,279,326.03
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	60,000,000.00	60,000,000.00
INTEREST EARNED ON TRUST FUND	0.00	23,763,566.78	14,638,788.05
FUTA TAX CREDITS	0.00	0.00	1,909.95
OTHER CHANGES	18,372.16	434,429.66	106,529.74
TOTAL INCREASES	<u>70,697,426.20</u>	<u>643,874,566.05</u>	<u>521,800,654.53</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	15,292,370.76	226,514,829.98	174,339,964.42
QUIT NONCHARGE BENEFITS	2,523,626.70	34,271,031.82	21,633,638.32
OTHER DECREASES	91,190.14	22,688,769.69	10,025,260.80
OTHER NONCHARGE BENEFITS	625,985.50	10,352,964.43	32,908,865.14
TOTAL DECREASES	<u>18,533,173.10</u>	<u>293,827,595.92</u>	<u>238,907,728.68</u>
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,874,847,915.04	2,874,847,915.04	2,731,694,922.08
BALANCING ACCOUNT	<u>(1,165,104,065.80)</u>	<u>(1,165,104,065.80)</u>	<u>(1,343,484,058.30)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,709,743,849.24</u></u>	<u><u>1,709,743,849.24</u></u>	<u><u>1,388,210,863.78</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,657,577,116 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. \$11,719,265 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 10/31/2023**

RECEIPTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	\$55,369,370.52	\$398,220,512.67	\$310,131,794.10
SOLVENCY	18,559,906.48	157,676,164.45	134,739,711.39
ADMINISTRATIVE FEE	20.64	250.00	308.79
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	397,786.15	3,588,327.07	3,556,899.90
UNUSED CREDITS	863,561.03	5,711,948.86	1,315,701.67
GOVERNMENTAL UNITS	638,475.57	7,079,487.29	6,740,662.20
NONPROFITS	831,154.09	6,949,472.54	8,072,444.61
INTERSTATE CLAIMS (CWC)	94,022.82	3,105,422.07	2,732,264.29
ERROR SUSPENSE	75,974.13	62,817.63	86,416.00
FEDERAL PROGRAMS RECEIPTS	(699,575.40)	(13,399,667.96)	30,376,168.21
OVERPAYMENT COLLECTIONS	2,101,174.27	27,919,658.65	30,715,776.15
FORFEITURES	0.00	171.13	752.00
BENEFIT CONCEALMENT INCOME	159,886.61	2,004,831.41	1,279,326.03
EMPLOYER REFUNDS	(513,086.78)	(15,464,941.65)	(96,936,154.50)
COURT COSTS	59,692.99	546,819.92	349,261.78
INTEREST & PENALTY	302,193.89	3,072,446.29	3,239,021.14
CARD PAYMENT SERVICE FEE	6,522.99	40,607.34	22,557.51
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	240,614.58	3,019,054.27	1,742,512.85
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	2,810.62	51,768.42	1,236.22
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	18,030.67	35,946.26	9,307.16
SPECIAL ASSESSMENT FOR INTEREST	4,859.79	17,255.58	11,231.34
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	0.00	23,763,566.78	14,638,788.05
MISCELLANEOUS	(1,635.33)	152,403.63	98,697.81
TOTAL RECEIPTS	\$78,511,760.33	\$674,154,322.65	\$512,957,914.11
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	\$17,707,360.60	\$252,309,472.37	\$208,295,850.83
NONPROFIT CLAIMANTS	734,317.19	6,674,610.74	4,690,699.76
GOVERNMENTAL CLAIMANTS	540,932.06	6,533,298.10	3,144,900.17
INTERSTATE CLAIMS (CWC)	202,696.06	3,060,732.88	2,428,896.60
QUITS	2,523,626.70	34,271,031.82	21,633,638.32
OTHER NON-CHARGE BENEFITS	663,255.01	10,622,958.33	(34,209,730.18)
CLOSED EMPLOYERS	19.17	(15,605.81)	(2,268.21)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	53,186.84	937,130.13	1,160,735.56
EX-MILITARY (UCX)	25,516.83	166,966.06	218,674.29
TRADE ALLOWANCE (TRA/TRA-NAFTA)	33,911.00	416,768.18	996,448.86
WORK-SHARE (STC)	(1,310.94)	(2,490,447.73)	985,358.49
FEDERAL PANDEMIC UC (FPUC)	(687,313.11)	(7,661,871.83)	10,225,230.41
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	(49,305.71)	(564,715.44)	3,131,882.97
MIXED EARNERS UC (MEUC)	0.00	1,500.00	36,400.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	(96,766.42)	(1,272,466.53)	3,921,453.99
PANDEMIC EMERGENCY UC (PEUC)	(130,708.87)	(1,715,106.57)	7,079,904.09
PANDEMIC FIRST WEEK (PFW)	1,559.11	58,827.08	744,597.10
EMER UC RELIEF REIMB EMPL (EUR)	(10,407.51)	(152,838.06)	2,077,007.77
2003 TEMPORARY EMERGENCY UI (TEUC)	(38.89)	(7,773.08)	(7,335.46)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(10,629.28)	(114,869.03)	(134,407.12)
FEDERAL EMERGENCY UI (EUC)	(94,739.83)	(1,017,171.96)	(1,128,806.37)
FEDERAL EXTENDED BENEFITS (EB)	(9,298.43)	(86,974.66)	114,221.24
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	0.00	(2,244.53)	(197.52)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(248.50)	(3,413.06)	76,428.04
INTEREST & PENALTY	338,877.09	3,162,307.82	3,084,333.60
CARD PAYMENT SERVICE FEE TRANSFER	3,903.64	35,991.54	21,273.64
PROGRAM INTEGRITY	207,824.47	6,240,899.42	4,806,885.98
SPECIAL ASSESSMENT FOR INTEREST	2,643.73	17,089.45	14,316.19
COURT COSTS	42,181.70	537,513.18	329,496.87
ADMINISTRATIVE FEE TRANSFER	12.69	291.41	274.81
LOST WAGES ASSISTANCE (LWA) ADMIN TRANSFER	0.00	0.00	33,229.41
FEDERAL WITHHOLDING	(33,755.00)	(59,940.82)	(16,669.00)
STATE WITHHOLDING	1,258,392.01	980,535.26	2,544,153.92
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	(1,909.95)
TOTAL DISBURSEMENTS	\$23,215,693.41	\$329,777,256.66	\$247,316,869.53
NET INCREASE(DECREASE)	55,296,066.92	344,377,065.99	265,641,044.58
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,644,719,314.98	\$1,355,638,315.91	\$1,121,533,802.25
BALANCE AT END OF MONTH/YEAR	\$1,700,015,381.90	\$1,700,015,381.90	\$1,387,174,846.83

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

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,602,272,855.08	\$1,303,839,732.39	\$1,048,002,601.08
INCREASES:			
TAX RECEIPTS/RFB PAID	55,369,370.52	398,220,512.67	310,131,794.10
U.I. PAYMENTS CREDITED TO SURPLUS	18,468,063.14	162,581,836.76	132,586,790.65
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	60,000,000.00	60,000,000.00
INTEREST EARNED ON TRUST FUND	0.00	23,763,566.78	14,638,788.05
FUTA TAX CREDITS	0.00	0.00	1,909.95
TOTAL INCREASE IN CASH	<u>73,837,433.66</u>	<u>644,565,916.21</u>	<u>517,359,282.75</u>
TOTAL CASH AVAILABLE	<u>1,676,110,288.74</u>	<u>1,948,405,648.60</u>	<u>1,565,361,883.83</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	15,292,370.76	226,514,829.98	174,339,964.42
BENEFITS CHARGED TO SURPLUS	3,251,209.85	45,551,769.04	54,963,359.19
TOTAL BENEFITS PAID DURING PERIOD	<u>18,543,580.61</u>	<u>272,066,599.02</u>	<u>229,303,323.61</u>
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>(10,407.51)</u>	<u>(152,838.06)</u>	<u>2,077,007.77</u>
ENDING U.I. CASH BALANCE (13) (14) (15)	<u><u>1,657,577,115.64</u></u>	<u><u>1,657,577,115.64</u></u>	<u><u>1,332,959,652.02</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.

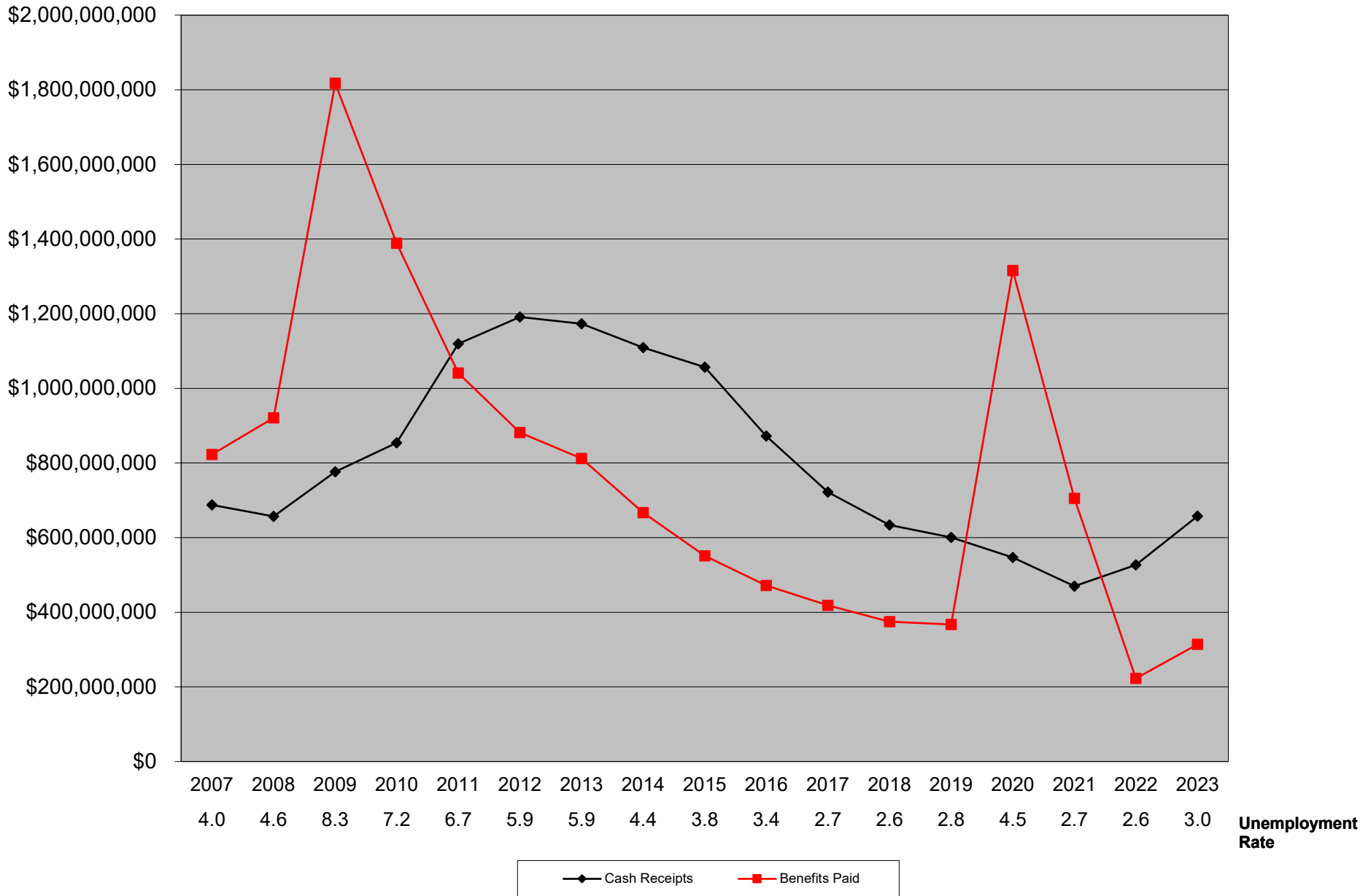
15. \$11,719,265 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, 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 October 31, 2023

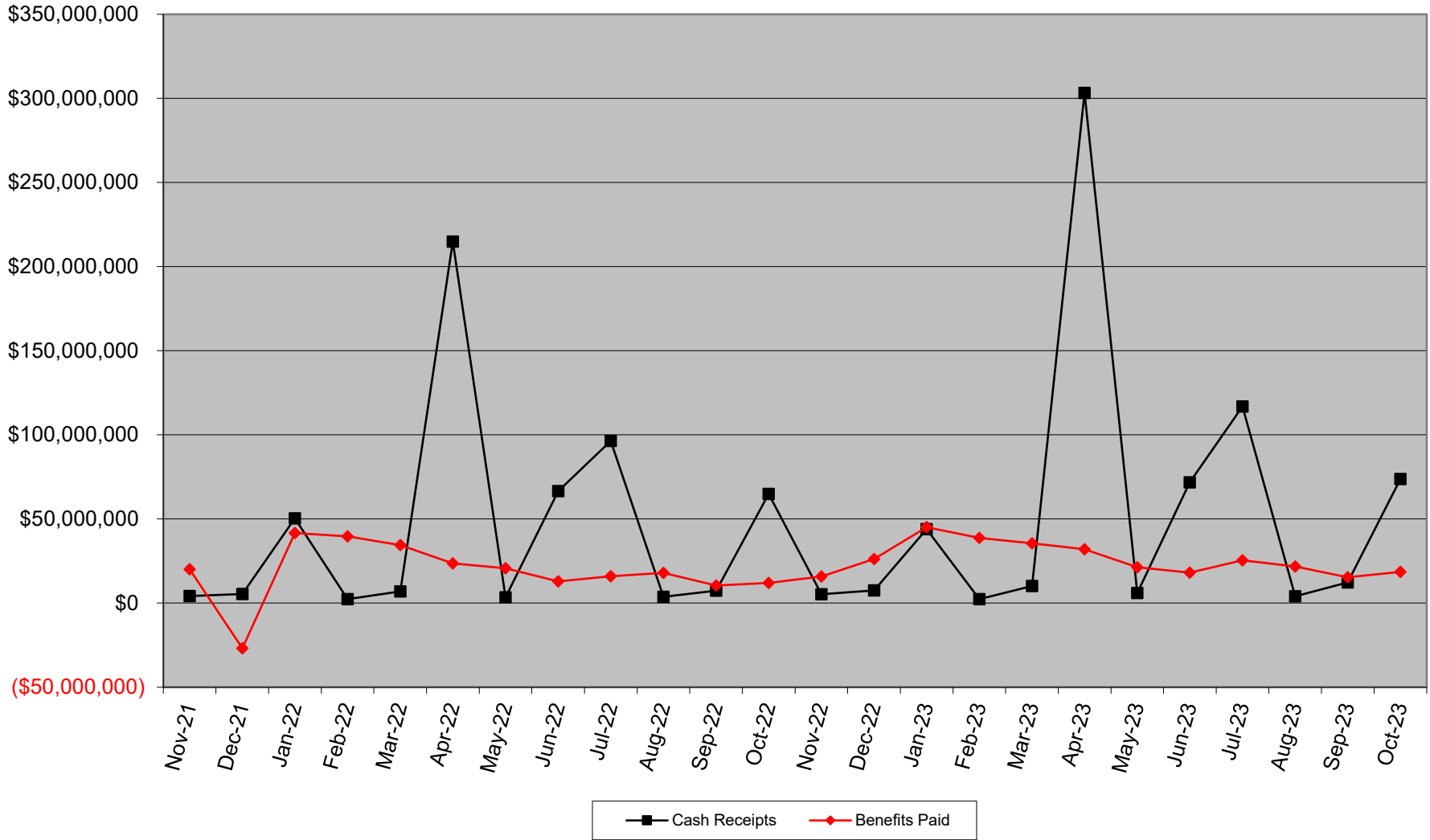
	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$1,198,965,823.56)	(\$1,399,163,452.19)	(\$1,527,719,203.28)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	18,559,906.48	157,676,164.45	134,739,711.39
FORFEITURES	0.00	171.13	752.00
OTHER INCREASES	<u>(91,843.34)</u>	<u>4,905,501.18</u>	<u>(2,153,672.74)</u>
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	18,468,063.14	162,581,836.76	132,586,790.65
TRANSFERS BETWEEN SURPLUS ACCTS (16)			
2021 WI ACT 58 TRANSFERS TO TRUST FUND	(33,532,236.64)	(139,047.77)	(20,181,288.04)
INTEREST EARNED ON TRUST FUND	0.00	60,000,000.00	60,000,000.00
FUTA TAX CREDITS	0.00	23,763,566.78	14,638,788.05
TOTAL INCREASES	<u>0.00</u>	<u>0.00</u>	<u>1,909.95</u>
	(15,064,173.50)	246,206,355.77	187,046,200.61
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	2,523,626.70	34,271,031.82	21,633,638.32
OTHER NON-CHARGE BENEFITS	<u>727,583.15</u>	<u>11,280,737.22</u>	<u>33,329,720.87</u>
BENEFITS CHARGED TO SURPLUS SUBTOTAL	3,251,209.85	45,551,769.04	54,963,359.19
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
	<u>(10,407.51)</u>	<u>(152,838.06)</u>	<u>2,077,007.77</u>
BALANCE AT THE END OF THE MONTH/YEAR	<u>(1,217,270,799.40)</u>	<u>(1,217,270,799.40)</u>	<u>(1,398,735,270.06)</u>

16. The 10% writeoff for 2023 was \$33.6 million and is included in this balance. The 10% writeoff shifts employer benefit charges to the balancing account. The 10% writeoff has no effect on receivable balances.

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

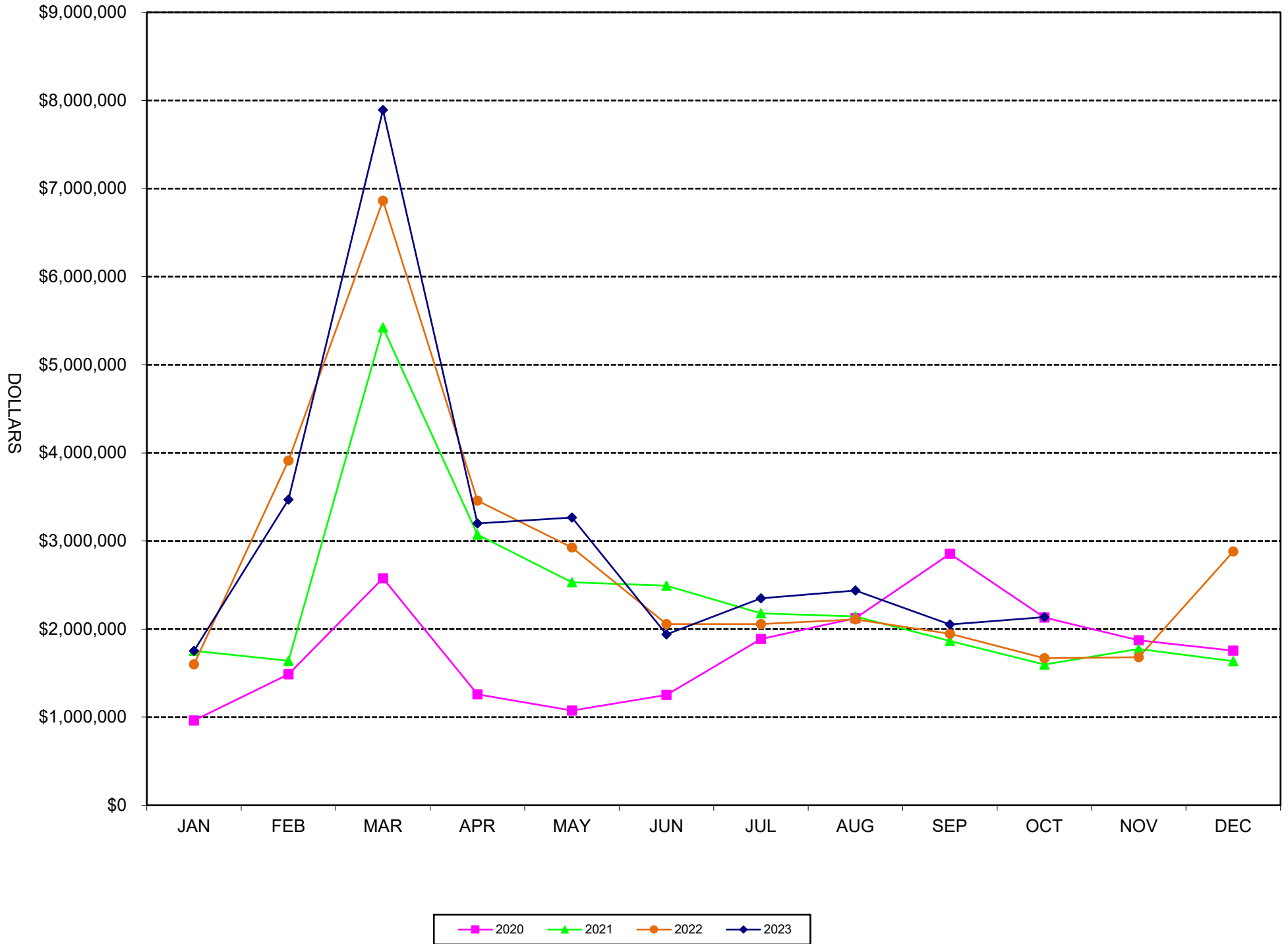


Cash Activity Related to Taxable Employers - Most Recent 24 Months Excluding FUTA Tax Credits

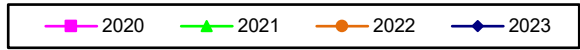
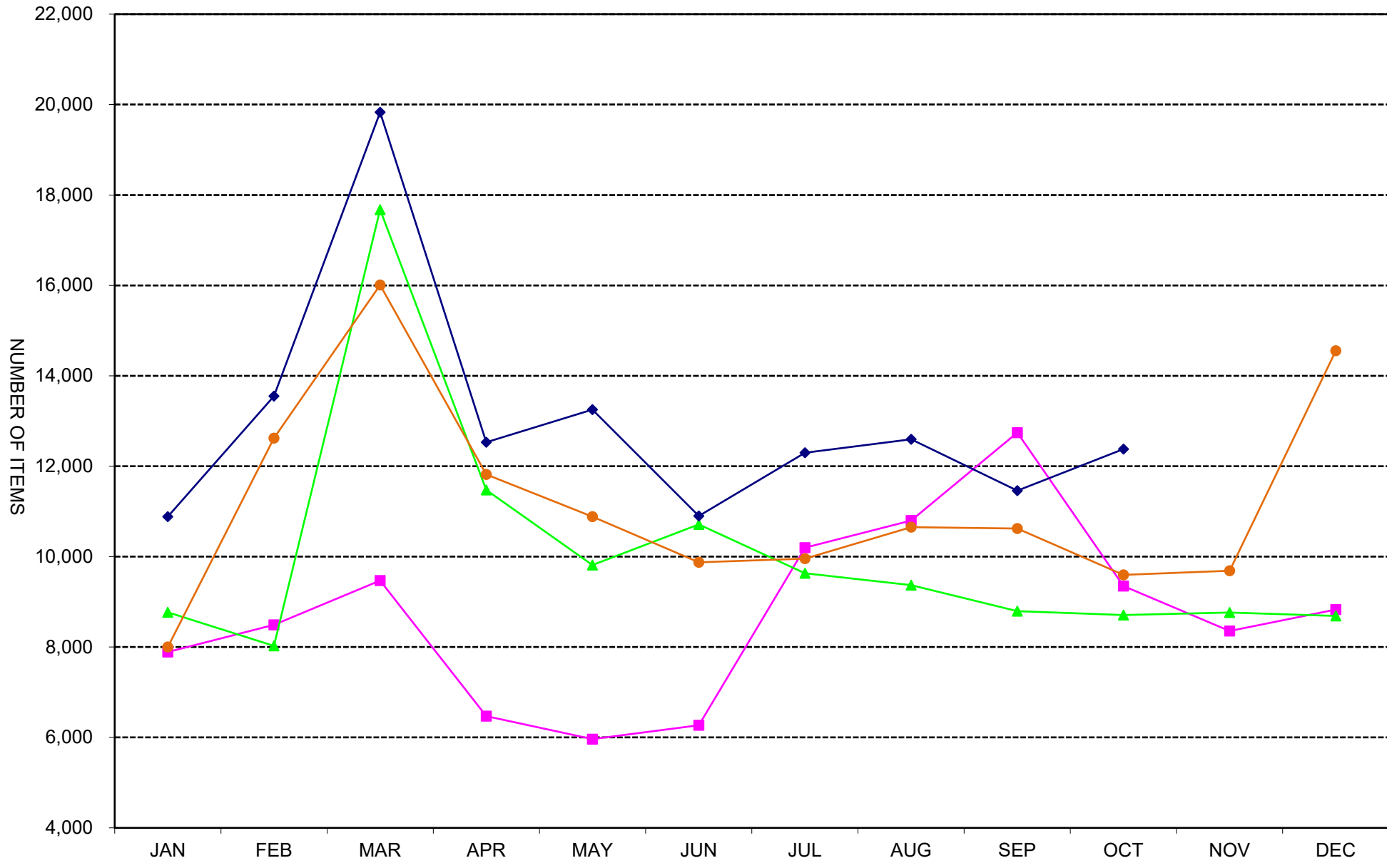


MONTHLY OVERPAYMENT CASH RECEIPTS

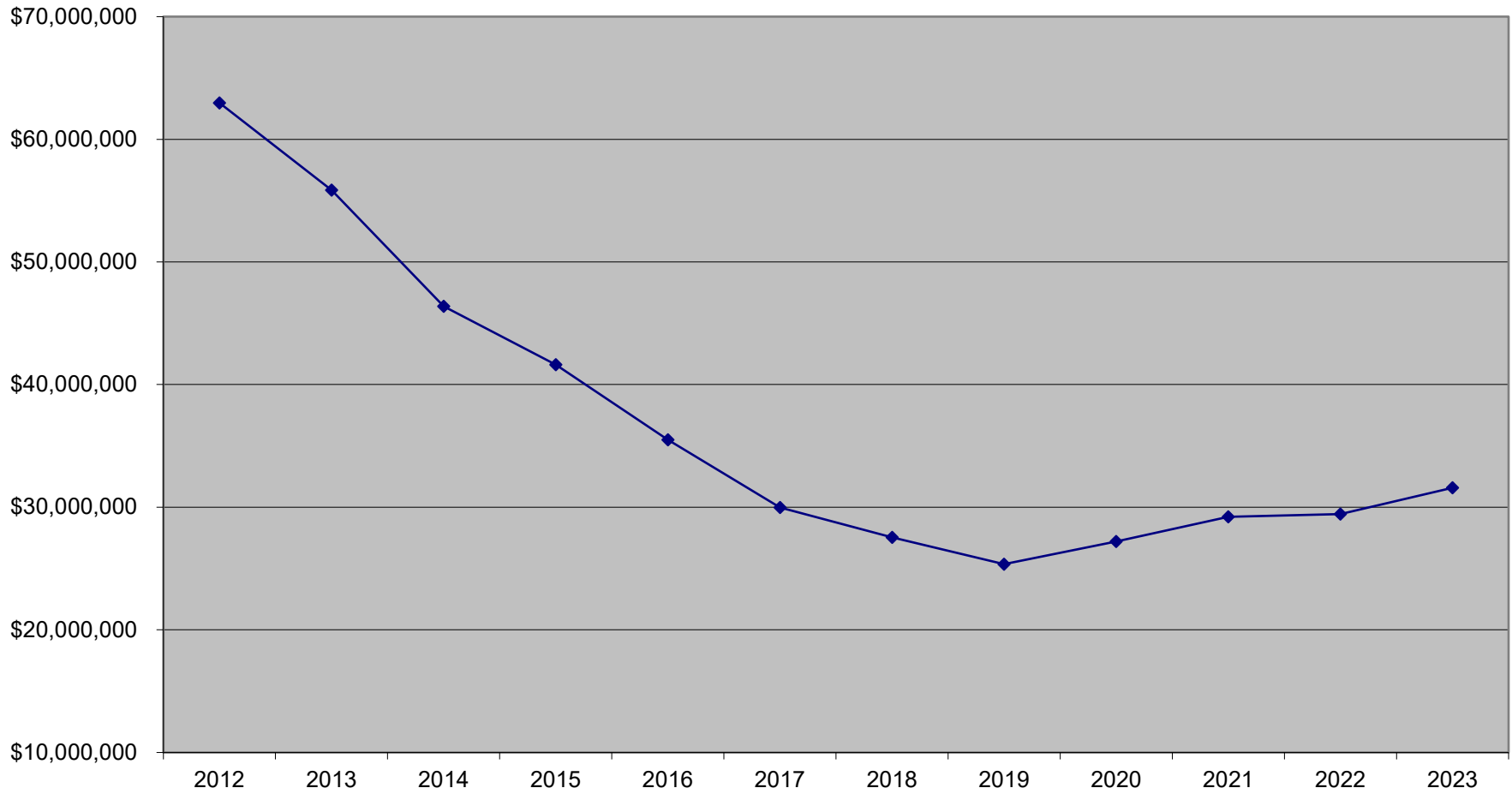
(by dollar amount)



MONTHLY OVERPAYMENT CASH RECEIPTS (by number of items)

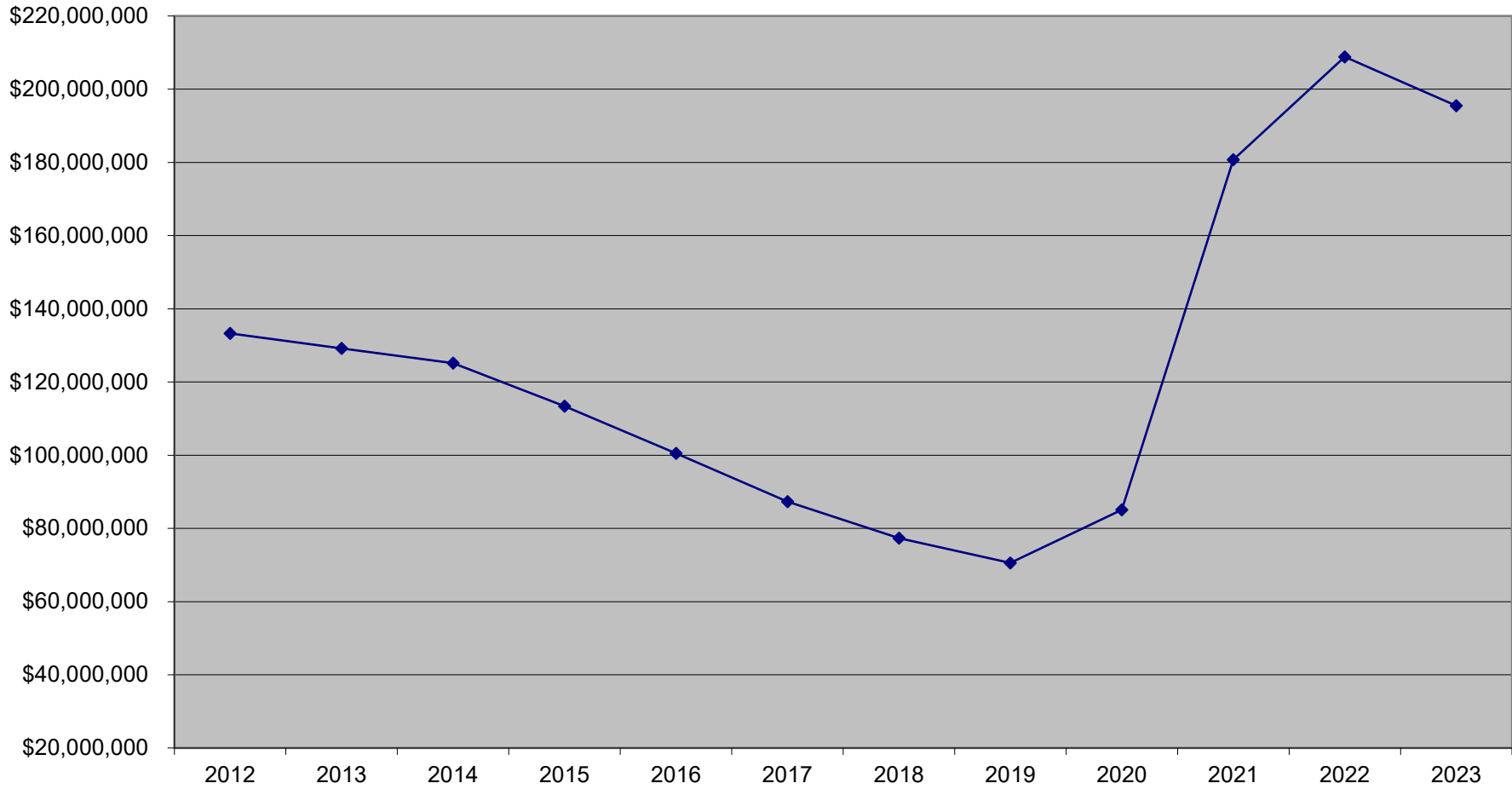


TOTAL TAXABLE EMPLOYER RFB & SOLVENCY RECEIVABLES
(for all years as of October)



Source: Monthly Balance Sheet

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



Source: Monthly Balance Sheet

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.



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-5203/P3
MED:wlj/amn/emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 108.17 (2g), 108.17 (7) and 108.205 (1m); **to renumber and**
2 **amend** 108.04 (11) (cm); **to amend** 108.04 (11) (d), 108.04 (11) (f), 108.095 (2),
3 108.14 (2e), 108.16 (3) (a), 108.17 (2), 108.17 (2b), 108.205 (2), 108.22 (1) (ac),
4 108.22 (1) (ad) 1., 108.22 (1) (af) and 108.225 (16) (am) 1. c.; and **to create**
5 108.022, 108.04 (11) (cm) 2. and 108.185 of the statutes; **relating to:** various
6 changes to the unemployment insurance law.

Analysis by the Legislative Reference Bureau

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

Penalties for obtaining benefits in the name of another person

Under current law, if any person makes a false statement or representation in order to obtain benefits in the name of another person, the person may be required to repay the amount of the benefits obtained and to pay an additional amount equal to the amount of benefits obtained. Current law does not specify a penalty for when such a person makes a false statement or representation in order to obtain benefits in the name of another person but fails to obtain any benefits.

The bill provides that if a person makes a false statement or representation on an initial claim in order to intentionally obtain benefits in the name of another person, but fails to obtain benefits, the person is subject to a penalty of \$5,000. The bill also makes a number of other minor changes to the existing penalty provision.

Use of electronic methods for filing, payments, and reporting

Currently, with certain exceptions, each employer that has employees who are engaged in employment covered by the UI law must file quarterly contribution (tax) and employment and wage reports and make quarterly contribution payments to DWD. An employer of 25 or more employees or an employer agent that files reports on behalf of any employer must file its reports electronically. Current law also requires each employer that makes contributions for any 12-month period ending on June 30 equal to a total of at least \$10,000 to make all contribution payments electronically in the following year. Finally, current law allows DWD to 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 DWD, may be used for transmission or receipt of any document specified by DWD that is related to the administration of the UI law in lieu of any other means of submission or receipt.

The bill makes use of these electronic methods mandatory in all cases unless the employer or other person demonstrates good cause for being unable to use the electronic method. The bill specifies what constitutes good cause for purposes of these provisions. The bill also makes various corresponding changes to penalty provisions that apply in the case of nonuse of these required electronic methods. The bill further provides that DWD may permit the use of electronic records and electronic signatures for any document specified by DWD that is related to the administration of the UI law.

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

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

1 **SECTION 1.** 108.022 of the statutes is created to read:

2 **108.022 Electronic payments and filings; good cause.** For purposes of
3 requirements to use electronic filing, payment, or interchange methods specified
4 under ss. 108.14 (2e), 108.17 (2b) and (7) (a), 108.185, and 108.205 (2), good cause for
5 not using such method includes all of the following, as determined by the
6 department:

7 **(1)** Having limited or no Internet access.

8 **(2)** Having digital literacy limitations.

1 **(3)** Having communication barriers, such as having a vision or other disability
2 that prevents the ease of using the electronic method or having limited or no English
3 proficiency.

4 **(4)** The presence of other circumstances that make use of the electronic method
5 unusually difficult for the person, as determined by the department.

6 **SECTION 2.** 108.04 (11) (cm) of the statutes is renumbered 108.04 (11) (cm) 1.
7 and amended to read:

8 108.04 **(11)** (cm) 1. If any person makes a false statement or representation in
9 order to obtain, for his or her own benefit, benefits in the name of another person and
10 obtains such benefits, the benefits received by that person constitute a benefit
11 overpayment. Such person ~~may~~ shall, by a determination or decision issued under
12 s. 108.095, be required to repay the amount of the benefits obtained and shall
13 additionally be assessed ~~an administrative assessment in an additional~~ a penalty in
14 an amount equal to the amount of benefits obtained.

15 **SECTION 3.** 108.04 (11) (cm) 2. of the statutes is created to read:

16 108.04 **(11)** (cm) 2. If any person makes a false statement or representation on
17 an initial claim in order to intentionally obtain, for his or her own benefit, benefits
18 in the name of another person but fails to obtain benefits, that person shall, by a
19 determination or decision issued under s. 108.095, be assessed a penalty of \$5,000.

20 **SECTION 4.** 108.04 (11) (d) of the statutes is amended to read:

21 108.04 **(11)** (d) In addition to other remedies, the department may, by civil
22 action, recover any benefits obtained by means of any false statement or
23 representation or any ~~administrative assessment~~ penalty imposed under par. (cm).
24 Chapter 778 does not apply to collection of any benefits or ~~assessment~~ penalty under
25 this paragraph.

1 **SECTION 5.** 108.04 (11) (f) of the statutes is amended to read:

2 108.04 (**11**) (f) All amounts forfeited under par. (c) and all ~~collections from~~
3 ~~administrative assessments~~ penalties collected under par. (cm) shall be credited to
4 the administrative account.

5 **SECTION 6.** 108.095 (2) of the statutes is amended to read:

6 108.095 (**2**) The department shall investigate whether any person has obtained
7 or attempted to obtain benefits that were payable to another person by means of any
8 false statement or representation, and may issue an initial determination
9 concerning its findings. The department shall electronically deliver a copy of the
10 determination to, or mail a copy of the determination to the last-known address of,
11 each party affected thereby. Unless designated by a determination under this
12 section, an employing unit is not a party to the determination. The department may
13 set aside or amend the determination at any time prior to a hearing concerning the
14 determination under sub. (5) on the basis of subsequent information or to correct a
15 mistake, including an error of law.

16 **SECTION 7.** 108.14 (2e) of the statutes is amended to read:

17 108.14 (**2e**) The department ~~may~~ shall provide a secure means of electronic
18 interchange between itself and employing units, claimants, and other persons that,
19 ~~upon request to and with prior approval by the department, may~~ shall be used for
20 departmental transmission or receipt of any document specified by the department
21 that is related to the administration of this chapter and related federal programs in
22 lieu of any other means of submission or receipt specified in this chapter. The secure
23 means of electronic interchange shall be used by employing units, claimants, and
24 other persons unless the person demonstrates good cause, as specified in s. 108.022,
25 for being unable to use the secure means of electronic interchange. Subject to s.

1 137.25 (2) and any rules promulgated thereunder, the department may permit the
2 use of electronic records and electronic signatures for any document specified by the
3 department that is related to the administration of this chapter. If a due date is
4 established by statute for the receipt of any document that is submitted
5 electronically to the department under this subsection, then that submission is
6 timely only if the document is submitted by midnight of the statutory due date.

7 **SECTION 8.** 108.16 (3) (a) of the statutes is amended to read:

8 108.16 (3) (a) Any overpayment for which the claimant's liability to reimburse
9 the fund is established under s. 108.22 (8) or any assessment penalty under s. 108.04
10 (11) (cm) for which a final determination has been issued under s. 108.09 or 108.095
11 upon receipt of certification by the department that reasonable efforts have been
12 made to recover the overpayment or the amount of the assessment penalty and that
13 the amount due is uncollectible.

14 **SECTION 9.** 108.17 (2) of the statutes is amended to read:

15 108.17 (2) (a) Except as provided in par. (b) and subject to sub. (2b) and s.
16 108.185, every employer that is subject to a contribution requirement shall file
17 quarterly reports of contributions required under this chapter with the department,
18 and pay contributions to the department, in such manner as the department
19 prescribes. Each contribution report and payment is due at the close of the month
20 next following the end of the applicable calendar quarter, except as authorized in sub.
21 (2c) or as the department may assign a later due date pursuant to sub. (1m) or
22 general department rules.

23 (b) The department may electronically provide a means whereby an employer
24 that files its employment and wage reports electronically may determine the amount
25 of contributions due for payment by the employer under s. 108.18 for each quarter.

1 If an employer that is subject to a contribution requirement files its employment and
2 wage reports under s. 108.205 (1) electronically, in the manner prescribed by the
3 department ~~for purposes of this paragraph~~ under s. 108.205 (2), the department may
4 require the employer to determine electronically the amount of contributions due for
5 payment by the employer under s. 108.18 for each quarter. In such case, the
6 employer is excused from filing contribution reports under par. (a). The employer
7 shall pay the amount due for each quarter by the due date specified in par. (a).

8 **SECTION 10.** 108.17 (2b) of the statutes is amended to read:

9 108.17 **(2b)** The department shall prescribe a form and methodology for filing
10 contribution reports under sub. (2) electronically. Each employer of ~~25 or more~~
11 ~~employees, as determined under s. 108.22 (1) (ae), that does not use an and employer~~
12 ~~agent to file its contribution reports under this section~~ shall file its contribution
13 reports electronically in the manner and form prescribed by the department. ~~Each~~
14 ~~employer that becomes subject to an electronic reporting requirement under this~~
15 ~~subsection shall file its initial report under this subsection for the quarter during~~
16 ~~which the employer becomes subject to the reporting requirement. Once an employer~~
17 ~~becomes subject to a reporting requirement under this subsection, it shall continue~~
18 ~~to file its reports under this subsection unless that requirement is waived by the~~
19 ~~department unless the employer demonstrates good cause, as specified in s. 108.022,~~
20 for being unable to file contribution reports electronically.

21 **SECTION 11.** 108.17 (2g) of the statutes is repealed.

22 **SECTION 12.** 108.17 (7) of the statutes is repealed.

23 **SECTION 13.** 108.185 of the statutes is created to read:

24 **108.185 Payment of contributions and reimbursements; good cause.**

25 Each employer, employer agent, person liable under s. 108.22 (9), and private agency

1 liable under s. 108.22 (10) shall pay all contributions, reimbursements, interest,
2 penalties, assessments, and other amounts due under this chapter by means of
3 electronic funds transfer or another electronic method as approved by the
4 department unless the employer, employer agent, person, or private agency
5 demonstrates good cause, as specified in s. 108.022, for being unable to pay such
6 amounts electronically.

7 **SECTION 14.** 108.205 (1m) of the statutes is repealed.

8 **SECTION 15.** 108.205 (2) of the statutes is amended to read:

9 108.205 (2) Each employer of ~~25 or more employees, as determined under s.~~
10 ~~108.22 (1) (ae), that does not use an employer agent to file its reports under this~~
11 ~~section~~ and employer agent shall file the quarterly report under sub. (1)
12 electronically in the manner and form prescribed by the department. ~~An employer~~
13 ~~that becomes subject to an electronic reporting requirement under this subsection~~
14 ~~shall file its initial report under this subsection for the quarter during which the~~
15 ~~employer becomes subject to the reporting requirement. Once an employer becomes~~
16 ~~subject to the reporting requirement under this subsection, the employer shall~~
17 ~~continue to file its quarterly reports under this subsection unless that requirement~~
18 ~~is waived by the department~~ unless the employer demonstrates good cause, as
19 specified in s. 108.022, for being unable to file reports electronically.

20 **SECTION 16.** 108.22 (1) (ac) of the statutes is amended to read:

21 108.22 (1) (ac) In addition to any fee assessed under par. (a), the department
22 may assess an employer or employer agent that is subject to the reporting
23 requirement under s. 108.205 (2) and that fails to file its report in the manner and
24 form prescribed under that subsection a penalty of \$20 for each employee whose

1 information is not reported in the that manner and form ~~prescribed under s. 108.205~~
2 ~~(1m) (b) or (2)~~.

3 **SECTION 17.** 108.22 (1) (ad) 1. of the statutes is amended to read:

4 108.22 (1) (ad) 1. An employer agent that is subject to the reporting
5 requirements under s. 108.17 ~~(2g) (2b)~~ and that fails to file a contribution report in
6 accordance with s. 108.17 ~~(2g) (2b)~~ may be assessed a penalty by the department in
7 the amount of \$25 for each employer whose report is not filed electronically in the
8 manner and form prescribed by the department.

9 **SECTION 18.** 108.22 (1) (af) of the statutes is amended to read:

10 108.22 (1) (af) In addition to the fee assessed under par. (a), the department
11 may assess ~~an employer or employer agent~~ a person that is subject to a requirement
12 required to make contributions a payment to the department by means of an
13 electronic ~~funds transfer~~ method under s. ~~108.17 (7) 108.185~~ and that ~~pays~~
14 ~~contributions~~ makes the payment by any method inconsistent with s. ~~108.17 (7)~~
15 ~~108.185~~ a penalty of the greater of \$50 or an amount equal to one-half of ~~one~~ 1
16 percent of the total ~~contributions~~ amount paid by the ~~employer or employer agent~~
17 person for the quarter in which the violation occurs.

18 **SECTION 19.** 108.225 (16) (am) 1. c. of the statutes is amended to read:

19 108.225 (16) (am) 1. c. The department may decrease or eliminate the
20 exemption from levy under this paragraph if a final determination has been issued
21 under s. 108.09 or 108.095 or a judgment has been entered under s. 108.24 (1) in
22 which the debtor has been found guilty of making a false statement or representation
23 to obtain benefits and the benefits and any ~~assessment~~ penalty under s. 108.04 (11)
24 (cm) have not been paid or reimbursed at the time that the levy is issued, unless the
25 fund's treasurer has written off the debt under s. 108.16 (3) (a).

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