



## Unemployment Insurance Advisory Council

### Meeting Agenda

January 4, 2024, 9 a.m.

#### **The public may attend by teleconference.**

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)  
Meeting number (access code): 2664 606 7556 Password: DWD1

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

1. Call to order and introductions
2. Approval of minutes of the December 5, 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. Rulemaking proposal
  - Proposed scope statement for UI hearings - DWD 140
7. Labor and Management proposals to amend the unemployment insurance law
8. Research requests
9. 2023-2024 UIAC timeline
10. Future meeting dates: Feb. 15, Mar. 21, Apr. 18, May 16, June 20, July 18
11. 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

December 5, 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, Di Ann Fechter, Mike Gotzler, Shane Griesbach, Christopher Harris, Scott Manley, and Susan Quam.

**Department Staff:** Andy Rubsam, Jason Schunk, Jim Moe, Robert Usarek, Ashley Gruttke, Mike Myszewski, Jennifer Wakerhauser (General Counsel), and Joe Brockman.

**Members of the Public:** Victor Forberger (Attorney, Wisconsin UI Clinic), Brenda Lewison (Legal Action of Wisconsin), and Cindy Buchko (Construction Business Group).

### 1. Call to Order and Introductions

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

### 2. Approval of Minutes of the November 16, 2023, UIAC Meeting

Motion by Ms. Feistel, second by Mr. Manley, to approve the minutes of the November 16, 2023, meeting with a minor correction. The vote was taken by voice vote 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 highlights are in members' packets. Ms. Knutson stated that the Trust Fund balance as of the end of October is \$1.645 billion, a 26% increase over last year at the same time.

## **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

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

## **6. LRB Draft of D23-04 and D23-05 Department Proposals**

Ms. Knutson stated that a copy of the LRB draft was provided to members for their review.

## **7. Rulemaking Proposal**

- Proposed scope statement for UI hearings – DWD 140

Ms. Knutson stated that 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 Labor and Management proposals will be discussed in caucus today.

## **9. Research Requests**

Ms. Knutson stated that there were no pending 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:

- January 18, 2024
- February 15, 2024
- March 21, 2024
- April 18, 2024
- May 16, 2024
- June 20, 2024

Motion by Mr. Griesbach, second by Mr. Manley, 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 voice vote and passed unanimously.

The Council went into closed caucus session at 10:08 am.

The Council reconvened in open session at 1:30 pm.

Mr. Manley stated that Labor and Management members would like to continue their negotiations. Mr. Manley stated that both sides propose a meeting date of January 4, 2024, at 9:00 am, for a virtual meeting.

Mr. Manley stated that Labor and Management have no concerns with the LRB draft.

Motion by Mr. Manley, second by Mr. Griesbach, to approve the LRB draft.

The motion passed by a unanimous voice vote.

## **12. Adjourn**

Motion by Mr. Gotzler, second by Mr. Griesbach to adjourn. The motion passed by a unanimous voice vote.

The Council adjourned at 1:35 pm.

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# UI Advisory Council

January 4, 2024



All-time low **2.4%** Wisconsin unemployment rate in April and May 2023



All-time high **3,020,300** nonfarm jobs in November 2023



Apprenticeship Milestones



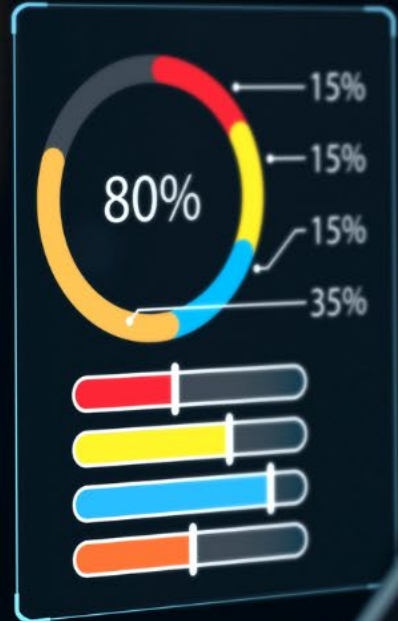
Record high **178,337** working age individuals with disabilities employed in Wisconsin



Record high **136,000** construction jobs in September 2023

## RECORD BREAKING ACHIEVEMENTS

# MODERNIZING SERVICES







**MODERNIZING THE  
WORKFORCE**

An aerial photograph of the Wisconsin State Capitol building in Madison, Wisconsin. The building is a large, white, neoclassical structure with a prominent central dome topped by a golden statue. The building is surrounded by a lush green lawn with many trees in full spring foliage. In the background, other city buildings and a clear blue sky are visible. A large, semi-transparent blue circle is overlaid on the center of the image, containing the text "WORKFORCE OF THE FUTURE" in white, bold, sans-serif capital letters.

**WORKFORCE  
OF THE FUTURE**

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Thank you!

Jan. 4, 2024 | UI Advisory Council

## UI Reserve Fund Highlights

January 4, 2024

- Benefit payments through November 2023 increased by \$47.2 million or 19.3% when compared to benefits paid through November 2022.

| <b>Benefits Paid</b>  | <b>2023 YTD*</b><br><i>(in millions)</i> | <b>2022 YTD*</b><br><i>(in millions)</i> | <b>Change</b><br><i>(in millions)</i> | <b>Change</b><br><i>(in percent)</i> |
|-----------------------|--|--|---------------------------------------|--------------------------------------|
| Total Regular UI Paid | \$292.3                                  | \$245.1                                  | \$47.2                                | 19.3%                                |

- Tax receipts through November 2023 increased by \$110 million or 24.4% when compared to tax receipts through November 2022. Both tax years were rated in Schedule D.

| <b>Tax Receipts</b> | <b>2023 YTD*</b><br><i>(in millions)</i> | <b>2022 YTD*</b><br><i>(in millions)</i> | <b>Change</b><br><i>(in millions)</i> | <b>Change</b><br><i>(in percent)</i> |
|---------------------|--|--|---------------------------------------|--------------------------------------|
| Total Tax Receipts  | \$560.0                                  | \$450.0                                  | \$110.0                               | 24.4%                                |

- The November 2023 Trust Fund ending balance was over \$1.6 billion, an increase of 26.2% when compared to the same time last year.

| <b>UI Trust Fund Balance</b> | November<br>2023<br><i>(in millions)</i> | November<br>2022<br><i>(in millions)</i> | <b>Change</b><br><i>(in millions)</i> | <b>Change</b><br><i>(in percent)</i> |
|------------------------------|--|--|---------------------------------------|--------------------------------------|
| Trust Fund Balance           | \$1,630.1                                | \$1,291.7                                | \$338.4                               | 26.2%                                |

- 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.

| <b>UI Trust Fund Interest</b> | <b>2023 YTD*</b><br><i>(in millions)</i> | <b>2022 YTD*</b><br><i>(in millions)</i> | <b>Change</b><br><i>(in millions)</i> | <b>Change</b><br><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 **November 30, 2023** Financial Statements.

# FINANCIAL STATEMENTS

For the Month Ended November 30, 2023



Unemployment Insurance Division

Bureau of Tax and Accounting

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

| <u>ASSETS</u>                                  | <u>CURRENT YEAR</u>            | <u>PRIOR YEAR</u>              |
|--|--------------------------------|--------------------------------|
| <b>CASH:</b>                                   |                                |                                |
| U.I. CONTRIBUTION ACCOUNT                      | 210,210.75                     | (139,186.06)                   |
| U.I. BENEFIT ACCOUNTS                          | (197,233.43)                   | (343,122.46)                   |
| U.I. TRUST FUND ACCOUNTS (1) (2) (3)           | <u>1,683,006,920.91</u>        | <u>1,374,988,559.82</u>        |
| TOTAL CASH                                     | <u>1,683,019,898.23</u>        | <u>1,374,506,251.30</u>        |
| <b>ACCOUNTS RECEIVABLE:</b>                    |                                |                                |
| BENEFIT OVERPAYMENT RECEIVABLES                | 194,203,114.65                 | 209,081,524.72                 |
| LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)       | <u>(62,106,233.12)</u>         | <u>(59,537,813.59)</u>         |
| NET BENEFIT OVERPAYMENT RECEIVABLES            | 132,096,881.53                 | 149,543,711.13                 |
| TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6) | 34,721,097.23                  | 32,114,851.49                  |
| LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)       | <u>(16,496,361.29)</u>         | <u>(15,684,363.69)</u>         |
| NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV     | 18,224,735.94                  | 16,430,487.80                  |
| OTHER EMPLOYER RECEIVABLES                     | 24,132,631.87                  | 22,687,354.55                  |
| LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS           | <u>(8,096,663.21)</u>          | <u>(8,320,755.65)</u>          |
| NET OTHER EMPLOYER RECEIVABLES                 | 16,035,968.66                  | 14,366,598.90                  |
| TOTAL ACCOUNTS RECEIVABLE                      | <u>166,357,586.13</u>          | <u>180,340,797.83</u>          |
| <b>TOTAL ASSETS</b>                            | <u><u>1,849,377,484.36</u></u> | <u><u>1,554,847,049.13</u></u> |
| <b><u>LIABILITIES AND EQUITY</u></b>           |                                |                                |
| <b>LIABILITIES:</b>                            |                                |                                |
| CONTINGENT LIABILITIES (7)                     | 109,378,172.85                 | 120,260,136.88                 |
| OTHER LIABILITIES                              | 40,736,168.15                  | 52,258,000.93                  |
| FEDERAL BENEFIT PROGRAMS                       | 870,590.93                     | 197,490.72                     |
| CHILD SUPPORT HOLDING ACCOUNT                  | 8,749.00                       | 10,357.00                      |
| FEDERAL WITHHOLDING TAXES DUE                  | (9,687.00)                     | 120,096.00                     |
| STATE WITHHOLDING TAXES DUE                    | 1,014,654.30                   | 821,546.56                     |
| DUE TO OTHER GOVERNMENTS (8)                   | <u>539,046.76</u>              | <u>574,801.82</u>              |
| TOTAL LIABILITIES                              | 152,537,694.99                 | 174,242,429.91                 |
| <b>EQUITY:</b>                                 |                                |                                |
| RESERVE FUND BALANCE                           | 2,861,880,790.07               | 2,723,221,454.79               |
| BALANCING ACCOUNT                              | <u>(1,165,041,000.70)</u>      | <u>(1,342,616,835.57)</u>      |
| TOTAL EQUITY                                   | <u>1,696,839,789.37</u>        | <u>1,380,604,619.22</u>        |
| <b>TOTAL LIABILITIES AND EQUITY</b>            | <u><u>1,849,377,484.36</u></u> | <u><u>1,554,847,049.13</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. \$11,729,501 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 \$175,883. Deferrals for the prior year were \$138,967.
6. \$20,496,369, or 59.0%, of this balance is estimated.
7. \$85,848,803 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$23,529,370 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 \$4,932. The 11/30/2023 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$87,574. 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 November 30, 2023

|  | CURRENT ACTIVITY               | YTD ACTIVITY                   | PRIOR YTD                      |
|--|--------------------------------|--------------------------------|--------------------------------|
| BALANCE AT BEGINNING OF MONTH/YEAR:    |                                |                                |                                |
| U.I. TAXABLE ACCOUNTS                  | 3,326,326,294.16               | 3,152,504,720.62               | 3,025,371,200.23               |
| BALANCING ACCOUNT                      | <u>(1,616,582,444.92)</u>      | <u>(1,792,807,841.51)</u>      | <u>(1,920,053,262.30)</u>      |
| TOTAL BALANCE                          | 1,709,743,849.24               | 1,359,696,879.11               | 1,105,317,937.93               |
| <br><b>INCREASES:</b>                  |                                |                                |                                |
| TAX RECEIPTS/RFB PAID                  | 3,795,933.42                   | 402,016,446.09                 | 314,761,859.26                 |
| ACCRUED REVENUES                       | 3,150,113.31                   | 4,925,003.26                   | 3,768,196.27                   |
| SOLVENCY PAID                          | 272,508.65                     | 157,948,673.10                 | 135,217,598.32                 |
| FORFEITURES                            | 0.00                           | 171.13                         | 804.00                         |
| BENEFIT CONCEALMENT INCOME             | 90,028.31                      | 2,094,859.72                   | 1,361,197.46                   |
| 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                          | <u>32,315.51</u>               | <u>466,745.17</u>              | <u>223,027.42</u>              |
| TOTAL INCREASES                        | 7,340,899.20                   | 651,215,465.25                 | 529,973,380.73                 |
| <br><b>DECREASES:</b>                  |                                |                                |                                |
| TAXABLE EMPLOYER DISBURSEMENTS         | 16,759,341.12                  | 243,274,171.10                 | 187,454,811.75                 |
| QUIT NONCHARGE BENEFITS                | 2,629,148.54                   | 36,900,180.36                  | 23,830,080.25                  |
| OTHER DECREASES                        | 153,146.19                     | 22,841,915.88                  | 10,067,326.14                  |
| OTHER NONCHARGE BENEFITS               | <u>703,323.22</u>              | <u>11,056,287.65</u>           | <u>33,334,481.30</u>           |
| TOTAL DECREASES                        | 20,244,959.07                  | 314,072,554.99                 | 254,686,699.44                 |
| <br>BALANCE AT END OF MONTH/YEAR:      |                                |                                |                                |
| RESERVE FUND BALANCE                   | 2,861,880,790.07               | 2,861,880,790.07               | 2,723,221,454.79               |
| BALANCING ACCOUNT                      | <u>(1,165,041,000.70)</u>      | <u>(1,165,041,000.70)</u>      | <u>(1,342,616,835.57)</u>      |
| TOTAL BALANCE (9) (10) (11) (12)       | <u><u>1,696,839,789.37</u></u> | <u><u>1,696,839,789.37</u></u> | <u><u>1,380,604,619.22</u></u> |

9. This balance differs from the cash balance related to taxable employers of \$1,642,079,745 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. \$11,729,501 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  
CASH ANALYSIS  
FOR THE MONTH ENDED November 30, 2023

|   | <u>CURRENT<br/>ACTIVITY</u>    | <u>YEAR TO DATE<br/>ACTIVITY</u> | <u>PRIOR YTD<br/>ACTIVITY</u>  |
|---|--------------------------------|----------------------------------|--------------------------------|
| BEGINNING U.I. CASH BALANCE             | \$1,657,577,115.64             | \$1,303,839,732.39               | \$1,048,002,601.08             |
| INCREASES:                              |                                |                                  |                                |
| TAX RECEIPTS/RFB PAID                   | 3,795,933.42                   | 402,016,446.09                   | 314,761,859.26                 |
| U.I. PAYMENTS CREDITED TO SURPLUS       | 951,654.86                     | 163,533,491.62                   | 133,258,617.04                 |
| 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>4,747,588.28</u>            | <u>649,313,504.49</u>            | <u>522,661,174.30</u>          |
| TOTAL CASH AVAILABLE                    | <u>1,662,324,703.92</u>        | <u>1,953,153,236.88</u>          | <u>1,570,663,775.38</u>        |
| DECREASES:                              |                                |                                  |                                |
| TAXABLE EMPLOYER DISBURSEMENTS          | 16,759,341.12                  | 243,274,171.10                   | 187,454,811.75                 |
| BENEFITS CHARGED TO SURPLUS             | 3,494,178.80                   | 49,045,947.84                    | 57,643,283.72                  |
| TOTAL BENEFITS PAID DURING PERIOD       | <u>20,253,519.92</u>           | <u>292,320,118.94</u>            | <u>245,098,095.47</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>(8,560.85)</u>              | <u>(161,398.91)</u>              | <u>2,061,206.67</u>            |
| ENDING U.I. CASH BALANCE (13) (14) (15) | <u><u>1,642,079,744.85</u></u> | <u><u>1,642,079,744.85</u></u>   | <u><u>1,322,482,572.81</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.

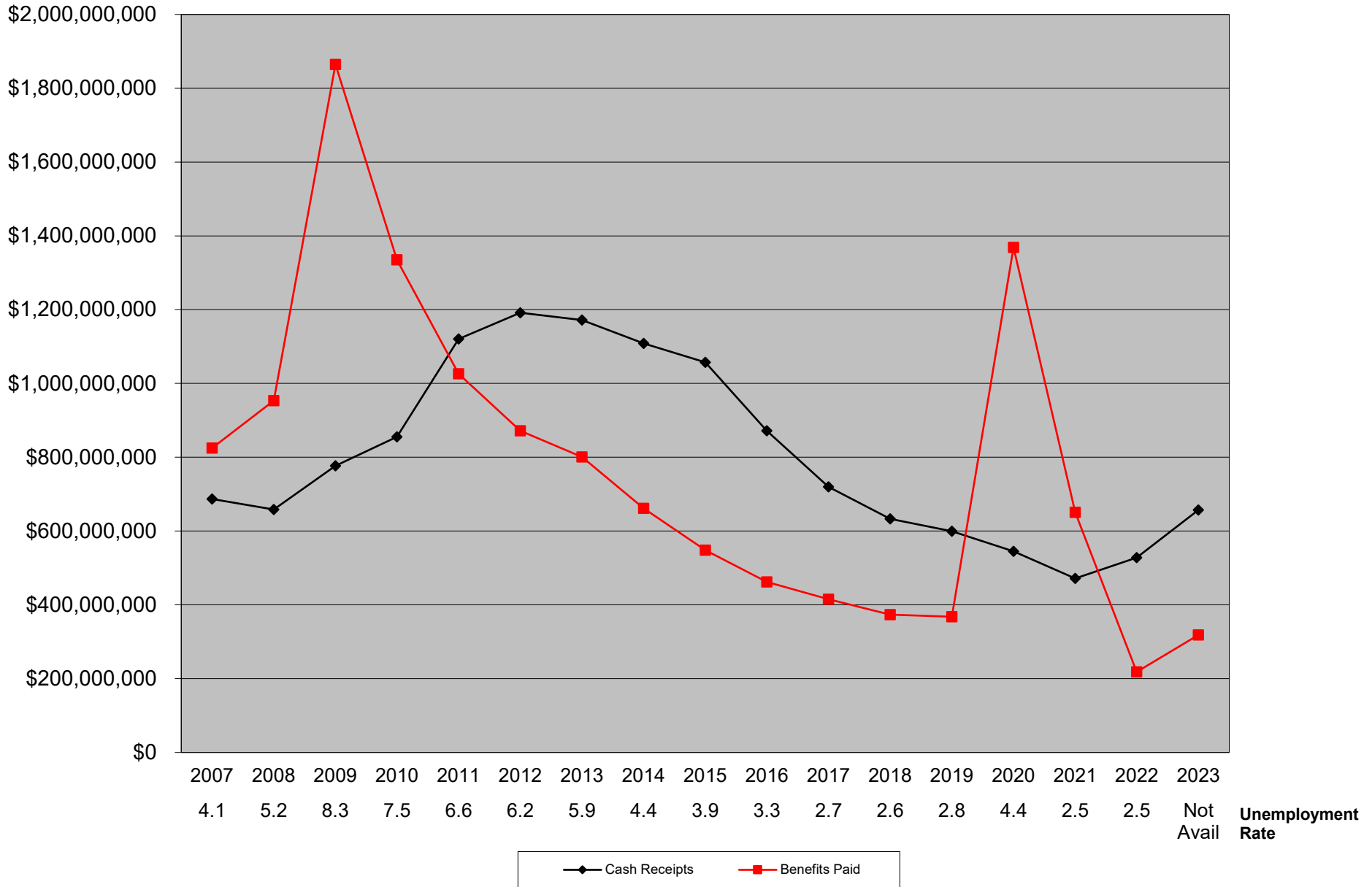
15. \$11,729,501 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, 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 November 30, 2023

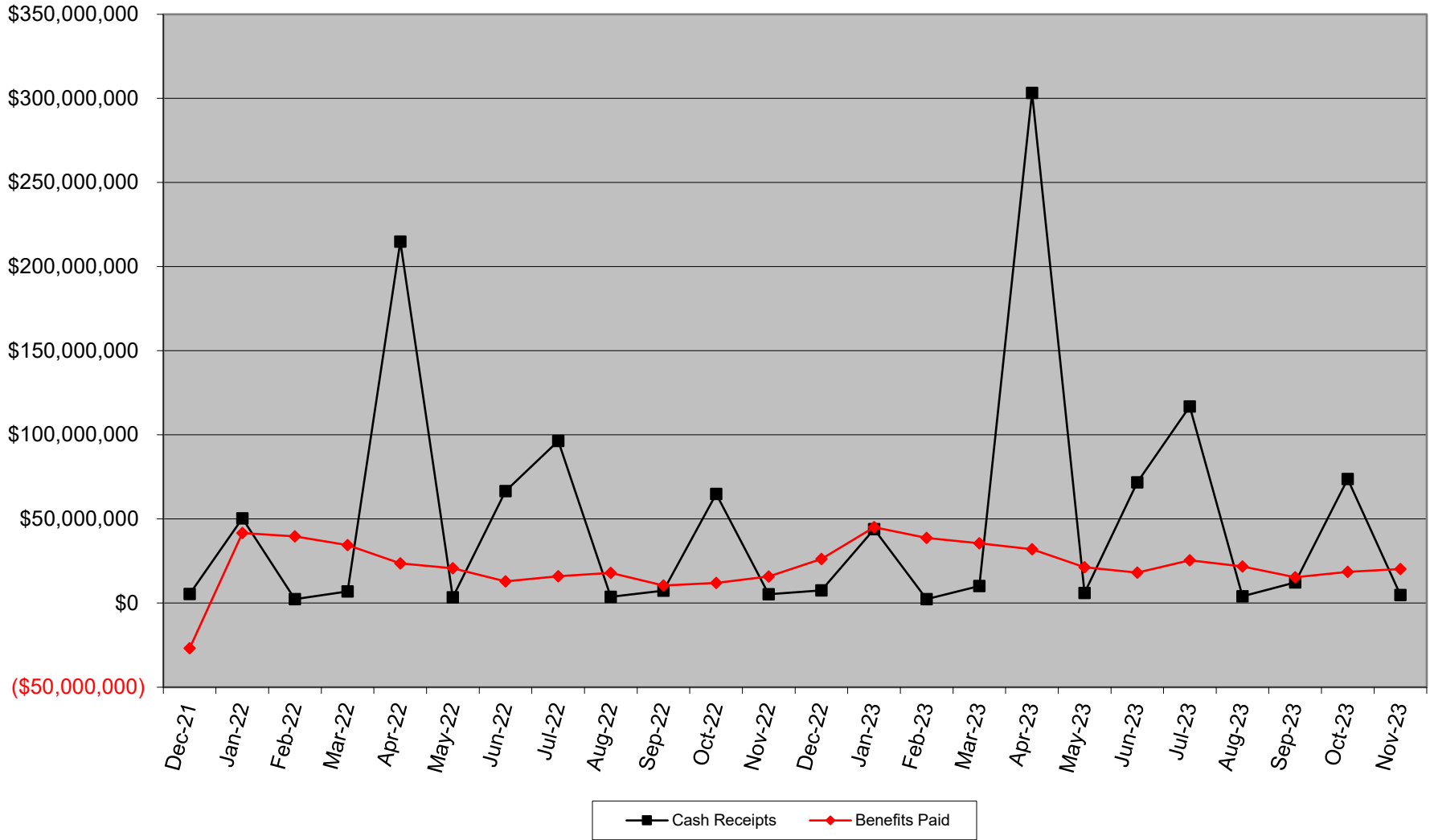
|  | <u>CURRENT<br/>ACTIVITY</u>      | <u>YEAR TO DATE<br/>ACTIVITY</u> | <u>PRIOR YTD<br/>ACTIVITY</u>    |
|--|----------------------------------|----------------------------------|----------------------------------|
| BALANCE AT THE BEGINNING OF THE MONTH/YEAR | (\$1,217,270,799.40)             | (\$1,399,163,452.19)             | (\$1,527,719,203.28)             |
| INCREASES:                                 |                                  |                                  |                                  |
| U.I. PAYMENTS CREDITED TO SURPLUS:         |                                  |                                  |                                  |
| SOLVENCY PAID                              | 272,508.65                       | 157,948,673.10                   | 135,217,598.32                   |
| FORFEITURES                                | 0.00                             | 171.13                           | 804.00                           |
| OTHER INCREASES                            | 679,146.21                       | 5,584,647.39                     | (1,959,785.28)                   |
| U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL | <u>951,654.86</u>                | <u>163,533,491.62</u>            | <u>133,258,617.04</u>            |
| TRANSFERS BETWEEN SURPLUS ACCTS (16)       |                                  |                                  |                                  |
| 2021 WI ACT 58 TRANSFERS TO TRUST FUND     | 3,717.27                         | (135,330.50)                     | (20,192,602.92)                  |
| 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>                  |
| TOTAL INCREASES                            | <u>955,372.13</u>                | <u>247,161,727.90</u>            | <u>187,706,712.12</u>            |
| DECREASES:                                 |                                  |                                  |                                  |
| BENEFITS CHARGED TO SURPLUS:               |                                  |                                  |                                  |
| QUITS                                      | 2,629,148.54                     | 36,900,180.36                    | 23,830,080.25                    |
| OTHER NON-CHARGE BENEFITS                  | 865,030.26                       | 12,145,767.48                    | 33,813,203.47                    |
| BENEFITS CHARGED TO SURPLUS SUBTOTAL       | <u>3,494,178.80</u>              | <u>49,045,947.84</u>             | <u>57,643,283.72</u>             |
| REED ACT EXPENDITURES                      |                                  |                                  |                                  |
| EMERGENCY ADMIN GRANT-EUISAA 2020 EXP      | 0.00                             | 0.00                             | 1,021,900.43                     |
| EMER UC RELIEF REIMB EMPL EXPENDITURES     | 0.00                             | 18,914,772.00                    | 0.00                             |
| TOTAL DECREASES                            | <u>(8,560.85)</u>                | <u>(161,398.91)</u>              | <u>2,061,206.67</u>              |
| BALANCE AT THE END OF THE MONTH/YEAR       | <u><u>(1,219,801,045.22)</u></u> | <u><u>(1,219,801,045.22)</u></u> | <u><u>(1,400,738,881.98)</u></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 December to November)

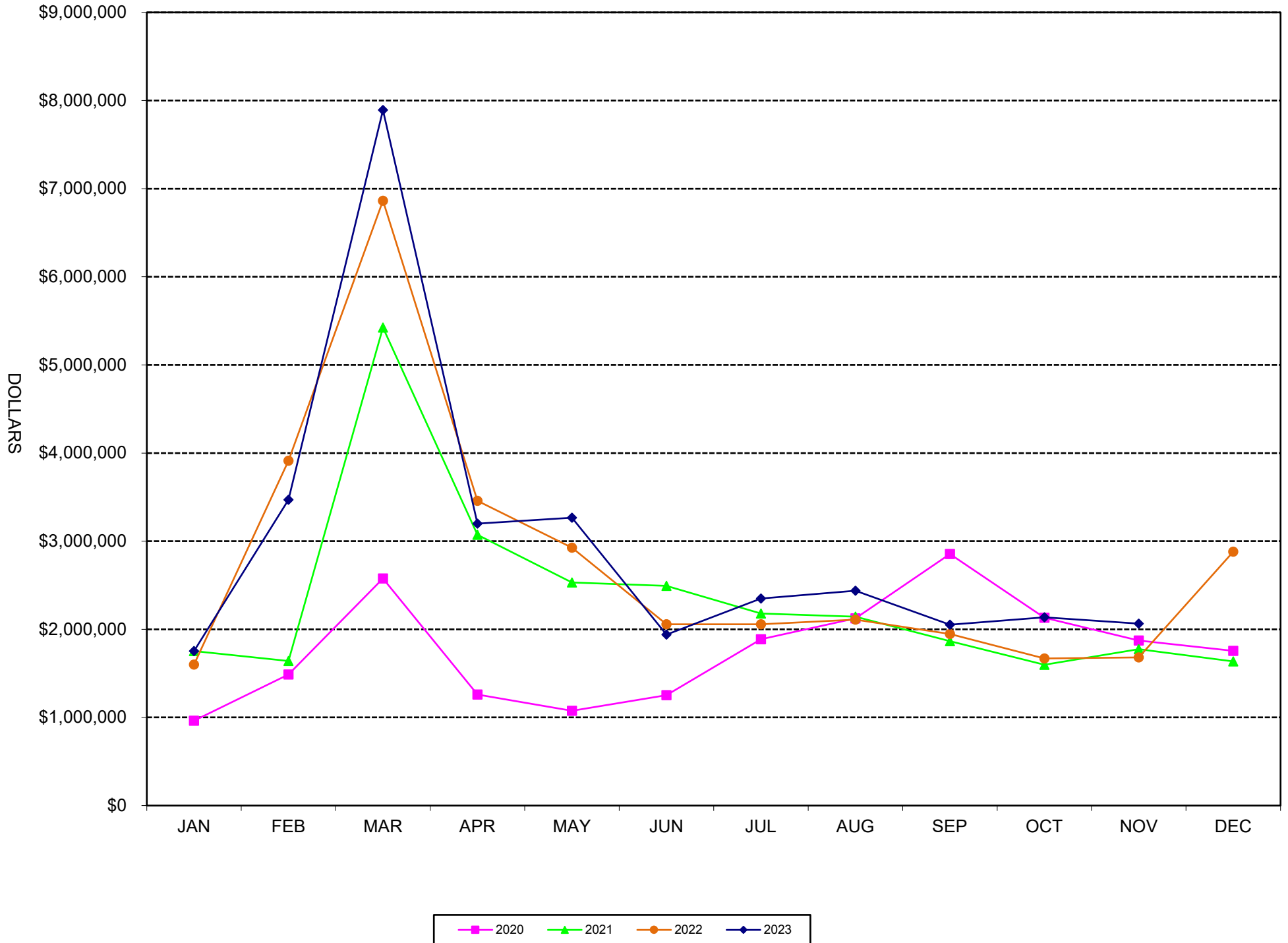


### Cash Activity Related to Taxable Employers - Most Recent 24 Months Excluding FUTA Tax Credits

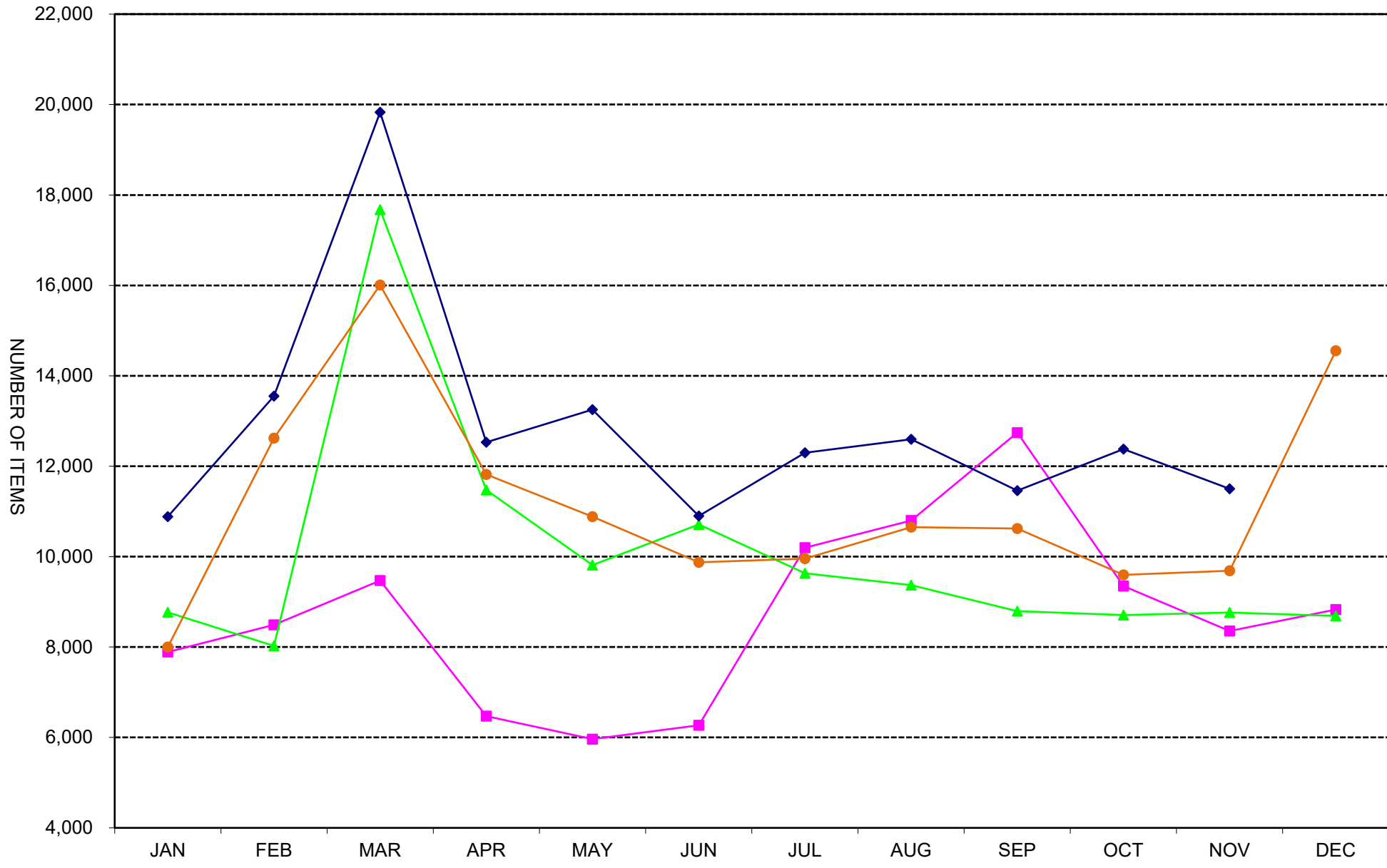


# MONTHLY OVERPAYMENT CASH RECEIPTS

(by dollar amount)

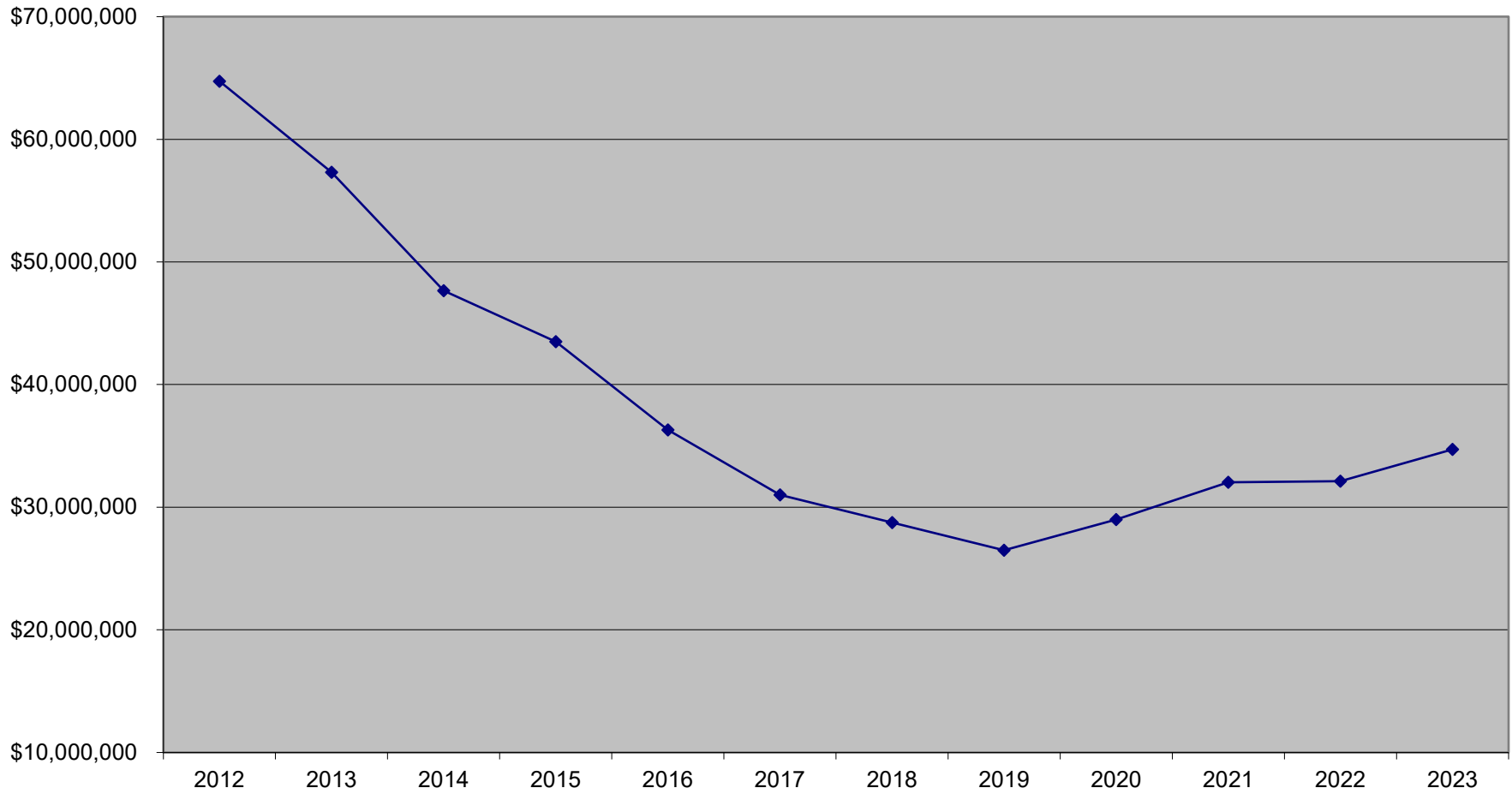


# MONTHLY OVERPAYMENT CASH RECEIPTS (by number of items)



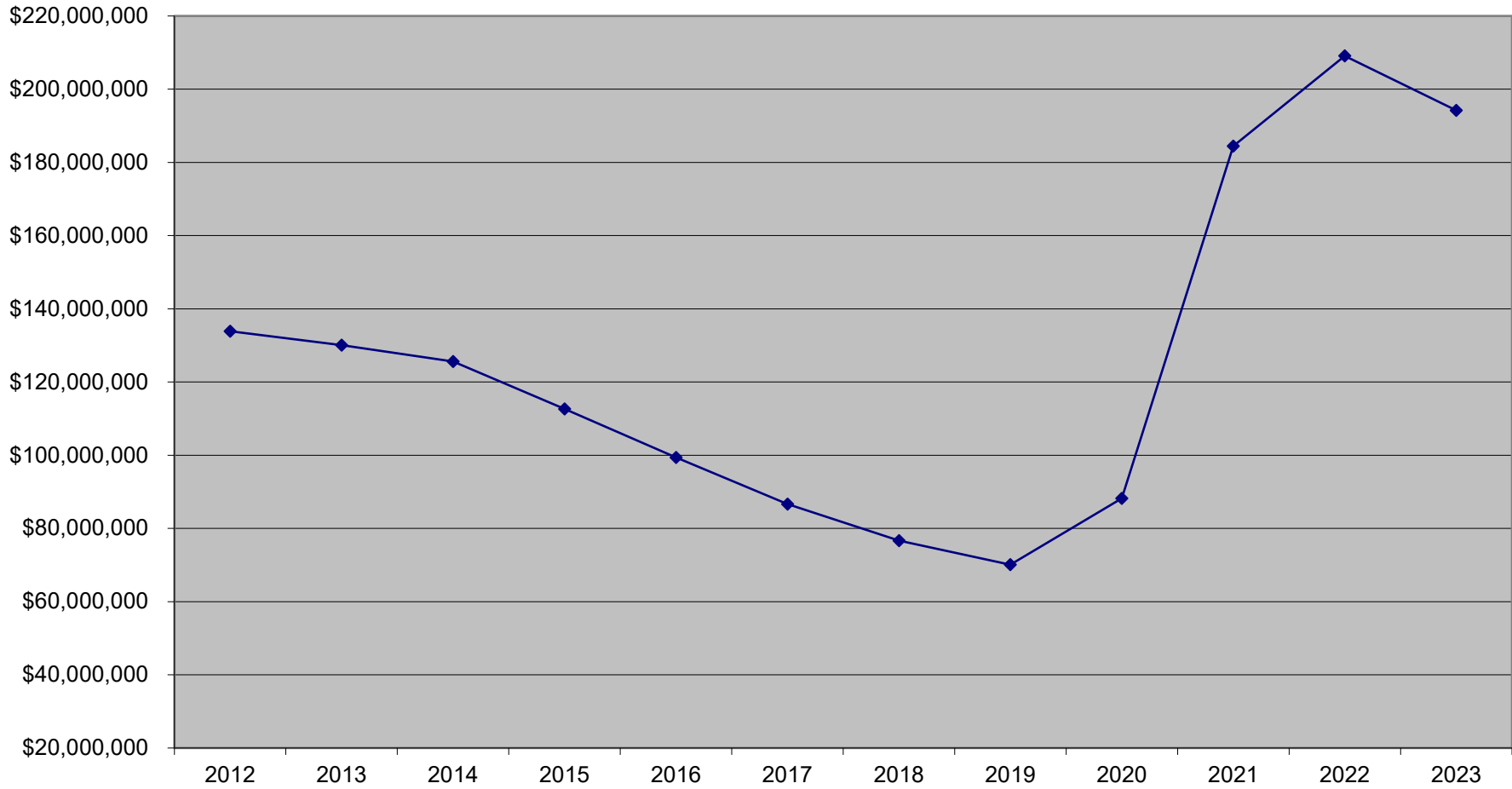
■ 2020    ▲ 2021    ● 2022    ◆ 2023

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



**Source: Monthly Balance Sheet**

**TOTAL BENEFIT OVERPAYMENT RECEIVABLES**  
**(for all years as of November)**



**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.<sup>1</sup>

**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.

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<sup>1</sup> 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 7<sup>th</sup> 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.<sup>1</sup> 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.

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

**D23-02**  
**Worker Misclassification Penalties**

**2. Proposed Statutory Changes<sup>2</sup>**

**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.~~

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<sup>2</sup> 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.

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:

| <b>State</b> | <b>Percent of UI hearings by phone (2019)</b> |
|--------------|---|
| 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](mailto: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

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