



## Unemployment Insurance Advisory Council

### Meeting Agenda

October 8, 2024, 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): 26610866940 Password: DWD1

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

1. Call to order and introductions
2. Approval of minutes of the June 13, 2024 UIAC meeting
3. Department update
4. Correspondence
5. Quarterly report on UI information technology systems ([4/1/2024-6/30/2024](#))
6. Trust Fund update – Shashank Partha
7. Program Integrity Assessment
8. Judicial update:
  - *Catholic Charities v. LIRC*
  - [Bevco v. LIRC](#)
9. Research requests
10. Future meeting dates: November 21, January 16, February 20, March 20
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

June 13, 2024

### Held Via Teleconference

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

**Members:** Janell Knutson (Chair), Sally Feistel, Di Ann Fechter, Corey Gall, Mike Gotzler, Shane Griesbach, Scott Manley, and Susan Quam.

**Department Staff:** Secretary Amy Pechacek, Deputy Secretary Pamela McGillivray, Jim Chiolino (UI Division Administrator), Jason Schunk (UI Deputy Division Administrator), Andy Rubsam, Jim Moe, Mike Myszewski, Shashank Partha, Linda Hendrickson, Jeff Laesch, Pam Neumann, Robert Usarek, Ashley Gruttke, Lee Sensenbrenner, Jennifer Wakerhauser (General Counsel), Kathryn Jaeger (Deputy Legislative Liaison), and Joe Brockman.

**Members of the Public:** BJ Dernbach (Assembly Workforce Development Committee Clerk, Wisconsin State Assembly), John Holland (Wisconsin Legislative Audit Bureau), and Victor Forberger (Attorney, Wisconsin UI Clinic).

### 1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:07 a.m. under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged UI Division Administrator Jim Chiolino, Andy Rubsam, DWD Secretary Amy Pechacek, and the department staff in attendance.

### 2. Approval of Minutes of the March 21, 2024, UIAC Meeting

Motion by Mr. Manley, second by Ms. Fechter, to approve the minutes of the March 21, 2024, meeting without correction. The vote was taken by roll call and passed unanimously.

### 3. Correspondence

Ms. Knutson reported there was one item of correspondence in members' packets. The Governor's Council on Migrant Labor sent a letter regarding work search requirements for migrant and seasonal farmworkers. Ms. Knutson responded on behalf of the Council (via email) stating the Council would receive a copy of the letter at the next meeting and the letter will be included as part of public comments for the public hearing this fall. The Council on Migrant Labor responded that they look forward to the public hearing process. Ms. Knutson stated the Council does not need to address the matter at this time.

#### **4. Department Updates**

Sec. Pechacek highlighted recent graduation ceremonies associated with Project SEARCH and the Division of Vocational Rehabilitation.

Sec. Pechacek reported the labor market data from April. The seasonally adjusted unemployment rate was again under 3% at 2.9% (a full percentage point below the national rate). The labor force participation rate was 65.6%, which is 2.9 percentage points above the national rate. Wisconsin has also been breaking records set last year in total employment and total jobs.

Sec. Pechacek provided an update on the UI Modernization project, which has been in progress for about 3 years. To-date, the department has implemented: a fully cloud-based customer contact platform; a platform for claimants to submit documents online; integration of plain language to ease the application process and prevent errors; an upgraded claimant portal that includes a message center for direct communication, text notifications, and a mobile-friendly design; translation of the UI application into other languages; and other Tiger Team projects. As UI Modernization continues, the department will continue work on modular and incremental projects to overhaul the mainframe system.

Sec. Pechacek advised work with Flexion will conclude in early July. So far, Flexion has established a secure cloud infrastructure, implemented additional security protocols, identified dependencies within the mainframe to avoid customer disruptions, and developed a benefits calculation engine.

Finally, UI Modernization also includes work on the new UI Employer Portal. The division has conducted focus groups for input from employers. The division is using feedback from the focus groups to help inform the final design aspects of the portal.

#### **5. Research Requests**

Sec. Pechacek provided a response to research requests raised at the March 21, 2024 Council meeting regarding DWD's fraud prevention and detection efforts. The full research response is included in members' packets.

Sec. Pechacek reported that addressing fraud has been at the forefront of the Council and department historically.

During the COVID-19 pandemic, the division's detection methods identified over 94,000 claims and attempted claims of potential imposters. Sec. Pechacek reported the division's prevention methods prevented over \$130 million of payments to potential imposters, as a conservative estimate.

Sec. Pechacek stated Wisconsin ranked second in total overpayment recoveries among the 10 states in US-DOL Region 5 during 2023. This ranking also stands out nationally, as Wisconsin ranks seventh of the 53 state agencies for total overpayment recoveries.

Sec. Pechacek noted the two most common work search issues are falsified work search actions and invalid work search actions. When a claimant does not enter four work search actions, if required, the system will automatically deny the claim. In 2023, over 23,000 claims were denied for that reason. Sec. Pechacek reported there are two types of work search audits: random and targeted. Random audits are regularly conducted on a sample of claims to ensure requirements are met. Targeted audits

are routinely conducted on claims with suspicious traits. In 2023, the overall denial rate for work search audits was 39.3%; for random work search audits 26.3%; and for targeted work search audits 56%. Sec. Pechacek explained denial rates for targeted work search audits are typically higher since the claims already exhibit suspicious traits.

There have been more than 30 new program integrity projects adopted, broadened, and initiated to strengthen the UI program and prevent fraud. Sec. Pechacek outlined some of these efforts.

Sec. Pechacek stated every UI team member plays a role in supporting the integrity of the UI program even if fraud or program integrity duties are not explicitly outlined in their job description. For example, there are standard procedures and processes to assure staff are equipped to prevent fraud. Staff are advised of new fraud schemes they may see in their role. Fraud prevention is the goal. Division employees dedicate many thousands of hours each year in various activities to prevent and detect fraud and in education to claimants and employers.

Sec. Pechacek reported the division received more than 1,000 total tips across the various fraud reporting methods. There were over 2,300 identity theft investigations in 2023. Also in 2023, the division made three referrals to Wisconsin district attorneys for benefit fraud cases. The division also referred two tax cases to federal agencies, one in 2022 and one in 2023 which have both now resulted in charges and convictions. Additionally, the division assisted federal agencies with 103 benefit fraud cases in 2023, of which 29 have resulted in indictments, 14 are pending, and 60 are under investigation.

US-DOL requirements for states to administer the UI program include maintaining a quality control program; adhering to data reporting and shared data requests; participation in US-DOL-sponsored research programs and audits; and required data validation. Sec. Pechacek stated US-DOL updates states on federal budget proposals, which, if implemented, the department may have to adopt. The FY2025 budget proposal outlines various program integrity improvements which Wisconsin has already implemented.

Sec. Pechacek emphasized the importance of both division staff and technology in the security of the UI system and described the positive results received from the department's annual survey on employee engagement. Sec. Pechacek noted Council members can contact the division with any questions or to request additional information and thanked Council members for their service.

## **6. Quarterly Report on UI Information Technology Systems (1/1/24 – 3/31/24)**

Ms. Knutson stated that the report for Q1 2024 can be found in members' packets. Ms. Knutson explained that, in addition to the items presented by Sec. Pechacek, the report also includes information on an updated dashboard which can be found online at <https://dwd.wisconsin.gov/uistats/>.

## **7. Trust Fund Update**

Mr. Partha reported the Trust Fund highlights based on the April 30, 2024 Financial Statements, which can be found in members' packets. Benefit payments through April 2024 increased by \$11.5 million or 7.6% (when compared to last year). Tax receipts through April 2024 declined by \$3.4 million or 1.0% (when compared to last year). The UI Trust Fund balance was just over \$1.8 billion at the end of April, which is an increase of 22.5% (when compared to last year). Benefits paid so far

in 2024 totaled \$163.0 million, and tax receipts year-to-date totaled \$347.7 million. Interest earned on the Trust Fund (received quarterly) was \$11.1 million compared to \$5.9 million for the same period last year.

Mr. Partha expects the UI tax schedule to remain in Schedule D, the lowest rate schedule; with a final determination based on the June Financial Statements.

## **8. 2024 Financial Outlook Report**

Ms. Knutson stated that members were sent an electronic copy of the report and introduced Rob Usarek, UI Research Analyst, who presented the information contained in the 2024 Financial Outlook Report.

Mr. Usarek stated that in the last two years there was an increase in benefits paid and tax revenue. The UI Trust Fund balance continued to grow; the balance was \$1.3 billion at the end of 2022 and \$1.6 billion at the end of 2023. As the UI Trust Fund balance grew, there was an increase in the Average High Cost Multiple (AHCM) solvency measure from 0.55 at the end of 2022 to 0.65 at the end of 2023.

Mr. Usarek explained that benefit payments in 2022 and 2023 were at low levels that had not been seen since the late 1980s. Mr. Usarek stated benefit payments had been declining since the end of the 2008-2009 recession, increased during the COVID-19 pandemic, decreased following the pandemic, and now are growing slightly.

The UI Trust Fund is projected to grow in the projection period (CY 2025 and CY 2026). Mr. Usarek projects the UI Trust Fund balance to end CY 2024 close to \$2 billion. Tax revenue and benefits are also expected to increase, but slightly, due to increased wages and increased employment in general (not due to increases in the unemployment rate).

Mr. Usarek also provided a brief summary of the Secretary's recommendations, which are included as part of the 2024 Financial Outlook Report and can be found in members' packets.

## **9. Proposed Scope Statement for UI Hearings – DWD 140**

Ms. Knutson stated that the proposed scope statement will be discussed at a future meeting.

## **10. Judicial Updates: *Amazon Logistics, Inc. v. LIRC* and *Morgan v. LIRC***

Ms. Knutson advised that the appellate decisions on the *Amazon Logistics, Inc. v. LIRC* and *Morgan v. LIRC* cases can be found in members' packets. Mr. Rubsam summarized the status of both cases.

Mr. Rubsam explained that the *Amazon Logistics* case involves an independent contractor/employee issue where a department audit found delivery workers were employees and not independent contractors, which was upheld by the administrative law judge (ALJ) and LIRC. However, the Circuit Court reversed LIRC's decision determining that the workers were independent contractors. Then, the Court of Appeals issued a published decision that the workers are employees. The Wisconsin Supreme Court initially granted the petition to review the case and held oral arguments but then later dismissed the appeal as improvidently granted, so the Court of Appeals decision (issuing workers were employees) was left in effect. LIRC has moved for reconsideration of the

dismissal, which is still before the court. Mr. Rubsam advised the department will update the Council if there are any changes in the case in the future.

*Morgan v. LIRC* is a benefits case regarding the Pandemic Unemployment Assistance (PUA) program. PUA is governed in part by Disaster Unemployment Assistance (DUA) regulations which provide that benefit payments are reduced by any income received (meaning gross income). Mr. Rubsam explained the department determined Ms. Morgan was overpaid PUA benefits because she underreported her self-employment income. The ALJ, LIRC, and Circuit Court found that Ms. Morgan's gross receipts from her sewing business should be used to reduce her PUA benefits. The Court of Appeals agreed that LIRC properly used the state tax law definition of "gross income" to determine the amount of PUA benefits payable to Ms. Morgan. Ms. Morgan was found to be at fault for the overpayment (so the overpayment cannot be waived). Mr. Rubsam advised this case may be further appealed, and the department will update the Council accordingly.

Mr. Rubsam stated that, since the PUA program has ended, the department does not expect the *Morgan v. LIRC* case to have a large effect on future cases. The case also does not change the department's approach because the department will follow the LIRC and Court of Appeals' decision.

## **11. Future Meeting Dates**

Ms. Knutson stated that the scheduled future meeting dates are:

- September 19, 2024
- October 17, 2024
- November 21, 2024

Ms. Knutson explained that the public hearing is normally held in November each even-numbered year and there is typically no Council meeting that month.

## **12. Closed Caucus/Adjourn**

Motion by Mr. Griesbach, second by Mr. Manley, to convene in closed caucus session to deliberate the items on the agenda pursuant to Wis. Stat. § 19.85(1)(ee) and to adjourn from closed caucus. Vote was taken by roll call and passed unanimously.

The Council went into closed caucus session at 11:03 a.m. and the public portion of the meeting was adjourned.

Name: Demetrius Nelson

Topic: Unemployment Insurance

Comments / Questions: Urgent Request for Reconsideration of Wisconsin Statute 108.04(17)(A)-(C) & DWD 132.04 for Unemployment Benefits During Summer Break

I am writing to urgently request a reconsideration of Wisconsin Statute 108.04(17)(A)-(C) and DWD 132.04 as they pertain to the provision of unemployment benefits for teachers during the summer months. As an educator who faces significant financial challenges during this period, I believe the current interpretation of these statutes imposes an unjust and unrealistic financial burden on teachers, undermining their ability to meet essential living expenses, including rent.

### Key Arguments Against the Statute

#### 1. Financial Instability and Hardship

**Year-Round Financial Obligations:** Unlike many other professions, teachers' salaries are typically spread out over the academic year, leaving a substantial gap in income during the summer months. This gap can lead to severe financial instability, making it difficult for educators to meet their ongoing financial commitments, including rent, utilities, and groceries.

**Inadequate Savings:** The expectation that teachers can save enough during the academic year to cover summer expenses is often unrealistic, particularly for those who already struggle with the rising costs of living. Many teachers live paycheck to paycheck and cannot accumulate sufficient savings to cover three months without income.

#### 2. Reasonable Assurance is Not Equivalent to Current Employment

**No Income During Summer:** The concept of "reasonable assurance" of returning to work in the next academic year does not provide any financial relief during the summer. Teachers with future contracts are still without income during this period, making them effectively unemployed.

**Purpose of Unemployment Benefits:** Unemployment benefits are intended to provide financial support to individuals who are temporarily without income. Denying these benefits to teachers during the summer goes against the fundamental purpose of unemployment insurance, which is to assist those who are not currently earning.

#### 3. Inconsistent Application and Fairness

**Seasonal Workers:** Other seasonal workers, such as construction and agricultural workers, are eligible for unemployment benefits during their off-seasons. Teachers, however, are excluded from this support, despite facing similar financial hardships during their non-working periods.

**Equitable Treatment:** This exclusion creates an inequitable situation where teachers are unfairly penalized. Ensuring that teachers receive unemployment benefits during the summer would align with the principles of fair and equal treatment under the law.

#### 4. Impact on Education Quality and Teacher Well-being

**Teacher Well-being:** Financial stress during the summer months can have a significant negative impact on teachers' mental and emotional well-being. This stress can carry over into the academic year, affecting their performance and effectiveness in the classroom.

**Retention and Recruitment:** Providing financial stability for teachers year-round would help retain experienced educators and attract new talent to the profession. Teachers who are financially secure are more likely to remain in the profession and focus on delivering high-quality education to their students.

In conclusion, the current interpretation of Wisconsin Statute 108.04(17)(A)-(C) and DWD 132.04 unfairly disadvantages teachers by denying them access to unemployment benefits during the summer months. This policy creates unnecessary financial hardship, undermines the well-being of educators, and ultimately impacts the quality of education. Reconsidering and amending these statutes to allow teachers to receive unemployment benefits during the summer would provide much-needed financial stability and support to those dedicated to educating our future generations.

Thank you for your time and consideration of this important issue. I am available for further discussion and to provide additional insights based on my personal experiences as an educator facing these challenges.

Sincerely,

Demetrius Nelson



**From:** [Knutson, Janell - DWD](#)  
**To:** [Demitrius Nelson](#)  
**Cc:** [Rubsam, Andrew J - DWD](#)  
**Subject:** UI program  
**Date:** Tuesday, July 30, 2024 4:34:38 PM

---

Good afternoon Demitrius Nelson,

Thank you for your email concerning eligibility requirements for unemployment insurance benefits. Your email will be presented to the UIAC at the September 2024 meeting.

The UIAC is not formally taking public comment until the public hearing that is anticipated to be scheduled in November 2024. Public comments that are received will be presented to the UIAC at the January 2025 meeting. In odd-numbered years, the UIAC develops its agreed-bill and considers comments from the public in that process.

Thank you for your interest in the UI program.

Sincerely,

Janell Knutson

UIAC Chair

Director of the Bureau of Legal Affairs

DWD Unemployment Insurance Division

Department of Workforce Development

*CONFIDENTIALITY NOTICE: The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.*



# State of Wisconsin

---

Date: July 31, 2024

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

From: Department of Administration Secretary-designee Kathy Blumenfeld *Kathy Blumenfeld*

From: Department of Workforce Development Secretary-designee Amy Pechacek *Amy Pechacek*

**Subject:** 2021 Wisconsin Act 4 Quarterly Report – Second Quarter 2024

Pursuant to 2021 Wisconsin Act 4, under Wis. Stat. s. 108.14(27)(e), this report serves to update you on the progress the Department of Workforce Development (DWD) has made on its project to improve the information technology (IT) systems used for processing and paying claims for unemployment insurance (UI) benefits from April 1 to June 30, 2024. We are pleased to share in this report that DWD has continued to make good progress in its UI modernization efforts.

## **Unemployment Insurance System Modernization**

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

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

## **Employer Portal**

The goal of this modernization project is to create a state-of-the-art, web-based and mobile solution that modernizes the current employer portal with the added functionality that improves communication between DWD and its customers for tax and wage reporting, employer information and support, responding to submitted unemployment insurance claims verification, and appeal activities. Some of the most critical items for consideration are secure communication and document sharing to increase efficient collaboration between employers and DWD in the UI program.

During this quarter, DWD and its vendor completed technical discovery to identify the roadmap and tasks required to replace the existing employer portal, enhance its features, and expand its functionality. Initial development work focused on refinements to the user experience that was released in December 2023. To understand features that would be important to the users – Wisconsin employers – DWD held a series of focus group sessions to collect feedback from employers on the proposed design. Valuable information was garnered through these sessions that will influence the final product design.

## **Legal Notifications**

During the second quarter, Flexion targeted development of the "vertical slice" approach described in the [2021 Wisconsin Act 4 Quarterly Report – Third Quarter 2023](#). In this quarter, the team began to develop a legal notifications library and selected a common issue that, after investigation, requires a legal notification to be issued. After investigation, the claimant must be notified of the final determination and whether or not the particular issue has been resolved. Under the legacy system, sending legal notifications is a manual, time consuming process that may be subject to error. In contrast, the modern system will automatically suggest logical notifications for adjudication staff to include with the final determination. During this quarter, the team began developing the legal notifications for the prescribed issues and the underlying resource or library was created that provides the allowable legal language for each type of issue so that staff can select all that are appropriate. As additional types of issues are identified, the library of legal notifications will be expanded and generated automatically for adjudication staff working on the issues to minimize risk or error (i.e., improper denials and overpayments).

## **Benefit Calculation and Liability Engine**

Under the contract with Flexion, the work has involved establishing a secure cloud infrastructure, implementing additional security protocols, identifying dependencies within the mainframe to avoid customer disruptions, and developing a benefits calculation engine that accounts for the complex rules associated with Wisconsin's UI eligibility requirements.

During the second quarter, the UI Modernization team continued work to identify the components of a claim and ensure that the components can be addressed in the modern system regardless of circumstance. Through this process, the team isolated and identified processes that have not worked efficiently in the current system, including processes that lead to extra steps or manual workarounds. Through this work, the team identified additional elements of the system that need to be modernized, including sending correspondence to claimants and employers and displaying and updating the amount paid and the amount remaining on a claim.

As the department moves toward the build-out, integration, testing, and deployment of a fully modern system, DWD's work with Flexion concluded in early July. Working with a new vendor, DWD will take advantage of rapidly evolving technology to accelerate development of code and deliver performance features that continue Wisconsin's leadership in UI customer service. DWD is excited to continue its progress in developing a UI system that reflects the priorities of its customers, provides staff with cutting-edge tools to detect and protect against fraud, and offers agility to perform to scale in the face of future economic disruption or program introductions.

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

## UI Reserve Fund Highlights

October 8, 2024

- Benefit payments through August 2024 increased by \$30 million or 12.6% when compared to benefits paid through August 2023.

<b>Benefits Paid</b>	<b>2024 YTD*</b> <i>(in millions)</i>	<b>2023 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Regular UI Paid	\$268.2	\$238.2	\$30.0	12.6%

- Tax receipts through August 2024 declined by \$9 million or 1.9% when compared to taxes receipts through August 2023.

<b>Tax Receipts</b>	<b>2024 YTD*</b> <i>(in millions)</i>	<b>2023 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Tax Receipts	\$471.7	\$480.7	(\$9.0)	(1.9%)

- The August 2024 Trust Fund ending balance was above \$1.8 billion, an increase of 15.9% when compared to the same time last year.

*[The Trust Fund balance on June 30 per June 2024 Financials was just under \$1.8B which meets the \$1.2 billion or greater threshold for Schedule D to remain in effect for the next calendar year.]*

<b>UI Trust Fund Balance</b>	<b>August 2024</b> <i>(in millions)</i>	<b>August 2023</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Trust Fund Balance	\$1846.6	\$1593.3	\$253.3	15.9%

- Interest earned on the Trust Fund is received quarterly. Interest for the first two quarters of 2024 was \$23.5 million compared to \$13 million for the same period last year.

<b>UI Trust Fund Interest</b>	<b>2024 YTD*</b> <i>(in millions)</i>	<b>2023 YTD*</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Interest Earned	\$23.5	\$13.0	\$10.5	80.8%

\*All calendar year-to-date (YTD) numbers are based on the August 31, 2024 Financial Statements.

# FINANCIAL STATEMENTS

For the Month Ended August 31, 2024



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
BALANCE SHEET  
FOR THE MONTH ENDED August 31, 2024

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
<b>CASH:</b>		
U.I. CONTRIBUTION ACCOUNT	423,720.11	266,898.56
U.I. BENEFIT ACCOUNTS	(72,455.20)	(161,644.02)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,897,472,663.38</u>	<u>1,647,953,463.34</u>
TOTAL CASH	<u>1,897,823,928.29</u>	<u>1,648,058,717.88</u>
<b>ACCOUNTS RECEIVABLE:</b>		
BENEFIT OVERPAYMENT RECEIVABLES	178,813,938.52	196,721,313.33
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(57,954,676.49)</u>	<u>(62,734,755.68)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	120,859,262.03	133,986,557.65
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	39,869,751.29	36,906,527.29
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(21,964,991.47)</u>	<u>(16,696,902.89)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	17,904,759.82	20,209,624.40
OTHER EMPLOYER RECEIVABLES	23,974,551.10	23,839,397.03
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(9,815,763.31)</u>	<u>(8,634,110.37)</u>
NET OTHER EMPLOYER RECEIVABLES	14,158,787.79	15,205,286.66
TOTAL ACCOUNTS RECEIVABLE	<u>152,922,809.64</u>	<u>169,401,468.71</u>
TOTAL ASSETS	<u><u>2,050,746,737.93</u></u>	<u><u>1,817,460,186.59</u></u>
<b><u>LIABILITIES AND EQUITY</u></b>		
<b>LIABILITIES:</b>		
CONTINGENT LIABILITIES (7)	97,157,975.88	109,591,023.49
OTHER LIABILITIES	38,017,172.53	42,644,206.24
FEDERAL BENEFIT PROGRAMS	1,805,549.59	814,883.68
CHILD SUPPORT HOLDING ACCOUNT	10,298.00	9,156.00
FEDERAL WITHHOLDING TAXES DUE	(15,214.00)	35,135.00
STATE WITHHOLDING TAXES DUE	1,573,107.08	1,290,366.31
DUE TO OTHER GOVERNMENTS (8)	<u>846,737.16</u>	<u>618,177.01</u>
TOTAL LIABILITIES	139,395,626.24	155,002,947.73
<b>EQUITY:</b>		
RESERVE FUND BALANCE	2,914,812,701.49	2,812,828,648.04
BALANCING ACCOUNT	<u>(1,003,461,589.80)</u>	<u>(1,150,371,409.18)</u>
TOTAL EQUITY	<u>1,911,351,111.69</u>	<u>1,662,457,238.86</u>
TOTAL LIABILITIES AND EQUITY	<u><u>2,050,746,737.93</u></u>	<u><u>1,817,460,186.59</u></u>

1. \$284,585 of this balance is for administration purposes and is not available to pay benefits.
2. \$1,321,696 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$11,900,150 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 34.0%. The allowance for uncollectible delinquent employer taxes is 50.3%. 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 \$671,898. Deferrals for the prior year were \$805,469.
6. \$24,606,193, or 61.7%, of this balance is estimated.
7. \$77,157,784 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$20,000,192 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 \$793. The 08/31/2024 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$137. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,605,130.

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RESERVE FUND ANALYSIS  
FOR THE MONTH ENDED August 31, 2024

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	3,390,104,828.89	3,290,285,224.79	3,152,504,720.62
BALANCING ACCOUNT	<u>(1,460,538,371.69)</u>	<u>(1,608,925,132.26)</u>	<u>(1,792,807,841.51)</u>
TOTAL BALANCE	1,929,566,457.20	1,681,360,092.53	1,359,696,879.11
<b>INCREASES:</b>			
TAX RECEIPTS/RFB PAID	2,458,326.59	334,942,245.30	341,735,790.18
ACCRUED REVENUES	3,684,471.78	6,491,627.08	6,937,373.75
SOLVENCY PAID	682,558.74	136,714,388.88	138,929,916.91
FORFEITURES	370.00	740.00	210.00
BENEFIT CONCEALMENT INCOME	77,042.93	1,231,295.61	1,719,130.19
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	0.00	60,000,000.00
INTEREST EARNED ON TRUST FUND	0.00	23,461,992.09	13,047,212.69
FUTA TAX CREDITS	0.00	(3,137.30)	0.00
OTHER CHANGES	21,716.86	306,770.16	398,313.28
TOTAL INCREASES	<u>6,924,486.90</u>	<u>503,145,921.82</u>	<u>562,767,947.00</u>
<b>DECREASES:</b>			
TAXABLE EMPLOYER DISBURSEMENTS	21,242,477.27	227,502,455.57	198,508,049.00
QUIT NONCHARGE BENEFITS	2,911,690.90	29,591,162.90	29,694,649.28
OTHER DECREASES	223,139.31	6,018,284.16	22,612,143.25
OTHER NONCHARGE BENEFITS	762,524.93	10,043,000.03	9,192,745.72
TOTAL DECREASES	<u>25,139,832.41</u>	<u>273,154,902.66</u>	<u>260,007,587.25</u>
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,914,812,701.49	2,914,812,701.49	2,812,828,648.04
BALANCING ACCOUNT	<u>(1,003,461,589.80)</u>	<u>(1,003,461,589.80)</u>	<u>(1,150,371,409.18)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u><u>1,911,351,111.69</u></u>	<u><u>1,911,351,111.69</u></u>	<u><u>1,662,457,238.86</u></u>

9. This balance differs from the cash balance related to taxable employers of \$1,858,763,154 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. \$1,321,696 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$11,900,150 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 08/31/2024**

**RECEIPTS**

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE</u>	<u>PRIOR YEAR TO DATE</u>
TAX RECEIPTS/RFB	\$2,458,326.59	\$334,942,245.30	\$341,735,790.18
SOLVENCY	682,558.74	136,714,388.88	138,929,916.91
ADMINISTRATIVE FEE	11.90	190.24	218.11
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	12,715.07	3,186,585.30	3,187,759.40
UNUSED CREDITS	(360,462.24)	9,592,559.00	4,242,387.40
GOVERNMENTAL UNITS	839,350.35	5,747,994.96	5,737,279.07
NONPROFITS	1,037,632.46	6,716,429.50	5,230,181.63
INTERSTATE CLAIMS (CWC)	616,244.69	2,829,421.36	2,764,322.64
ERROR SUSPENSE	(25,125.72)	20,016.23	(9,183.87)
FEDERAL PROGRAMS RECEIPTS	(788,051.63)	(8,043,106.96)	(11,987,236.50)
OVERPAYMENT COLLECTIONS	1,717,333.55	20,131,084.89	23,864,676.94
FORFEITURES	370.00	740.00	210.00
BENEFIT CONCEALMENT INCOME	77,042.93	1,231,295.61	1,719,130.19
EMPLOYER REFUNDS	(418,545.58)	(12,005,699.16)	(13,287,276.74)
COURT COSTS	40,923.93	443,749.22	444,613.25
INTEREST & PENALTY	606,186.18	2,792,275.97	2,576,357.77
CARD PAYMENT SERVICE FEE	2,924.48	34,033.59	30,042.23
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	151,423.47	2,135,242.31	2,586,894.33
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	849.88	20,338.49	47,807.80
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	992.93	36,870.08	16,116.37
SPECIAL ASSESSMENT FOR INTEREST	642.89	7,437.27	10,652.68
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	0.00	60,000,000.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	23,461,992.09	13,047,212.69
MISCELLANEOUS	5,983.80	75,775.93	142,436.05
<b>TOTAL RECEIPTS</b>	<b>\$6,659,328.67</b>	<b>\$530,071,860.10</b>	<b>\$581,030,308.53</b>

**DISBURSEMENTS**

CHARGES TO TAXABLE EMPLOYERS	\$22,641,550.02	\$245,315,627.31	\$219,925,188.17
NONPROFIT CLAIMANTS	1,008,049.65	6,924,630.42	5,262,125.78
GOVERNMENTAL CLAIMANTS	798,345.07	5,925,253.23	5,488,323.71
INTERSTATE CLAIMS (CWC)	228,566.84	2,636,194.50	2,677,488.06
QUITS	2,911,690.90	29,591,162.90	29,694,649.28
OTHER NON-CHARGE BENEFITS	946,758.80	10,510,444.05	9,491,682.62
CLOSED EMPLOYERS	(488.98)	(10,852.70)	(12,808.00)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	73,332.67	624,759.63	838,719.88
EX-MILITARY (UCX)	13,763.90	159,288.58	134,320.87
TRADE ALLOWANCE (TRA/TRA-NAFTA)	3,170.00	72,843.53	357,626.18
WORK-SHARE (STC)	(460.72)	(8,439.54)	(2,488,379.81)
FEDERAL PANDEMIC UC (FPUC)	(423,363.77)	(6,274,717.34)	(6,419,877.21)
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	(32,432.23)	(367,210.17)	(483,665.56)
MIXED EARNERS UC (MEUC)	0.00	(200.00)	1,500.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	(74,658.59)	(1,035,347.39)	(1,119,913.29)
PANDEMIC EMERGENCY UC (PEUC)	(80,544.56)	(1,262,623.56)	(1,527,093.19)
PANDEMIC FIRST WEEK (PFW)	(1,495.57)	(26,805.73)	59,456.50
EMER UC RELIEF REIMB EMPL (EUR)	(8,905.60)	(166,106.92)	(126,867.12)
2003 TEMPORARY EMERGENCY UI (TEUC)	(28.43)	(3,278.25)	(7,679.52)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(5,944.09)	(76,640.28)	(93,094.97)
FEDERAL EMERGENCY UI (EUC)	(61,046.74)	(640,944.71)	(840,319.93)
FEDERAL EXTENDED BENEFITS (EB)	(8,086.32)	(52,594.81)	(58,139.78)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	0.00	(2,200.00)	0.00
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	0.00	(87.93)	(2,244.53)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	0.00	(139.59)	(3,164.56)
INTEREST & PENALTY	347,806.62	2,439,318.71	2,485,265.85
CARD PAYMENT SERVICE FEE TRANSFER	5,660.59	34,825.81	28,284.27
PROGRAM INTEGRITY	822,727.40	5,398,012.81	5,821,246.64
SPECIAL ASSESSMENT FOR INTEREST	0.00	12,718.90	14,445.72
COURT COSTS	56,607.26	442,139.45	456,506.04
ADMINISTRATIVE FEE TRANSFER	47.75	192.15	266.03
FEDERAL WITHHOLDING	36,662.00	(3,895.00)	(34,820.82)
STATE WITHHOLDING	(714,774.01)	191,049.09	176,107.25
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	0.00	18,914,772.00
FEDERAL LOAN REPAYMENTS	0.00	3,137.30	0.00
<b>TOTAL DISBURSEMENTS</b>	<b>\$28,482,509.86</b>	<b>\$300,349,514.45</b>	<b>\$288,609,906.56</b>

**NET INCREASE(DECREASE) (21,823,181.19) 229,722,345.65 292,420,401.97**

BALANCE AT BEGINNING OF MONTH/YEAR	\$1,919,647,109.48	\$1,668,101,582.64	\$1,355,638,315.91
<b>BALANCE AT END OF MONTH/YEAR</b>	<b><u>\$1,897,823,928.29</u></b>	<b><u>\$1,897,823,928.29</u></b>	<b><u>\$1,648,058,717.88</u></b>



DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
CASH ANALYSIS  
FOR THE MONTH ENDED August 31, 2024

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,880,319,676.07	\$1,627,466,340.60	\$1,303,839,732.39
INCREASES:			
TAX RECEIPTS/RFB PAID	2,458,326.59	334,942,245.30	341,735,790.18
U.I. PAYMENTS CREDITED TO SURPLUS	1,124,983.68	140,902,428.62	143,712,544.56
2021 WI ACT 58 TRANSFERS TO TRUST FUND	0.00	0.00	60,000,000.00
INTEREST EARNED ON TRUST FUND	0.00	23,461,992.09	13,047,212.69
FUTA TAX CREDITS	0.00	(3,137.30)	0.00
TOTAL INCREASE IN CASH	<u>3,583,310.27</u>	<u>499,303,528.71</u>	<u>558,495,547.43</u>
TOTAL CASH AVAILABLE	<u>1,883,902,986.34</u>	<u>2,126,769,869.31</u>	<u>1,862,335,279.82</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	21,242,477.27	227,502,455.57	198,508,049.00
BENEFITS CHARGED TO SURPLUS	3,906,260.74	40,670,366.73	39,712,570.41
TOTAL BENEFITS PAID DURING PERIOD	<u>25,148,738.01</u>	<u>268,172,822.30</u>	<u>238,220,619.41</u>
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP	0.00	0.00	18,914,772.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	(8,905.60)	(166,106.92)	(126,867.12)
ENDING U.I. CASH BALANCE (13) (14) (15)	<u><u>1,858,763,153.93</u></u>	<u><u>1,858,763,153.93</u></u>	<u><u>1,605,326,755.53</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.

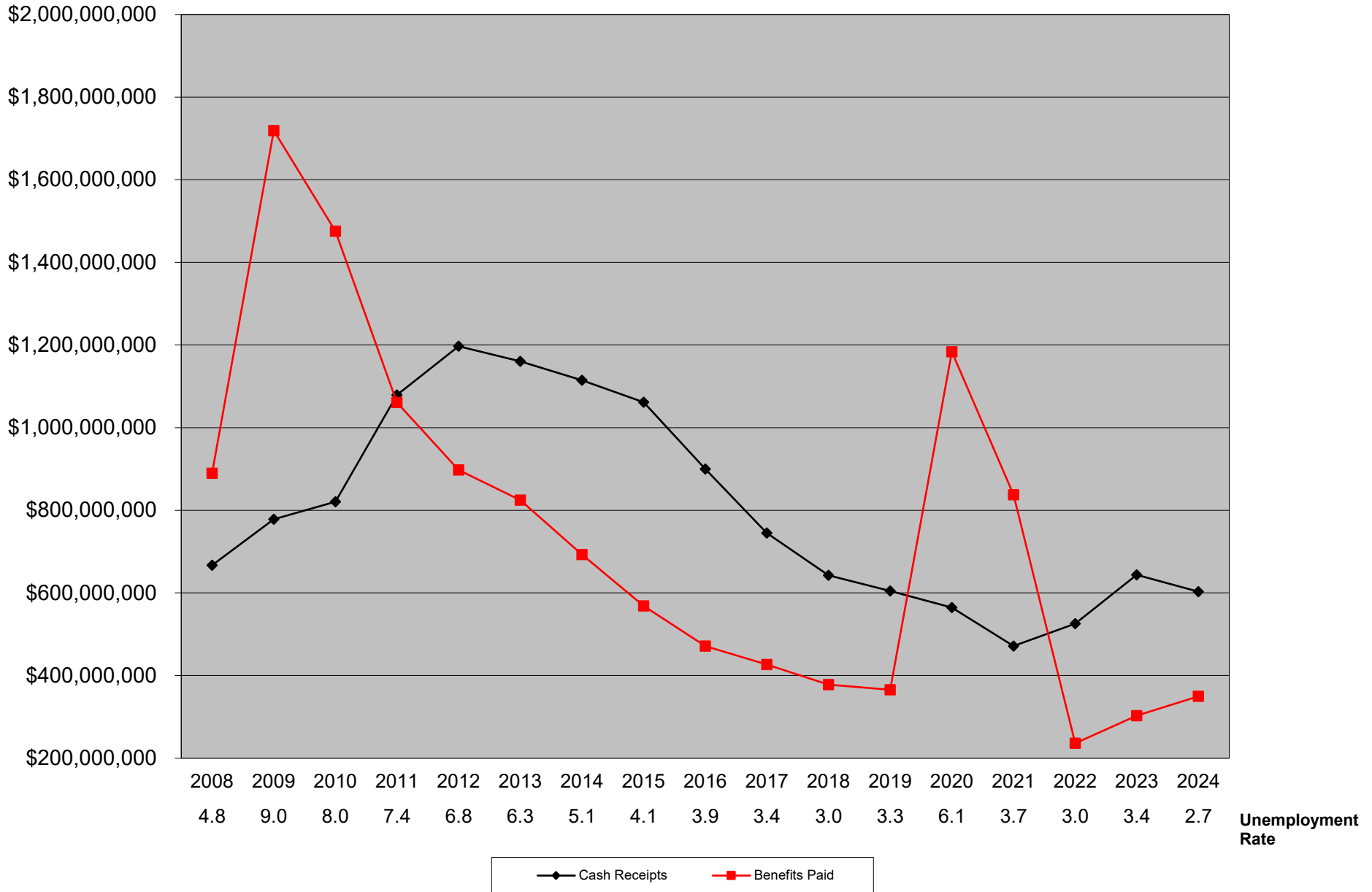
14. \$1,321,696 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

15. \$11,900,150 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.

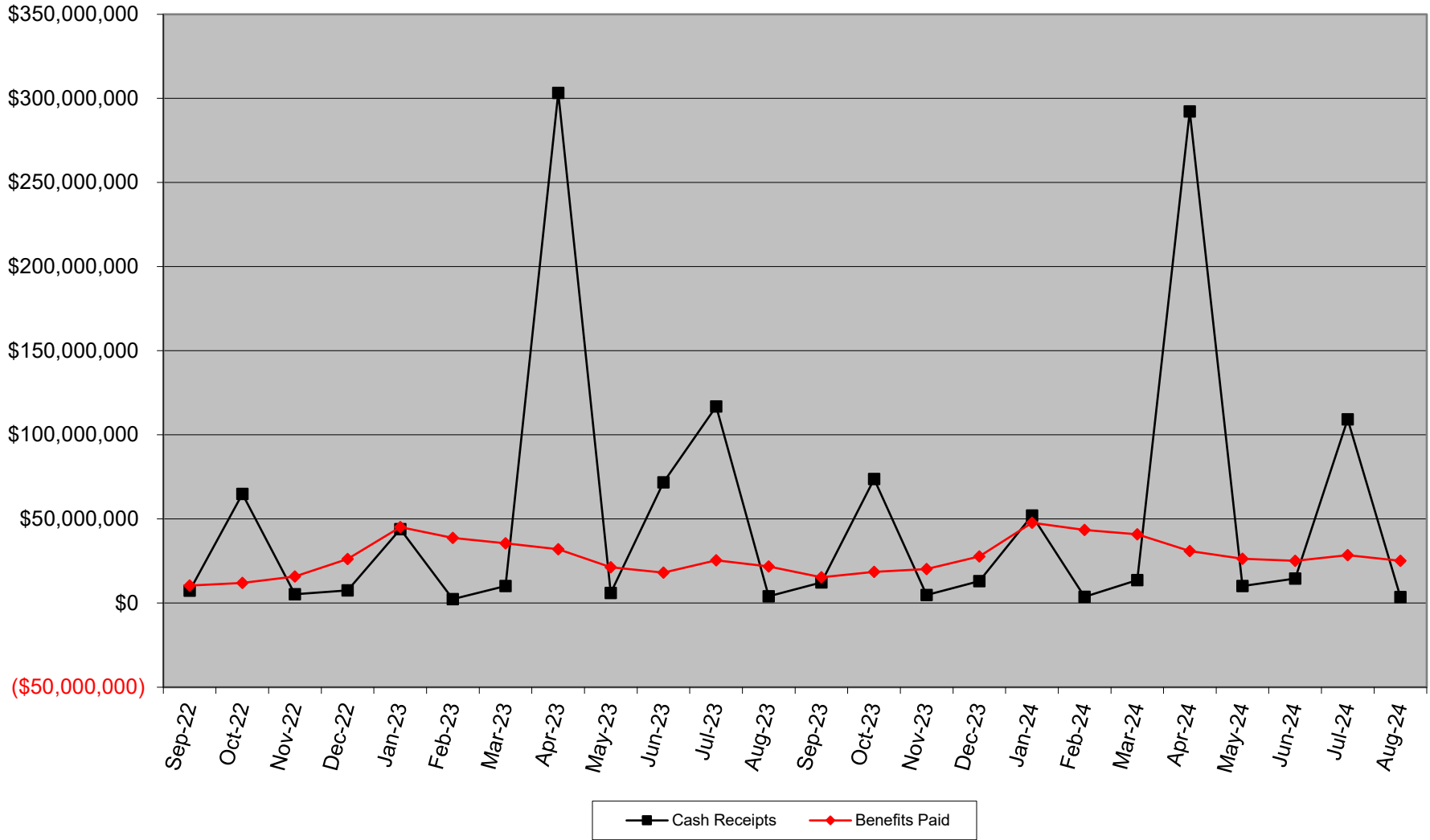
BUREAU OF TAX AND ACCOUNTING  
U.I. TREASURER'S REPORT  
BALANCING ACCT SUMMARY  
FOR THE MONTH ENDED August 31, 2024

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$1,053,376,641.29)	(\$1,209,257,177.64)	(\$1,399,163,452.19)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	682,558.74	136,714,388.88	138,929,916.91
FORFEITURES	370.00	740.00	210.00
OTHER INCREASES	442,054.94	4,187,299.74	4,782,417.65
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	<u>1,124,983.68</u>	<u>140,902,428.62</u>	<u>143,712,544.56</u>
TRANSFERS BETWEEN SURPLUS ACCTS			
2021 WI ACT 58 TRANSFERS TO TRUST FUND	99,465.19	29,350,606.48	33,402,277.72
INTEREST EARNED ON TRUST FUND	0.00	0.00	60,000,000.00
FUTA TAX CREDITS	0.00	23,461,992.09	13,047,212.69
	0.00	(3,137.30)	0.00
TOTAL INCREASES	<u>1,224,448.87</u>	<u>193,711,889.89</u>	<u>250,162,034.97</u>
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	2,911,690.90	29,591,162.90	29,694,649.28
OTHER NON-CHARGE BENEFITS	994,569.84	11,079,203.83	10,017,921.13
BENEFITS CHARGED TO SURPLUS SUBTOTAL	<u>3,906,260.74</u>	<u>40,670,366.73</u>	<u>39,712,570.41</u>
EMERGENCY ADMIN GRANT-EUISAA 2020 EXP			
EMER UC RELIEF REIMB EMPL EXPENDITURES	0.00	0.00	18,914,772.00
	(8,905.60)	(166,106.92)	(126,867.12)
BALANCE AT THE END OF THE MONTH/YEAR	<u><u>(1,056,049,547.56)</u></u>	<u><u>(1,056,049,547.56)</u></u>	<u><u>(1,207,501,892.51)</u></u>

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

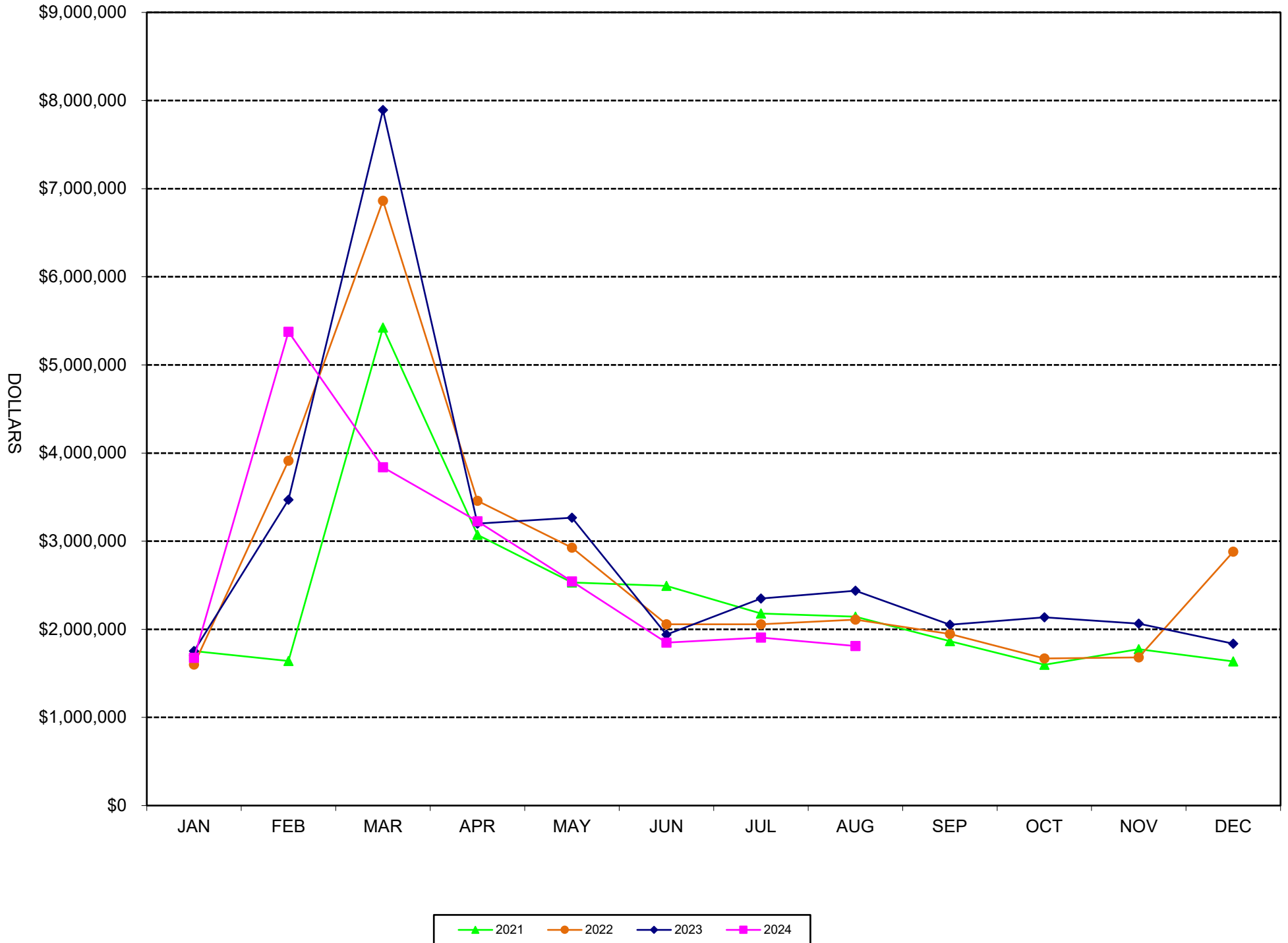


### Cash Activity Related to Taxable Employers - Most Recent 24 Months Excluding FUTA Tax Credits

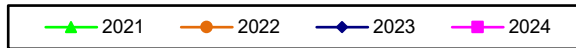
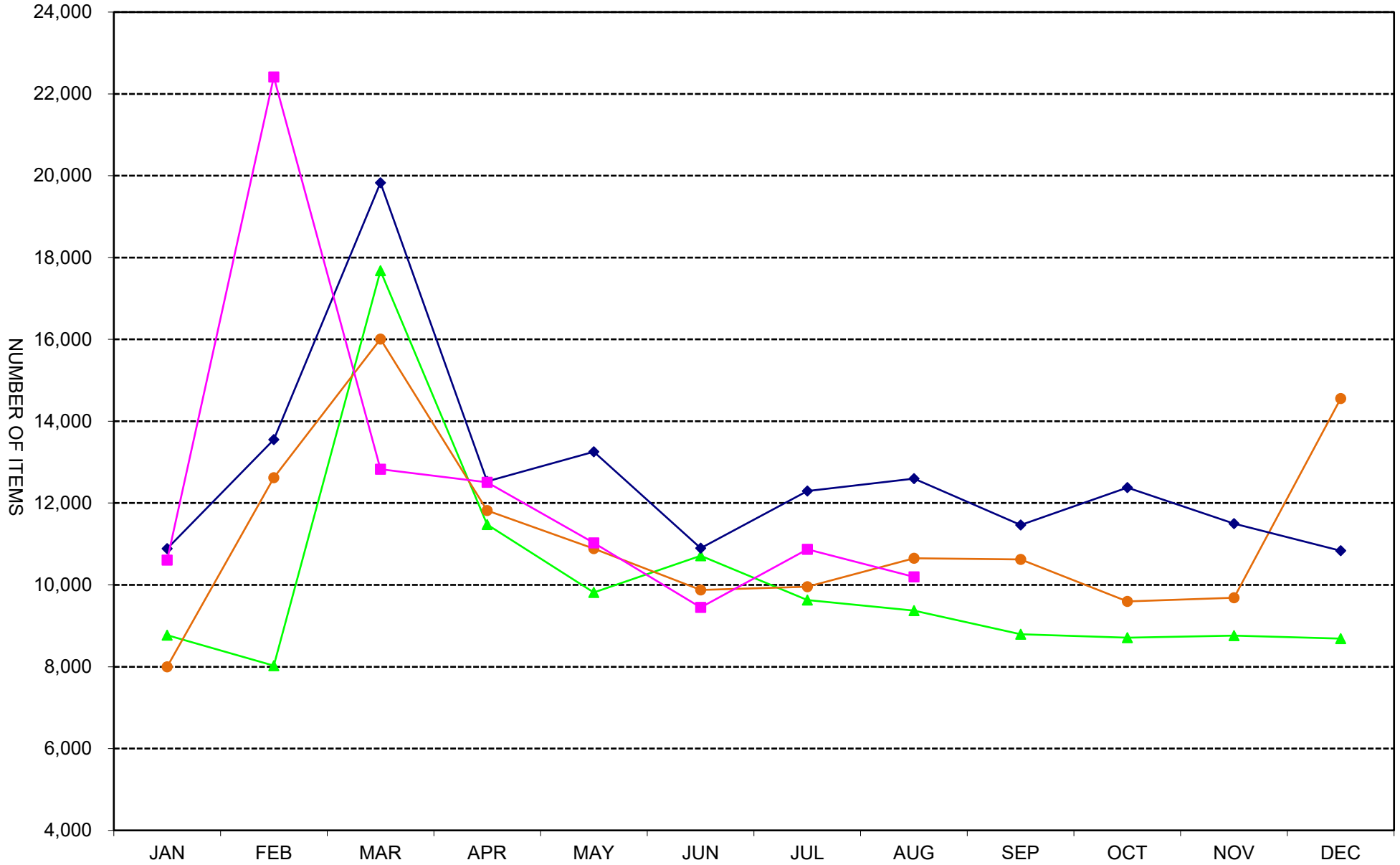


# MONTHLY OVERPAYMENT CASH RECEIPTS

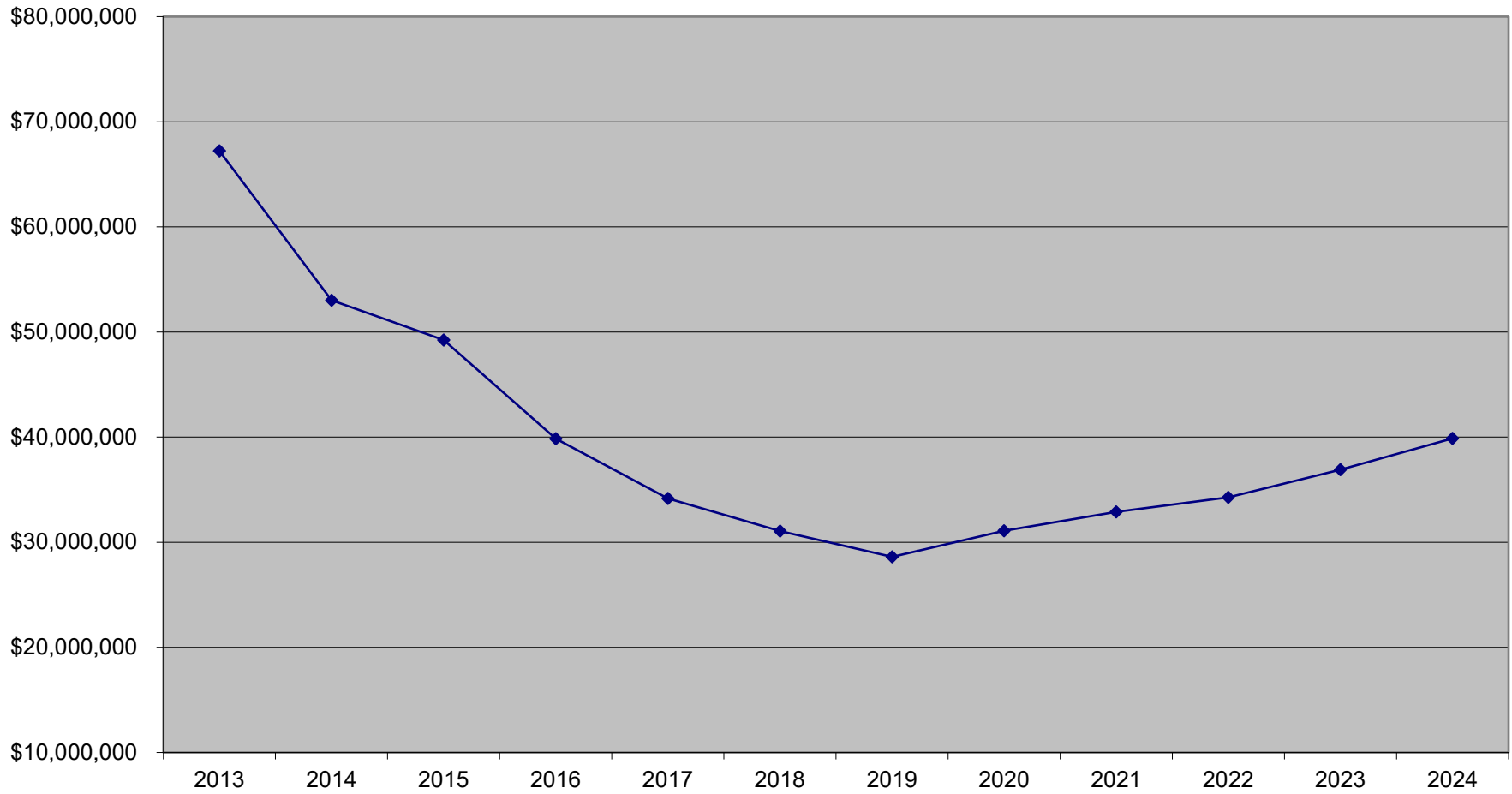
(by dollar amount)



# MONTHLY OVERPAYMENT CASH RECEIPTS (by number of items)

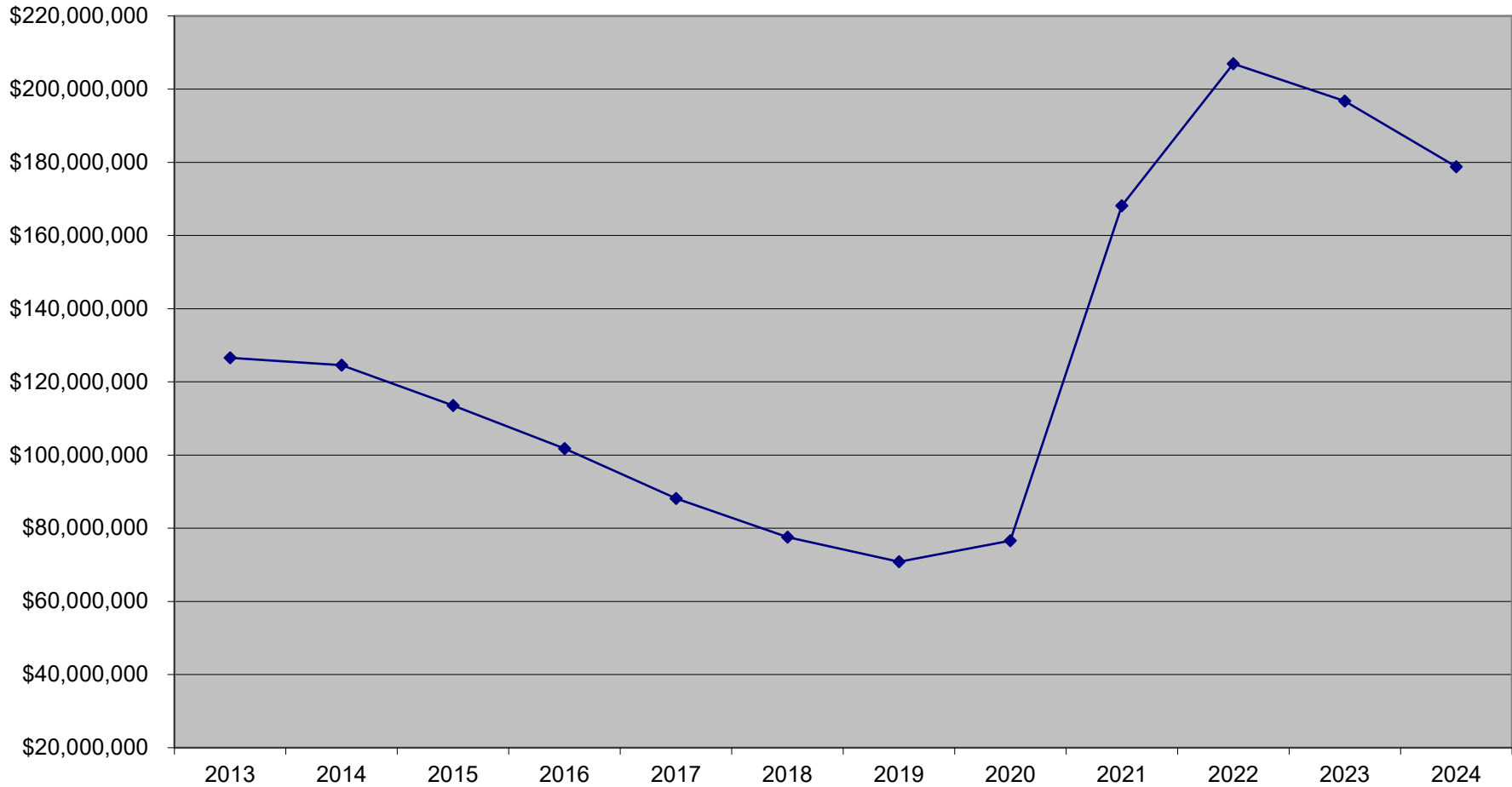


**TOTAL TAXABLE EMPLOYER RFB & SOLVENCY RECEIVABLES**  
**(for all years as of August)**



**Source: Monthly Balance Sheet**

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



**Source: Monthly Balance Sheet**



October 8, 2024

Dear Members of the Unemployment Insurance Advisory Council:

In 2016, the Council and Legislature approved a law authorizing a 0.01% assessment of employers for program integrity efforts, which is offset by a corresponding reduction in the solvency tax. This assessment maintains funding for anti-fraud and other program integrity efforts and has been authorized each year since the law was in effect.

The law requires me to consult with the Council and to consider the balance of the Unemployment Insurance Trust Fund before approving the assessment. The assessment notice must be published by November 30.

In weighing the need for continued funding of program integrity efforts with Trust Fund balance, **I recommend that the Department invest the 0.01% assessment into the Program Integrity Fund**, which will allow the Department to continue all current program integrity operations with no corresponding tax increase on employers.

In making this recommendation, I considered the following:

- This assessment generates about \$3.6 million annually for the Program Integrity Fund. This represents about 5.5% of the annual base federal UI administrative grant.
- The Trust Fund balance on June 30, 2024, was about \$1.787 billion. The projected assessment amount represents about 0.20% of this balance.
- The Department has been devoting resources to coordinate anti-fraud efforts with the Wisconsin Attorney General, the US-DOL Office of Inspector General, and other federal and state agencies.
- Like most states, Wisconsin has faced increased attempts by sophisticated international groups to defraud the unemployment insurance system during the past few years. As we build our new information technology system, we are continuing to implement best practices in combatting these new types of fraud threats.

The Department intends to continue placing a priority on program integrity and anti-fraud efforts. To this end, I believe the use of the 0.01% assessment to fund integrity efforts continues to be warranted.

The Department will use these funds to continue its program integrity efforts like fraud investigations, worker classification enforcement, worker classification public outreach efforts, identity verification and cross-matching efforts, and investigation and prosecution of criminal UI fraud.

I would appreciate your continued support for this proposal, which you have given each year since 2017. I value your consideration and service to the Department and the citizens of Wisconsin.

Sincerely,



Amy Pechacek  
Secretary

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 21, 2024**

Samuel A. Christensen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2023AP1057**

**Cir. Ct. No. 2022CV1241**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

**BEVCO PRECISION MANUFACTURING CO.,**

**PLAINTIFF-RESPONDENT,**

**v.**

**WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION,**

**DEFENDANT-APPELLANT,**

**WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,**

**DEFENDANT-CO-APPELLANT,**

**JACOB FISH,**

**DEFENDANT.**

---

APPEAL from an order of the circuit court for Waukesha County:  
MICHAEL J. APRAHAMIAN, Judge. *Affirmed and cause remanded.*

Before Neubauer, Grogan and Lazar, JJ.

¶1 LAZAR, J. The Wisconsin Labor and Industry Review Commission (the “Commission”) and the Wisconsin Department of Workforce Development (the “Department”) appeal from an order of the circuit court setting aside and reversing the Commission’s decision deeming Jacob Fish eligible for unemployment benefits pursuant to WIS. STAT. ch. 108. We conclude that the facts as found by the Commission establish that Fish’s former employer, Bevco Precision Manufacturing Co., terminated Fish due to misconduct as that term is defined by WIS. STAT. § 108.04(5)(e) (2021-22)<sup>1</sup> and interpreted by our supreme court in *DWD v. LIRC (Beres)*, 2018 WI 77, 382 Wis. 2d 611, 914 N.W.2d 625. We therefore affirm and remand this case for further proceedings consistent with this opinion.

## BACKGROUND

¶2 Fish began employment as an upholsterer with Bevco, a seating manufacturer, in April 2018. Bevco’s no-fault attendance policy, of which Fish indicated his awareness by signing an acknowledgment of receipt,<sup>2</sup> provides that workers are assessed “points” when they are tardy or absent: a quarter point for being less than fifteen minutes late, a half point for being between fifteen and ninety minutes late, and a full point for each day of unscheduled absence.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

<sup>2</sup> The Record shows that Fish signed copies of the policy that were provided to him (generally in conjunction with warnings for accumulating points pursuant to the policy) on at least April 19, 2018; June 19, 2018; August 13, 2018; December 18, 2018; April 30, 2019; May 22, 2019; March 6, 2020; and June 24, 2020.

Although sick days are not excused and do result in the assessment of points, workers are allowed three “sick days” per year for which they are paid.<sup>3</sup> Workers are not assessed points for pre-approved vacation days or legally protected absences such as jury duty, approved medical leave, or bereavement. Points accumulate and are carried over year to year, but a worker can have one point subtracted from his or her total for each calendar month of perfect attendance.

¶3 As Fish’s supervisor agreed in her testimony before the Department, “earning a point isn’t a good thing.” Warnings are issued when a worker accumulates four points, six points, eight points, and ten points. At ten points, a worker may be suspended for three days with no pay. If an employee exceeds ten points, it is Bevco’s policy to “immediately terminate[] [the employee] for excessive absenteeism.”

¶4 Fish began the year 2020 with a carry-over balance of 5.25 points. He then missed work (or was late) on the following dates for the noted reasons: January 8-10 (illness), January 31 (tardy), February 13-17 (illness), March 3 (unknown), March 20 (tardy), June 10 (unknown), June 22-23 (tardy), July 23 (illness), July 24 (approved vacation day for which he was not assessed points), and July 27-30 (COVID-related absence for which he was not assessed points<sup>4</sup>). On August 6, Fish submitted a request for vacation the next day (August 7), which Bevco denied. Nevertheless, Fish did not report to work on August 7; he called

---

<sup>3</sup> An illness that lasts multiple days and is proven with a doctor’s excuse as to each day of absence only results in one point.

<sup>4</sup> Bevco had a policy in place during the pandemic providing that employees with symptoms of COVID-19 were not to report for work. Bevco was “more lenient” during this time regarding points and would not always assess points for COVID-related absences, although the policy was apparently not officially changed in this respect.

Bevco on that day and left a voicemail saying that he had had some sort of accident on the way to work.<sup>5</sup> This absence led to an additional point under Bevco’s attendance policy, bringing Fish to 10.5 total points. Fish was terminated on August 10, 2020, for violating Bevco’s attendance and punctuality policy and personal behavior policy (also based on his “excessive and/or continued tardiness & absenteeism”).

¶5 Fish filed a claim for unemployment benefits on the same day he was terminated. After an initial investigation, the Department allowed Fish’s claim. On redetermination, an investigator for the Department determined that Fish had been terminated for substantial fault and was thus ineligible for benefits. Following a hearing, an administrative law judge (“ALJ”) affirmed that determination of ineligibility based on his conclusion that Fish had been discharged for misconduct within the meaning of WIS. STAT. § 108.04(5). On appeal initiated by both Bevco<sup>6</sup> and Fish, the Commission reversed, making the findings of fact recounted above. The majority of the panel concluded that Fish’s termination was not due to misconduct because “most of the points the employee accrued in 2020 were for valid reasons with notice given.” The dissent, however, asserted that the Commission’s decision amounted to “ignor[ing] the mandate of *Beres*” and stated that pursuant to that case, “[i]f an employer has its own

---

<sup>5</sup> Fish testified that this accident was due to an intestinal issue on the way to work. He also testified that the vacation request he submitted on August 6, 2020, was due to feeling ill and wanting to visit a doctor on August 7 without earning another point for absenteeism.

<sup>6</sup> Bevco appealed due to the ALJ’s conclusion that it “failed to provide correct and complete information requested by the department during a fact-finding investigation” such that benefits paid to Fish did not constitute an overpayment.

attendance/absenteeism policy, then the statutory structure of WIS. STAT. § 108.04(5)(e) does not apply.”

¶6 Bevco appealed to the circuit court, which sided with the dissent and set aside the Commission’s order. In a thorough analysis, the court interpreted the plain language of WIS. STAT. § 108.04(5)(e)—in a manner purportedly consistent with the *Beres* opinion—to permit an employer “to implement an absenteeism policy that, when violated, permits termination for misconduct.” It also held, in the alternative, that the facts established Fish’s termination was due to his “substantial fault” under § 108.04(5g)(a). The Commission and the Department appeal.

## DISCUSSION

¶7 This court reviews the decision of the Commission, not that of the circuit court. *Mervosh v. LIRC*, 2010 WI App 36, ¶7, 324 Wis. 2d 134, 781 N.W.2d 236. Pursuant to WIS. STAT. § 108.09(7)(c)6.a., the Commission’s order may be set aside only upon one or more specific grounds, including a determination “[t]hat the commission acted without or in excess of its powers.” A decision based “on an incorrect interpretation of [WIS. STAT.] § 108.04(5)(e)” constitutes such an action “without or in excess of [the Commission’s] powers.” *Beres*, 382 Wis. 2d 611, ¶12; *see also Amazon Logistics, Inc. v. LIRC*, 2023 WI App 26, ¶18, 407 Wis. 2d 807, 992 N.W.2d 168, *review dismissed as improvidently granted*, 2024 WI 15, 411 Wis. 2d 166, 4 N.W.3d 294.

¶8 Facts found by the Commission are to be accepted if they are “supported by substantial and credible evidence.” *Operton v. LIRC*, 2017 WI 46, ¶18, 375 Wis. 2d 1, 894 N.W.2d 426 (citation omitted). This does not mean that we will remand a matter based on a fact that is unsupported by the preponderance

of evidence; under the “substantial evidence” standard, we will accept a factual conclusion that reasonable minds *could* reach after considering all of the evidence. **Wisconsin Bell, Inc. v. LIRC**, 2018 WI 76, ¶30, 382 Wis. 2d 624, 914 N.W.2d 1; *see also* WIS. STAT. § 108.09(7)(c)1. (“The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive.”).

¶9 The parties disagree about whether all of the facts found by the Commission are, in fact, supported by the Record, and whether we should consider certain facts that the Commission failed to mention that were indisputably proven in the hearing.<sup>7</sup> We need not resolve those disagreements because we conclude that the facts cited above, which were found by the Commission and not disputed, are sufficient to decide the case in Bevco’s favor as a matter of law.

¶10 As articulated by our supreme court, we review an administrative agency’s legal conclusions *de novo*, independent of the decisions of the agency or the circuit court. **Catholic Charities Bureau, Inc. v. LIRC**, 2024 WI 13, ¶23, 411 Wis. 2d 1, 3 N.W.3d 666; **Tetra Tech EC, Inc. v. DOR**, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21. With **Tetra Tech**, the court ended its former practice of deferring to administrative agencies’ legal conclusions.<sup>8</sup> 382 Wis. 2d

---

<sup>7</sup> Bevco argues, for example, that the Commission “conveniently omitted” facts having to do with the reasons (or lack thereof) for some of Fish’s absences and the amount of notice given for his August 7 absence. It also argues that the Commission’s conclusion that Fish provided a doctor’s note for his July 23 absence is not supported by the Record.

<sup>8</sup> The United States Supreme Court recently held that federal courts also do not defer to agency interpretation of statutes. **Loper Bright Enters. v. Raimondo**, 144 S. Ct. 2244, 2269-70 (2024).

496, ¶3. As we noted even in a pre-*Tetra Tech* opinion, we grant no deference to an agency when its interpretation of a statute “conflicts with a prior appellate decision,” as we conclude the Commission’s does here. See *Local 60, Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v. WERC*, 217 Wis. 2d 602, 608, 579 N.W.2d 59 (Ct. App. 1998).

¶11 The legal question before us is whether termination for violation of an employer’s absenteeism policy that differs from the absenteeism policy in WIS. STAT. § 108.04(5)(e) (with respect to notice and valid reason for absence) constitutes termination for misconduct as defined by that statute and, therefore, results in denial of unemployment benefits. “The law presumes that the employee is not disqualified from unemployment compensation,” *Consolidated Constr. Co. v. Casey*, 71 Wis. 2d 811, 820, 238 N.W.2d 758 (1976); thus, it is the employer’s burden to prove that the employee has been discharged for misconduct, substantial fault, or another reason that disqualifies the employee from receiving compensation. See *Operton*, 375 Wis. 2d 1, ¶38.

¶12 WISCONSIN STAT. § 108.04(5) states that “misconduct” includes:

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

(Emphasis added).

¶13 As noted in the decisions of both the Commission and the circuit court, our supreme court interpreted this statute in *Beres*. In that case, an



employee signed a written attendance policy from her employer acknowledging that an employee could be terminated during the employee’s ninety-day probationary period for a single absence if he or she did not give at least two hours’ advance notice of the absence. *Beres*, 382 Wis. 2d 611, ¶¶6-7. She failed to call the employer more than two hours before missing her shift due to illness during her probationary period and was subsequently terminated. *Id.*, ¶7. The court reversed LIRC’s decision that the employee was eligible for unemployment benefits,<sup>9</sup> holding that

the text of WIS. STAT. § 108.04(5)(e) plainly allows an employer to adopt its own attendance (or absenteeism) policy that differs from the policy set forth in § 108.04(5)(e), and termination for the violation of the employer’s policy will result in disqualification from receiving unemployment compensation benefits even if the employer’s policy is more restrictive than the policy set forth in the statute.

*Beres*, 382 Wis. 2d 611, ¶13.

¶14 In so doing, the *Beres* court focused on the “key language” of the statute: the clause beginning with “unless,” which the court stated “ordinarily means ‘except if.’” *Id.*, ¶¶14-19. As the court noted, a helpful “canon of statutory interpretation is that words in a statute that have a common meaning retain that common meaning.” *Id.*, ¶18 (citing WIS. STAT. § 990.01(1)). And when the word “unless” is replaced by the phrase “except if” in the statute at issue, the clear meaning is “that an employer can opt out of the statutory definition of

---

<sup>9</sup> Issued the same day as *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, 382 Wis. 2d 496, 914 N.W.2d 21, the *Beres* opinion incorporates and applies *Tetra Tech*’s deference analysis. *DWD v. LIRC (Beres)*, 2018 WI 77, ¶4 n.4, 382 Wis. 2d 611, 914 N.W.2d 625.

‘misconduct’ by absenteeism and set its own absenteeism policy, the violation of which will constitute statutory ‘misconduct.’” *Beres*, 382 Wis. 2d 611, ¶19.

¶15 We do not see the daylight that the Commission insists exists between *Beres* and the case before us. The Commission argues that the *Beres* court did not address the final clause of WIS. STAT. § 108.04(5)(e)—“if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism”—because the *Beres* court stated that “[o]nly the first two clauses [of § 108.04(5)(e)] [we]re relevant” in that case. *See Beres*, 382 Wis. 2d 611, ¶15. Thus, the Commission argues that *Beres* held only that an employer may alter the *number* of absences permitted before an employee commits misconduct, and may not deviate from the statutory policy that absences for valid reason and adequate notice do not count toward that number.

¶16 We do not agree with the Commission’s narrow interpretation of the unanimous holding in *Beres*. The court in that case explicitly framed the issue to encompass the question before us: whether the statute “allow[s] an employer to adopt an attendance or absenteeism policy that differs from that set forth in [WIS. STAT.] § 108.04(5)(e) such that termination of an employee for violating the employer’s policy results in disqualification for unemployment compensation benefits.” *See Beres*, 382 Wis. 2d 611, ¶4. The court noted that the employee in *Beres* was absent due to illness, the same “valid reason” for at least some of Fish’s absences. *See id.*, ¶7. And the court did not delve into the adequacy of the employee’s notice (or the question of whether her failure to give it in advance was reasonable in light of her illness) beyond observing that the employee did not comply with the employer’s policy of calling in at least two hours before a shift. *Id.*, ¶¶7, 24.

¶17 If the *Beres* court had meant to rest its decision on the fact that, although the reason for the absence was valid, the employee’s notice was inadequate under the statute (versus noncompliant with the employer’s policy)—the distinction the Commission urges us to make by asserting that “lack of notice was undisputed”—we cannot fathom why it would not have said so. Nor is it apparent to us why the court would have said the clause in WIS. STAT. § 108.04(5)(e) regarding reason and notice was not relevant to the issue with which it was presented,<sup>10</sup> or why it would have worded its holding as it did: that the statute “plainly allows an employer to adopt its own attendance (or absenteeism) policy” and that “violation of [that] policy will result in disqualification.” *Beres*, 382 Wis. 2d 611, ¶13. There is simply nothing in *Beres* to suggest, as the Commission now asserts, that “the commission, not party-employers, [are] to be the arbiter of what constitutes notice and valid reasons for an absence.” That interpretation directly conflicts with the *Beres* court’s clear statement “that an employer can opt out of the statutory definition of ‘misconduct.’” *Id.*, ¶19.

¶18 The Commission also cites *Vandervelde v. City of Green Lake*, 72 Wis. 2d 210, 215, 240 N.W.2d 399 (1976), and contends that Bevco’s proposed construction of WIS. STAT. § 108.04(5)(e) is incorrect because “limiting clauses in a statute are to be referred to the next preceding antecedent, unless the context or plain meaning dictates otherwise.” *See Vandervelde*, 72 Wis. 2d at 215. The Commission argues that, pursuant to this rule, the “unless” clause of the statute

---

<sup>10</sup> If, as the Commission argues now, an absence due to illness did not count under the statute so long as notice was given, the notice and valid reason clause would have been relevant to the *Beres* analysis.

(allowing an employer to adopt a different attendance policy) modifies only the clause preceding it, which deals with the number of days of work that can be missed and does not relate to the clause dealing with valid reasons and notice. As we have already said, we conclude that *Beres* holds that violation of an employer's attendance policy of which an employee is aware (as evidenced by a signed acknowledgement of receipt) constitutes "misconduct" for the purpose of disqualification from unemployment benefits, full stop.

¶19 But even if *Beres* did not so hold, the Commission's statutory interpretation argument is misplaced. This is a case where "the context [and] plain meaning" of the statute do require a construction under which an employer can adopt its own attendance policy addressing both the number of absences allowed and whether absences for certain reasons count against those allowed absences for the purpose of "misconduct." See *Vandervelde*, 72 Wis. 2d at 215. Like Bevco, many employers have "no-fault" attendance policies under which they allow employees a relatively large number of absences for both traditionally excused reasons (like illness) and unexcused reasons. To hold the employee accountable for the number of absences defined in the policy but then to disregard the policy when considering whether absences are "unexcused" for the purpose of determining whether there was misconduct under the statute would be both illogical, given the language of the statute, and unpredictable, since the number of unexcused absences would depend not on the employer's communicated policy but on the commission's after-the-fact determination of whether a given absence

was for valid reason and with notice.<sup>11</sup> See *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (“[S]tatutory language is interpreted ... reasonably, to avoid absurd or unreasonable results.”).

¶20 We are not persuaded by the Commission’s other arguments against Bevco’s construction. It asserts that this interpretation runs contrary to the rule articulated in *Operton*, 375 Wis. 2d 1, ¶32, that the unemployment insurance statutes should be liberally construed in favor of the payment of benefits.<sup>12</sup> But *Operton*—which addressed termination for “substantial fault” under WIS. STAT. § 108.04(5g), not misconduct, and was decided by our supreme court before *Beres*—explicitly states that employees “terminated as a result of any of the statutorily delineated actions” constituting misconduct are ineligible for benefits. *Operton*, 375 Wis. 2d 1, ¶34. *Operton* does not suggest that the “statutorily delineated actions,” *id.*, are to be construed so narrowly as to render statutory language meaningless. See *Kalal*, 271 Wis. 2d 633, ¶46 (“Statutory language is read where possible to give reasonable effect to every word.”). As discussed above, we conclude that the Commission’s interpretation would render the “opt out” provision in § 108.04(5)(e) essentially meaningless.

¶21 We also disagree that Bevco’s interpretation of the statute constitutes an improper delegation of legislative authority to employers and should therefore

---

<sup>11</sup> The dissenting commissioner correctly questioned whether an employee could ever be terminated for misconduct for violation of a no-fault attendance policy because he or she could likely always “identify at least one absence with notice and for valid reason” that would not count against the number of days allowed.

<sup>12</sup> The Commission also argues that *Catholic Charities Bureau, Inc. v. LIRC*, 2024 WI 13, ¶23, 411 Wis. 2d 1, 3 N.W.3d 666, is a “pertinent authority.” We agree with Bevco that this opinion, which cited *Beres*, is not relevant to the question of whether Fish engaged in misconduct as defined by WIS. STAT. § 108.04(5)(e) and interpreted by *Beres*.

be avoided. *See State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 440, 208 N.W.2d 780 (1973) (“The power to ... fix the limits within which the law shall operate, []is a power which is vested by our Constitution in the Legislature and may not be delegated.” (citation omitted)). The legislature itself provided employers the ability to adopt attendance policies that fit their businesses for the purposes of this statute. And even if this were deemed a delegation of legislative authority, it has “sufficient standards to limit the exercise of such power,” *see Milwaukee County v. Milwaukee District Council 48*, 109 Wis. 2d 14, 24, 325 N.W.2d 350 (Ct. App. 1982),—among them, the requirement that the employer’s policy must be in writing “in an employment manual of which the employee has acknowledged receipt with his or her signature.” WIS. STAT. § 108.04(5)(e).

¶22 Next, we reject the Commission’s argument that Bevco’s interpretation of the statute should be avoided because it risks non-compliance with the Federal Unemployment Tax Act (“FUTA”). As the circuit court aptly noted, we are “not at liberty to deviate from the statute the Wisconsin legislature enacted and how this state’s Supreme Court has determined it should be applied,” even if the Commission is right about FUTA.

¶23 Finally, while the parties make arguments about amendments to the statute that were passed by the legislature but not enacted into law, we do not find those arguments persuasive or those unenacted amendments relevant to our analysis of the statutory framework.

¶24 As an alternative argument, Bevco asserted that Fish was terminated for substantial fault as defined by WIS. STAT. § 108.04(5g). Although the Commission did not make any findings regarding Fish’s pre-2020 attendance record at Bevco, the circuit court relied on uncontroverted testimony that Fish had

had attendance problems throughout his tenure and determined (like the Department did early in the history of the case) that his termination was due to substantial fault. Since we affirm based on WIS. STAT. § 108.04(5)(e), we need not reach this issue. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938).

### CONCLUSION

¶25 For the foregoing reasons, we conclude that Fish was terminated for misconduct as that term is defined in WIS. STAT. § 108.04(5)(e) and that he is therefore ineligible for unemployment benefits. We affirm the circuit court, which set aside the Commission’s order finding Fish eligible for unemployment benefits, and we remand to that court to return the Record to the Commission for further proceedings consistent with this opinion.

*By the Court.*—Order affirmed and cause remanded.

Recommended for publication in the official reports.

**No. 2023AP1057(C)**

¶26 NEUBAUER, J. (*concurring*). I agree with the court’s decision to affirm the circuit court’s order reversing the Commission’s determination that Jacob Fish was eligible for unemployment benefits. As the majority explains, our supreme court’s decision in *DWD v. LIRC (Beres)*, 2018 WI 77, 382 Wis. 2d 611, 914 N.W.2d 625, controls this case and compels us to conclude that Fish’s employment was terminated for “misconduct” as that term is defined in WIS. STAT. § 108.04(5)(e).

¶27 I write separately to clarify why the Commission’s interpretation is unsupported and unreasonable, as addressed by the Majority at ¶¶20-21. Under WIS. STAT. § 108.04(5)(e), when there is no employer absenteeism policy, an employee is permitted up to two unexcused absences (i.e., without notice and valid reason) within the identified timeframe. Under *Beres*, an employer could adopt a policy whereby one unexcused absence would constitute “misconduct” under the statute. Under the Commission’s interpretation of the “opt out” provision, the statute effectively precludes a no-fault employer absenteeism policy *regardless of the number of permitted absences*. Thus, if an employer permits three, five, ten, or even more absences, *all* must be unexcused in order to amount to “misconduct.” In other words, the Commission’s interpretation would preclude a finding of “misconduct” if even *one* of an employee’s permitted number of absences is with notice and a valid reason, regardless of whether the employer’s policy permits three, five, ten, or even more absences. Under the Commission’s interpretation, an employer could adopt a policy establishing “misconduct” with one unexcused absence, as was the case in *Beres*, but not a no-fault policy allowing more



unexcused absences. If the legislature had intended to preclude no-fault employer absenteeism policies, and more to the point, to preclude a determination of “misconduct” for a far greater number of unexcused absences than the two unexcused absences permitted under the statute when there is no employer policy, or the one unexcused absence permitted in *Beres*, it would have said so.

¶28 As the Majority makes clear, the Commission’s interpretation is contrary to *Beres*’ holding that an employer may adopt a “more restrictive [policy] than the policy set forth in the statute.” *Beres*, 382 Wis. 2d 611, ¶13. The supreme court’s analysis in *Beres* made clear that the final clause in WIS. STAT. § 108.04(5)(e) dealing with notice and valid reason was not relevant to its determination that an employer may opt out. *Id.*, ¶15. Presumably, the court would have addressed that clause if it applies to employers’ policies, to limit (or not) the “misconduct” determination, given that the employee did not provide the required notice.<sup>1</sup>

¶29 I see no basis in the statutory language for the Commission’s unreasonable interpretation of the “opt out” provision in light of *Beres*. See *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110 (“[S]tatutory language is interpreted ... reasonably, to avoid absurd or unreasonable results.”). Because the Majority correctly applies *Beres*’ holding to the facts in this case, I concur in today’s result.

---

<sup>1</sup> As the outcome of *DWD v. LIRC (Beres)*, 2018 WI 77, 382 Wis. 2d 611, 914 N.W.2d 625, makes clear, the Commission’s analysis would not render the opt out meaningless because discharges for misconduct would remain possible, but only under the limited and unreasonable circumstances discussed herein.