STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance Advisory Council

Meeting Agenda

September 18, 2025, 10:00 a.m. – 4:30 p.m.

Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room B406

The public may attend by teleconference.

Phone: 415-655-0003 or 855-282-6330 (toll free) or WebEx
Meeting number (access code): 2660 944 5646 Password: DWD1

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

1. Call to order and introductions
2. Approval of minutes of the August 25, 2025 UIAC meeting
3. Department update
4. Quarterly report on UI information technology systems (4/1/25 – 6/30/25)
5. Trust Fund update – Shashank Partha
6. Judicial update – *Abby Windows, LLC v. LIRC*
7. Department proposals to amend the unemployment insurance law
   - D25-01 – Electronic Communication and Filing
   - D25-02 – Worker Misclassification Penalties
   - D25-03 – Repeal Waiting Week
   - D25-04 – Increase Maximum Weekly Benefit Amount
   - D25-05 – Increase and Index Maximum Wage Cap
   - D25-06 – Amend SSDI Disqualification
   - D25-07 – Repeal UI Drug Testing
   - D25-08 – Misconduct
   - D25-09 – Repeal Substantial Fault
   - D25-10 – Suitable Work

- D25-11 – Quit Exception for Relocating Spouse
- D25-12 – Repeal Work Search and Work Registration Waivers from Statute

8. Labor and Management proposals to amend the unemployment insurance law
9. Research requests
10. 2025-2026 UIAC timeline
11. Future meeting dates: October 16, November 20, December 18
12. Adjourn

Notice

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

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development

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

August 25, 2025

Held In-Person and Via Teleconference

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

Members: Janell Knutson (Chair), David Bohl, Sally Feistel, Corey Gall, Shane Griesbach, Scott Manley, Kent Miller, Jeff Peterson, and Susan Quam.

Department Staff: Jim Chiolino (UI Division Administrator), Andy Rubsam, Darren Magee, Linda Hendrickson, Ashley Gruttke, and Joe Brockman.

Members of the Public: Anita Krasno (General Counsel, Labor and Industry Review Commission), Mary Beth George (Office of Representative Christine Sinicki), Wisconsin Eye, and an unknown audio participant.

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 12:00 p.m. under the Wisconsin Open Meetings Law. Attendees introduced themselves in turn. Ms. Knutson acknowledged the department staff in attendance.

2. Approval of Minutes of the July 22, 2025, UIAC Meeting

Motion by Ms. Feistel, second by Mr. Manley, to approve the minutes of the July 22, 2025, meeting without correction. Vote was taken by voice vote and passed unanimously.

3. Department Proposals to Amend the Unemployment Insurance Law

Ms. Knutson stated the department's 12 proposals are included in members' packets.

Mr. Manley asked if the imposter penalty is included in the department's proposals. Ms. Knutson explained that the policy was something that the Council agreed to in the last cycle and the department still supports it even though it is not included as a department proposal.

4. Labor and Management Proposals to Amend the Unemployment Insurance Law

Ms. Knutson stated that this item was placed on the agenda as an opportunity for Labor and Management to caucus to discuss their proposals.

5. Research Requests

There were no outstanding or new research requests.

6. 2025-2026 UIAC Timeline

Ms. Knutson stated that the tentative schedule for the 2025-2026 agreed bill cycle remains unchanged and is included in members' packets.

7. Future Meeting Dates

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

- September 18, 2025
- October 16, 2025
- November 20, 2025

8. 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 have the opportunity to reconvene or adjourn from closed caucus. Vote was taken by voice vote and passed unanimously.

The Council went into closed caucus at 12:04 p.m. and later adjourned from caucus.

State of Wisconsin

Date: July 31, 2025

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

From: Department of Administration Secretary Kathy Blumenfeld Kathy Blumenfeld

From: Department of Workforce Development Secretary Amy Pechacek

Subject: 2021 Wisconsin Act 4 Quarterly Report – Second Quarter 2025

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, 2025.

DWD has undertaken various projects to modernize the suite of Wisconsin's Unemployment Insurance (UI) systems. These efforts include modernizing UI's information technology systems used for processing and paying claims for benefits (referred to as the "monetaries" project), as required by Act 4. DWD modernization efforts also include enhancements to the employer portal and advanced security features to assist in preventing and identifying UI fraud. The UI modernization projects have been supported by federal American Rescue Plan Act (ARPA) funds: $80 million in State and Local Fiscal Recovery Funds (SLFRF), administered through the Department of Administration, and $29 million in ARPA grants awarded by the U.S. Department of Labor (U.S. DOL).

DWD had specific plans to use both sources of federal funds (ARPA-SLFRF and ARPA-U.S. DOL funds) to complete modernization projects of its UI systems. The UI modernization projects were to ensure effective and efficient payment of benefits, provide secure and accessible communications with employers, and reduce fraud and overpayments. Unfortunately, as part of the Trump Administration's termination of $675 million in ARPA grants awarded to UI programs in over 30 states and territories, on May 22, 2025, U.S. DOL—without prior notice—terminated $29 million of DWD's modernization grants. As a result of U.S. DOL's action, DWD was forced to halt the following UI modernization projects:

- **UI Employer Portal Modernization ($11.25 million)**. DWD planned to use the funds to create a state-of-the-art web-based and mobile solution that modernizes the current employer portal with the added functionality that improves communications between DWD and its customers for tax and wage reporting, employer information and support, responding to submitted unemployment insurance claims verification, and activities in support of appeals. Some of the most critical items in the modernization project are secure communications to reduce fraud and document sharing to increase efficient collaboration between employers and DWD.

- **UI Program Integrity ($2.6 million)**. DWD used this to identify potential fraud, modernize the UI system to detect sophisticated new fraud schemes, and improve overpayment collection activities.

- **UI Fraud Detection and Prevention ($3.7 million)**. This grant was used to strengthen identity verification of UI claimants, enhance fraud detection and prevention strategies, improve data management and analytic capabilities, increase cybersecurity, and expand overpayment recovery efforts in all UI programs.

- **UI Tiger Team (round 1: $4.2 million; round 2: $263,400)**. DWD used the grant to implement identity authentication and identity proofing tools, including the Integrity Data Hub, as well as to modernize its application process. DWD was looking to further enhance its adjudication case scheduler automation and central repository for all interactions on a claim when the funds were terminated.

- **UI Equity ($6.8 million)**. DWD planned to use the remaining grant funds to implement a modernized correspondence tool to facilitate effective written communication with all UI customers through an agile and efficient systems interface. The new tool would make updates to standard correspondence less costly and require less staff resources.

Termination of the U.S. DOL grants prevents DWD realizing efficiencies for Wisconsin employers, workers, and DWD staff that it would gain from a fully modern and integrated UI IT system. Due to the importance of these projects, on June 25, 2025, DWD sent a letter to the Joint Committee on Finance (JFC) requesting one-time funds to make up for this loss. DWD also requested U.S. DOL to reconsider its termination of the grants. JFC did not provide DWD modernization funds and U.S. DOL declined to reverse its terminations.

While the $80 million ARPA-SLFRF modernization funds are not impacted by the Trump Administration's actions, those funds are insufficient to support the full modernization work and integration of its IT systems in a cloud-based environment. The UI IT systems, including monetaries, correspondence, adjudication, audit and QA, appeals, and employer portal, are complex and interdependent of each other. All components must be updated before the systems can be fully cloud-based. To best position itself to modernize the interconnected UI systems, DWD will be focusing on converting to modern code “on premise” rather than in the cloud. DWD will continue to develop the monetaries and other modules on premise with a focus on modern coding language that is more flexible and adaptable. When DWD has sufficient resources to convert the code for all interconnected UI systems, it will be poised to migrate fully to cloud-based system.

Indisputably, U.S. DOL's termination of the modernization funds set DWD back in terms of completing its modernization projects. Yet, we are proud of the UI modernization efforts that have been completed to date:

- Artificial Intelligence augmentation and fraud screen tool advancements;
- A cloud-based omni-channel contact center;
- Virtual customer service agents that are available after business hours to answer common questions in English and Spanish;
- An online chatbot that can answer common questions in English, Spanish, and Hmong;
- Fraud detection through LexisNexis and National Association of State Workforce Agencies' Integrity Data Hub;
- An online filing process and document upload capability that uses AI to enter data instead of manual data entry;
- Secure online messaging with adjudicators;
- Mobile phone friendly design for claimant portal with text alerts;
- Translation of the UI application into plain language;
- A dashboard showing initial and weekly claims by county;
- An adjudication scheduler;

- ID proofing;
- Knowledge base tool implementation; and
- Accessibility assessments.

Finally, to keep the Committees apprised of the resources being used and the cost of modernizing UI's information technology systems used for processing and paying claims for benefits, the following provides a funding overview for that project:

State and Local Fiscal Recovery Funds (SLFRF) under American Rescue Plan Act (ARPA)

$ 80,828,962.00	Allocation
$46,030,914.93	Expended
$2,779,695.41	Committed*

*****An additional $18,247,000 is subject to a Purchase Order with a vendor; however, there is no pending contract with the vendor to complete the work.

We hope you find this information helpful. We will provide the next quarterly Act 4 report to you in October 2025. In the meantime, please do not hesitate to contact us with questions.

UI Reserve Fund Highlights

September 18, 2025

1. Benefit payments through July 2025 declined by $20 million or 8.2% when compared to benefits paid through July 2024.

Benefits Paid	2025 YTD* (in millions)	2024 YTD* (in millions)	Change (in millions)	Change (in percent)
Total Regular UI Paid	$223.0	$243.0	($20.0)	(8.2%)

2. Tax receipts through July 2025 declined by $37.7 million or 8.0% when compared to tax receipts through July 2024.

Tax Receipts	2025 YTD* (in millions)	2024 YTD* (in millions)	Change (in millions)	Change (in percent)
Total Tax Receipts	$430.8	$468.5	($37.7)	(8.0%)

3. The July 2025 Trust Fund ending balance was over $2.1 billion, an increase of 12.6% when compared to the same time last year.**

UI Trust Fund Balance	July 2025 (in millions)	July 2024 (in millions)	Change (in millions)	Change (in percent)
Trust Fund Balance	**$2,103.8**	$1,868.2	$235.6	12.6%

4. Interest earned on the Trust Fund is received quarterly.

UI Trust Fund Interest	2025 YTD* (in millions)	2024 YTD* (in millions)	Change (in millions)	Change (in percent)
Total Interest Earned	$31.5	$23.5	$8.0	34.0%

*All calendar year-to-date (YTD) numbers are based on the July 31, 2025 Financial Statements.

**If the UI Trust Fund balance is $1.2 billion or more on June 30, Schedule D applies for the following year. The UI Trust Fund balance was over $2.0 billion as of June 30,2025 and therefore Schedule D will continue to be in effect for 2026 tax year.

FINANCIAL STATEMENTS

For the Month Ended July 31, 2025

Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED July 31, 2025

	CURRENT YEAR	PRIOR YEAR
ASSETS		
CASH:		
U.I. CONTRIBUTION ACCOUNT	2,883,751.10	4,030,670.06
U.I. BENEFIT ACCOUNTS	(146,055.89)	(253,708.40)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	2,145,296,454.89	1,915,870,147.82
TOTAL CASH	2,148,034,150.10	1,919,647,109.48
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	162,461,803.46	179,911,963.71
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	(54,057,788.09)	(58,208,148.50)
NET BENEFIT OVERPAYMENT RECEIVABLES	108,404,015.37	121,703,815.21
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	33,397,371.83	36,222,904.14
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	(18,957,002.50)	(22,008,631.33)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	14,440,369.33	14,214,272.81
OTHER EMPLOYER RECEIVABLES	22,550,673.04	23,635,788.37
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(9,817,467.51)	(9,935,490.61)
NET OTHER EMPLOYER RECEIVABLES	12,733,205.53	13,700,297.76
TOTAL ACCOUNTS RECEIVABLE	135,577,590.23	149,618,385.78
TOTAL ASSETS	2,283,611,740.33	2,069,265,495.26
LIABILITIES AND EQUITY		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	85,095,121.69	96,752,367.52
OTHER LIABILITIES	32,379,623.86	38,808,651.88
FEDERAL BENEFIT PROGRAMS	911,918.22	1,995,806.77
CHILD SUPPORT HOLDING ACCOUNT	7,677.00	10,661.00
FEDERAL WITHHOLDING TAXES DUE	23,121.00	21,448.00
STATE WITHHOLDING TAXES DUE	743,797.47	858,333.07
DUE TO OTHER GOVERNMENTS (8)	1,183,282.65	1,251,769.82
TOTAL LIABILITIES	120,344,541.89	139,699,038.06
EQUITY:		
RESERVE FUND BALANCE	3,003,370,906.62	2,933,696,317.36
BALANCING ACCOUNT	(840,103,708.18)	(1,004,129,860.16)
TOTAL EQUITY	2,163,267,198.44	1,929,566,457.20
TOTAL LIABILITIES AND EQUITY	2,283,611,740.33	2,069,265,495.26

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

2. $1,363,398 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

3. $12,049,040 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 35.9%. The allowance for uncollectible delinquent employer taxes is 51.0%. 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 $556,530. Deferrals for the prior year were $678,780.

6. $18,724,081, or 56.1%, of this balance is estimated.

7. $63,732,243 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. $21,362,879 of this balance is net interest, penalties, SAFI, and other fees assessed to employers; penalties and other fees assessed to claimants; and net LWA overpayments which, when collected, will be credited to the state fund.

8. This balance includes SAFI Payable of $5,580. The 07/31/2025 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is $0. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) are $9,610,190.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED July 31, 2025

	CURRENT ACTIVITY	YTD ACTIVITY	PRIOR YTD
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	3,405,734,716.80	3,385,346,039.05	3,290,285,224.79
BALANCING ACCOUNT	(1,317,616,894.26)	(1,466,546,076.17)	(1,608,925,132.26)
TOTAL BALANCE	2,088,117,822.54	1,918,799,962.88	1,681,360,092.53
INCREASES:			
TAX RECEIPTS/RFB PAID	76,477,638.21	302,440,629.18	332,483,918.71
ACCRUED REVENUES	(4,162,594.71)	1,454,623.04	2,807,155.30
SOLVENCY PAID	26,331,221.84	128,352,148.54	136,031,830.14
FORFEITURES	0.00	(3,368.00)	370.00
BENEFIT CONCEALMENT INCOME	128,198.40	1,012,569.95	1,154,252.68
INTEREST EARNED ON TRUST FUND	0.00	31,487,672.29	23,461,992.09
FUTA TAX CREDITS	0.00	(2,637.00)	(3,137.30)
OTHER CHANGES	26,525.20	305,548.75	285,053.30
TOTAL INCREASES	98,800,988.94	465,047,186.75	496,221,434.92
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	20,464,839.77	191,160,007.61	206,259,978.30
QUIT NONCHARGE BENEFITS	2,314,258.18	21,818,289.95	26,679,472.00
OTHER DECREASES	66,795.62	(1,498,436.17)	5,795,144.85
OTHER NONCHARGE BENEFITS	805,719.47	9,100,089.80	9,280,475.10
TOTAL DECREASES	23,651,613.04	220,579,951.19	248,015,070.25
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	3,003,370,906.62	3,003,370,906.62	2,933,696,317.36
BALANCING ACCOUNT	(840,103,708.18)	(840,103,708.18)	(1,004,129,860.16)
TOTAL BALANCE (9) (10) (11) (12)	2,163,267,198.44	2,163,267,198.44	1,929,566,457.20

9. This balance differs from the cash balance related to taxable employers of $2,116,155,788 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. $1,363,398 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. $12,049,040 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 07/31/2025

RECEIPTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	$76,477,638.21	$302,440,629.18	$332,483,918.71
SOLVENCY	26,331,221.84	128,352,148.54	136,031,830.14
ADMINISTRATIVE FEE	18.34	477.92	178.34
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	616,011.13	3,177,252.37	3,173,870.23
UNUSED CREDITS	1,395,834.80	8,222,110.60	9,953,021.24
GOVERNMENTAL UNITS	759,500.63	5,621,282.02	4,908,644.61
NONPROFITS	864,390.31	5,460,647.82	5,678,797.04
INTERSTATE CLAIMS (CWC)	83,377.24	2,043,718.47	2,213,176.67
ERROR SUSPENSE	4,715.04	(1,727.04)	45,141.95
FEDERAL PROGRAMS RECEIPTS	(756,689.82)	(7,885,850.68)	(7,255,055.33)
OVERPAYMENT COLLECTIONS	1,765,849.96	17,593,752.85	18,413,751.34
FORFEITURES	0.00	(3,368.00)	370.00
BENEFIT CONCEALMENT INCOME	128,198.40	1,012,569.95	1,154,252.68
EMPLOYER REFUNDS	(1,547,650.21)	(12,929,153.99)	(11,587,153.58)
COURT COSTS	53,503.39	411,003.89	402,825.29
INTEREST & PENALTY	215,900.63	2,480,429.88	2,186,089.79
CARD PAYMENT SERVICE FEE	5,418.13	31,372.75	31,109.11
LWA O/P - I&P TFR IN FROM FEDERAL PROGRAM RECEIPTS	62,887.03	1,626,751.81	0.00
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	205,459.94	1,667,723.73	1,983,818.84
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	1,760.10	13,995.18	19,488.61
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	963.12	49,608.95	35,877.15
SPECIAL ASSESSMENT FOR INTEREST	150.00	7,092.60	6,794.38
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	31,487,672.29	23,461,992.09
MISCELLANEOUS	13,832.62	113,128.00	69,792.13
TOTAL RECEIPTS	$106,682,290.83	$490,993,269.09	$523,412,531.43
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	$22,505,803.43	$207,802,578.50	$222,674,077.29
NONPROFIT CLAIMANTS	984,477.52	5,339,050.74	5,916,580.77
GOVERNMENTAL CLAIMANTS	779,548.02	5,296,850.58	5,126,908.16
INTERSTATE CLAIMS (CWC)	188,474.38	1,824,806.86	2,407,627.66
QUITS	2,314,258.18	21,818,289.95	26,679,472.00
OTHER NON-CHARGE BENEFITS	799,515.41	9,461,697.85	9,563,685.25
CLOSED EMPLOYERS	(925.91)	(15,501.92)	(10,363.72)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	65,762.74	546,604.19	551,426.96
EX-MILITARY (UCX)	17,996.93	201,791.40	145,524.68
TRADE ALLOWANCE (TRA/TRA-NAFTA)	(240.00)	2,639.00	69,673.53
WORK-SHARE (STC)	(359.00)	(1,232.83)	(7,978.82)
FEDERAL PANDEMIC UC (FPUC)	(589,083.14)	(4,708,547.29)	(5,851,353.57)
LOST WAGES ASSISTANCE $300 ADD-ON (LWA)	(68,207.48)	(335,008.67)	(334,777.94)
MIXED EARNERS UC (MEUC)	0.00	1,375.39	(200.00)
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	(80,891.19)	(750,279.27)	(960,688.80)
PANDEMIC EMERGENCY UC (PEUC)	(132,346.29)	(1,055,069.75)	(1,182,079.00)
PANDEMIC FIRST WEEK (PFW)	(1,968.85)	(17,505.83)	(25,310.16)
EMER UC RELIEF REIMB EMPL (EUR)	(16,335.23)	(110,172.79)	(157,201.32)
2003 TEMPORARY EMERGENCY UI (TEUC)	(1,660.24)	(7,164.08)	(3,249.82)
FEDERAL ADD'L COMPENSATION $25 ADD-ON (FAC)	(10,639.63)	(67,287.30)	(70,696.19)
FEDERAL EMERGENCY UI (EUC)	(85,674.92)	(563,873.83)	(579,897.97)
FEDERAL EXTENDED BENEFITS (EB)	(3,693.34)	(47,406.16)	(44,508.49)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	0.00	(960.00)	(2,200.00)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	0.00	(441.10)	(87.93)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(11.82)	(2,133.18)	(139.59)
INTEREST & PENALTY	304,822.77	2,470,494.18	2,091,512.09
CARD PAYMENT SERVICE FEE TRANSFER	3,587.05	29,085.78	29,165.22
LWA O/P - I&P TRANSFER	63,984.48	1,563,864.78	0.00
PROGRAM INTEGRITY	183,228.00	4,256,831.30	4,575,285.41
SPECIAL ASSESSMENT FOR INTEREST	0.00	3,023.31	12,718.90
COURT COSTS	51,018.75	405,084.16	385,532.19
ADMINISTRATIVE FEE TRANSFER	7.69	491.55	144.40
FEDERAL WITHHOLDING	211,686.94	127,946.00	(40,557.00)
STATE WITHHOLDING	1,221,346.53	1,422,690.47	905,823.10
FEDERAL LOAN REPAYMENTS	0.00	2,637.00	3,137.30
TOTAL DISBURSEMENTS	$28,703,481.78	$254,895,248.99	$271,867,004.59
NET INCREASE(DECREASE)	77,978,809.05	236,098,020.10	251,545,526.84
BALANCE AT BEGINNING OF MONTH/YEAR	$2,070,055,341.05	$1,911,936,130.00	$1,668,101,582.64
BALANCE AT END OF MONTH/YEAR	$2,148,034,150.10	$2,148,034,150.10	$1,919,647,109.48

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED July 31, 2025

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BEGINNING U.I. CASH BALANCE	$2,037,024,612.85	$1,874,111,061.69	$1,627,466,340.60
INCREASES:			
TAX RECEIPTS/RFB PAID	76,477,638.21	302,440,629.18	332,483,918.71
U.I. PAYMENTS CREDITED TO SURPLUS	26,305,150.16	130,980,679.46	139,777,444.94
INTEREST EARNED ON TRUST FUND	0.00	31,487,672.29	23,461,992.09
FUTA TAX CREDITS	0.00	(2,637.00)	(3,137.30)
TOTAL INCREASE IN CASH	102,782,788.37	464,906,343.93	495,720,218.44
TOTAL CASH AVAILABLE	2,139,807,401.22	2,339,017,405.62	2,123,186,559.04
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	20,464,839.77	191,160,007.61	206,259,978.30
BENEFITS CHARGED TO SURPLUS	3,203,108.50	31,811,782.62	36,764,105.99
TOTAL BENEFITS PAID DURING PERIOD	23,667,948.27	222,971,790.23	243,024,084.29
EMER UC RELIEF REIMB EMPL EXPENDITURES	(16,335.23)	(110,172.79)	(157,201.32)
ENDING U.I. CASH BALANCE (13) (14) (15)	2,116,155,788.18	2,116,155,788.18	1,880,319,676.07

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.

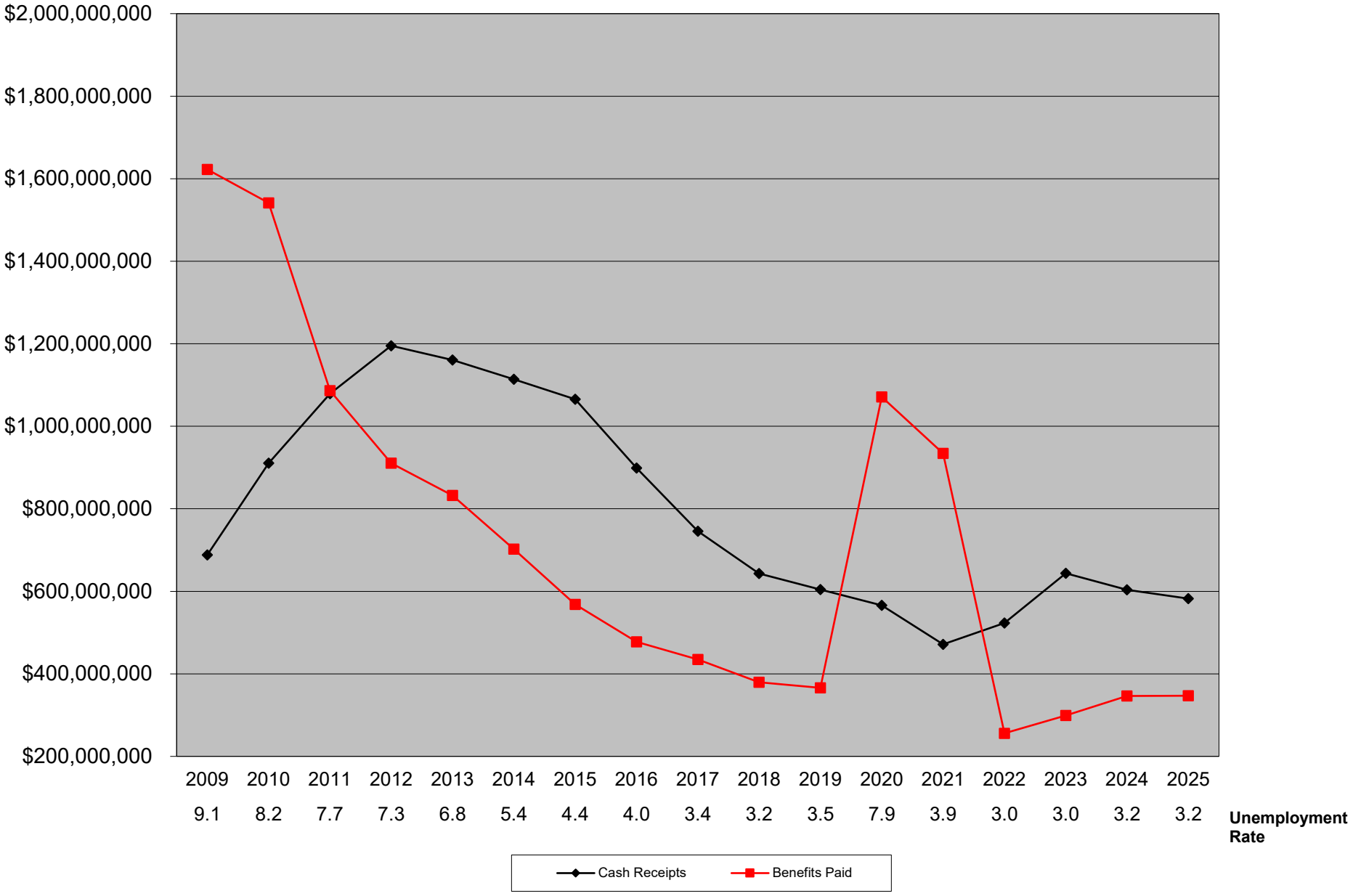
14. $1,363,398 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

15. $12,049,040 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.

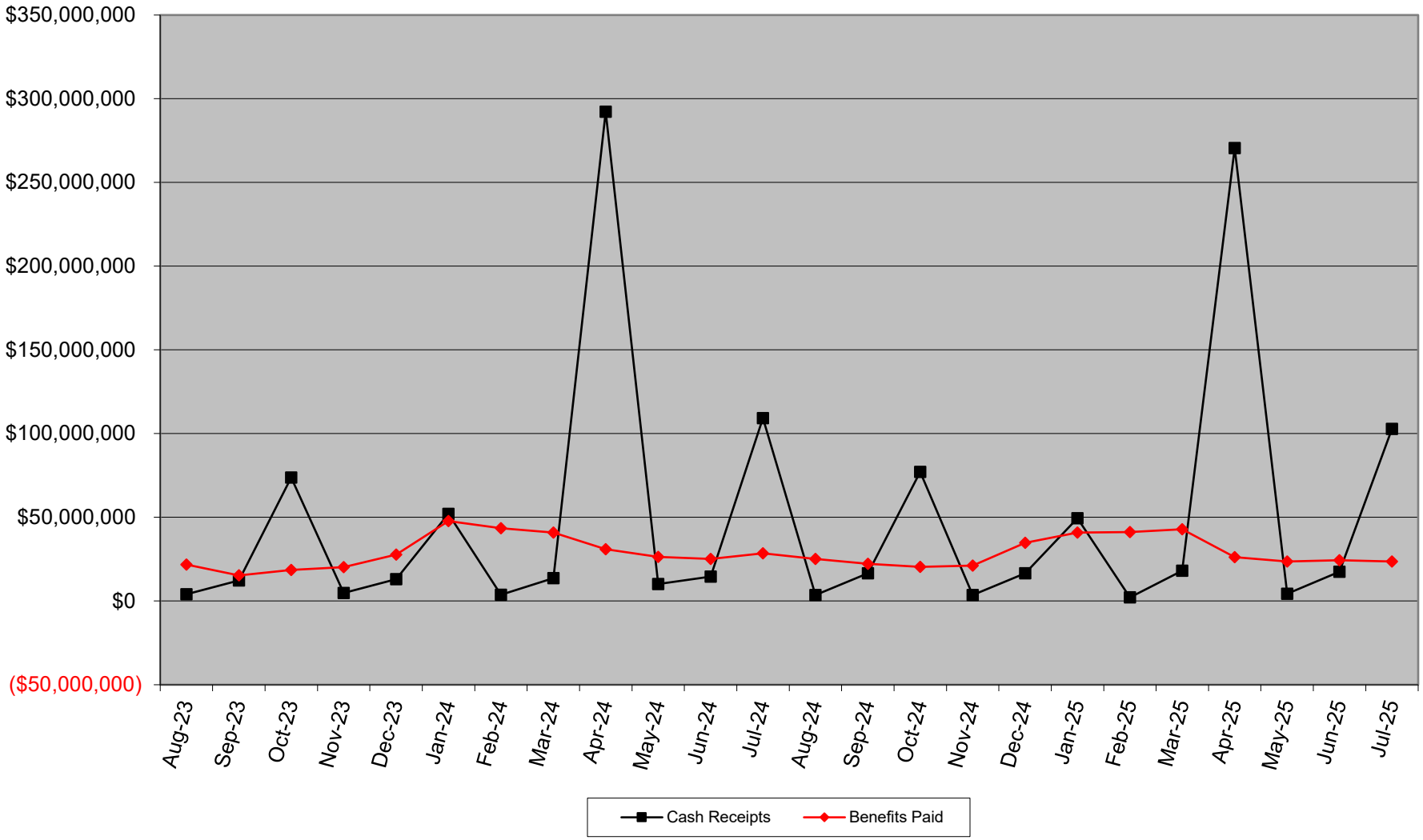
BUREAU OF TAX AND ACCOUNTING
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED July 31, 2025

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	($910,320,127.79)	($1,058,118,206.52)	($1,209,257,177.64)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	26,331,221.84	128,352,148.54	136,031,830.14
FORFEITURES	0.00	(3,368.00)	370.00
OTHER INCREASES	(26,071.68)	2,631,898.92	3,745,244.80
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	26,305,150.16	130,980,679.46	139,777,444.94
TRANSFERS BETWEEN SURPLUS ACCTS	(13,367.54)	40,138,983.16	29,251,141.29
INTEREST EARNED ON TRUST FUND	0.00	31,487,672.29	23,461,992.09
FUTA TAX CREDITS	0.00	(2,637.00)	(3,137.30)
TOTAL INCREASES	26,291,782.62	202,604,697.91	192,487,441.02
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	2,314,258.18	21,818,289.95	26,679,472.00
OTHER NON-CHARGE BENEFITS	888,850.32	9,993,491.20	10,084,633.99
MISCELLANEOUS EXPENSE	0.00	1.47	0.00
BENEFITS CHARGED TO SURPLUS SUBTOTAL	3,203,108.50	31,811,782.62	36,764,105.99
EMER UC RELIEF REIMB EMPL EXPENDITURES	(16,335.23)	(110,172.79)	(157,201.32)
BALANCE AT THE END OF THE MONTH/YEAR	(887,215,118.44)	(887,215,118.44)	(1,053,376,641.29)

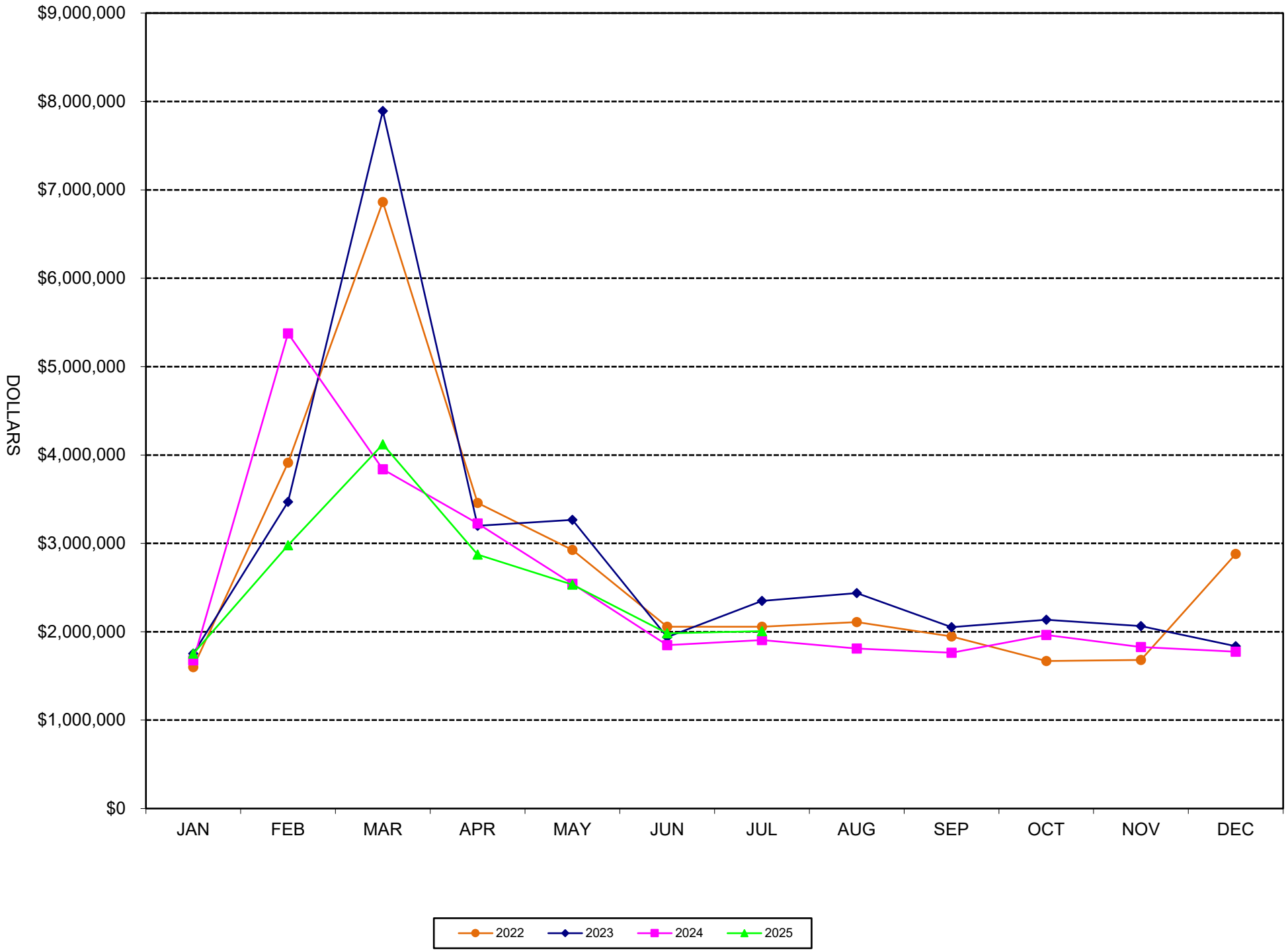
Cash Activity Related to Taxable Employers with WI Unemployment Rate
(for all years from August to July)



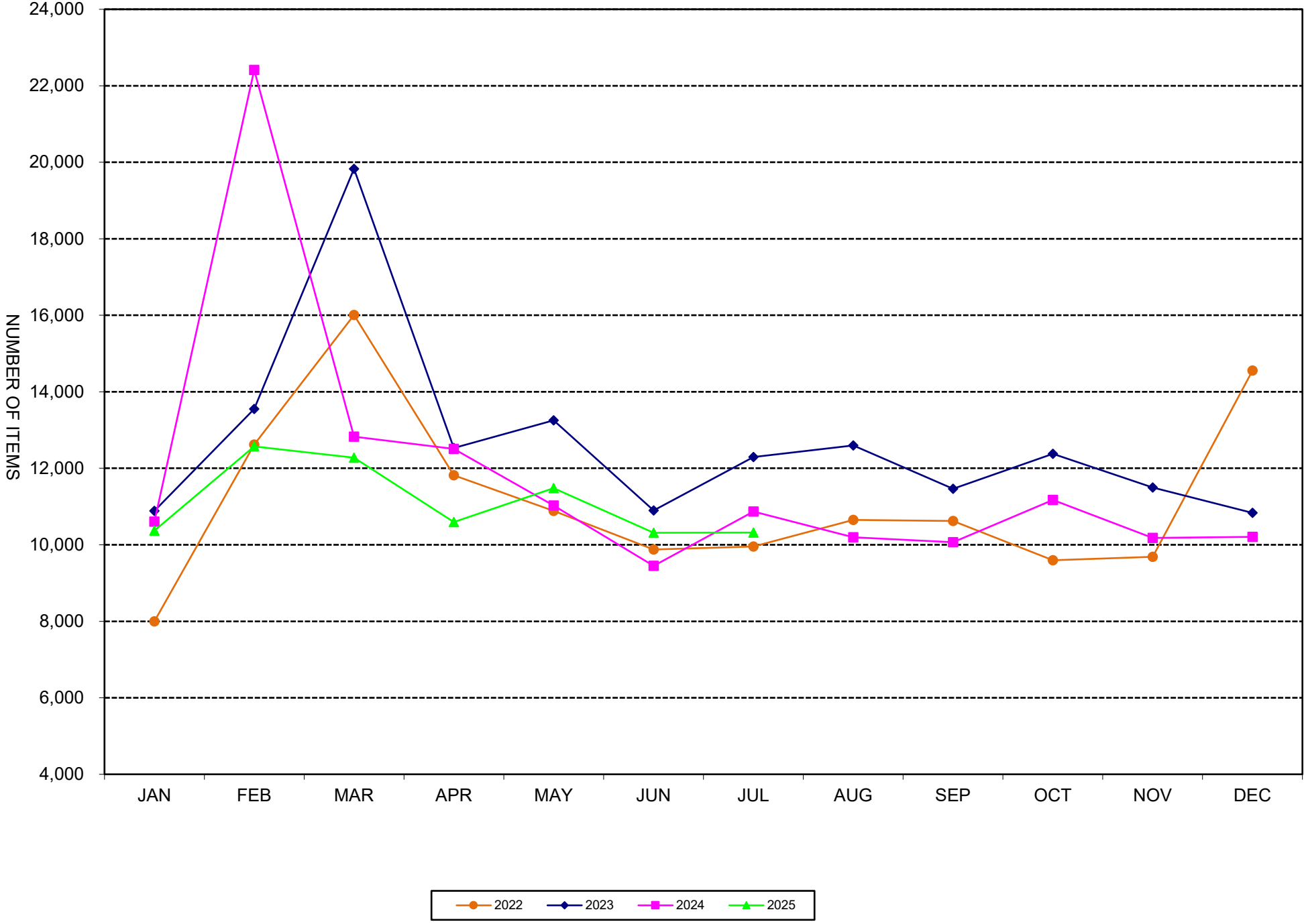
Cash Activity Related to Taxable Employers - Most Recent 24 Months



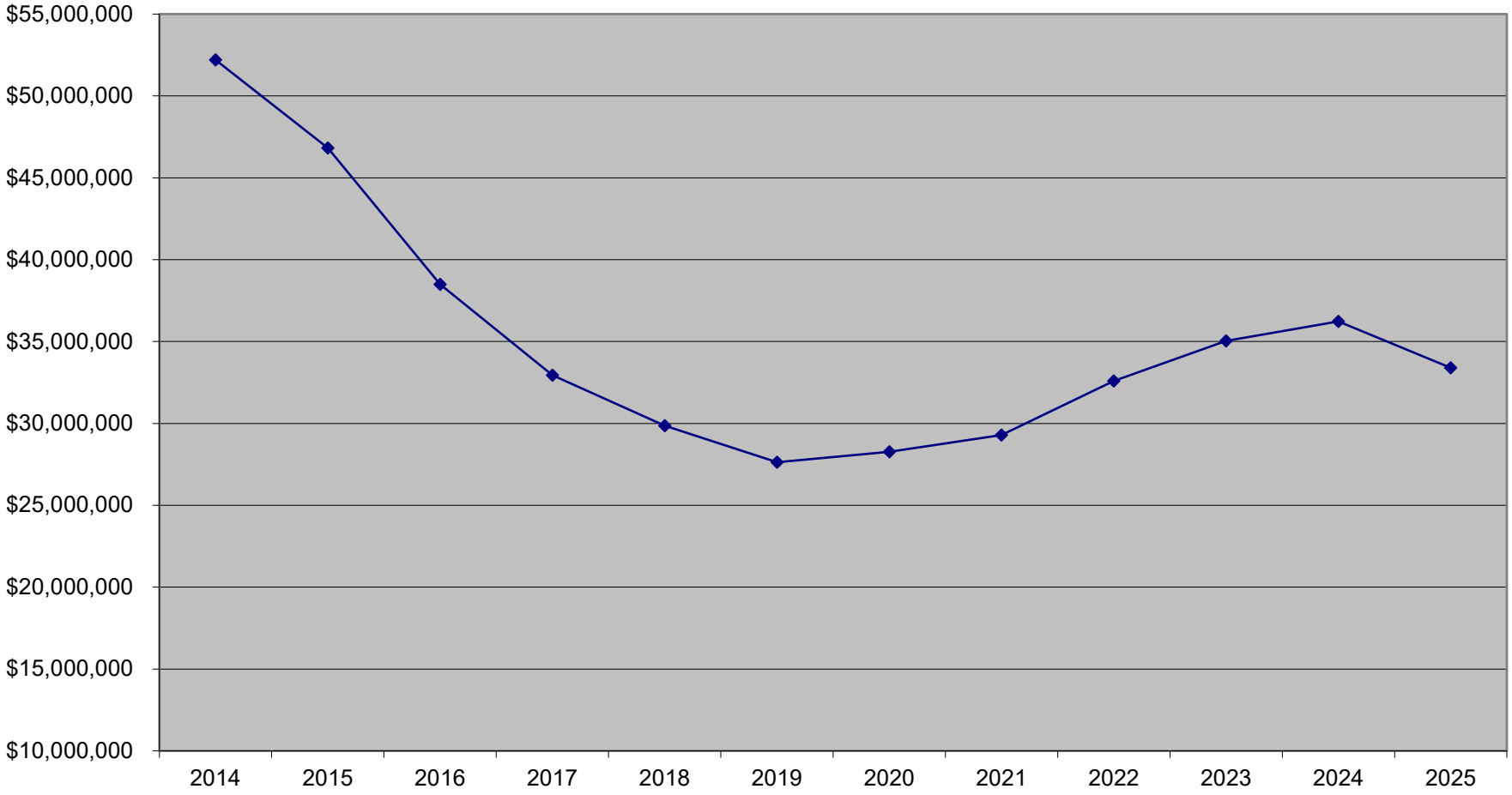
MONTHLY OVERPAYMENT CASH RECEIPTS
(by dollar amount)



MONTHLY OVERPAYMENT CASH RECEIPTS
(by number of items)

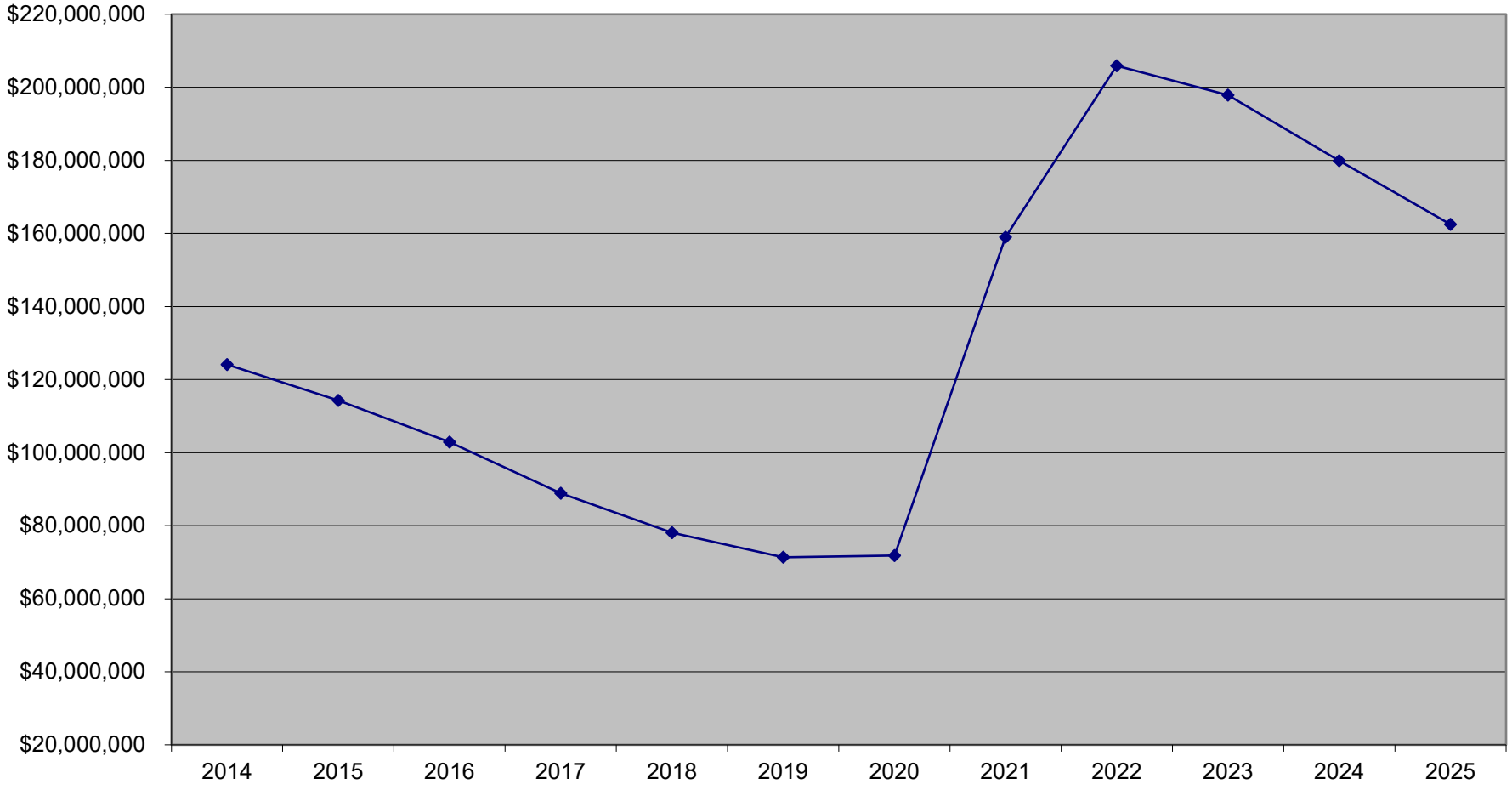


TOTAL TAXABLE EMPLOYER RFB & SOLVENCY RECEIVABLES
(for all years as of July)



Source: Monthly Balance Sheet

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



Source: Monthly Balance Sheet

COURT OF APPEALS
DECISION
DATED AND FILED

July 23, 2025

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. 2024AP1013 **Cir. Ct. No. 2023CV1100**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

ABBY WINDOWS, LLC,

PETITIONER-RESPONDENT,

V.

LABOR & INDUSTRY REVIEW COMMISSION,

RESPONDENT-APPELLANT,

WIS. DEPT. OF WORKFORCE DEVELOPMENT UI DIVISION,

RESPONDENT-CO-APPELLANT,

DANIEL R. TARPEY,

RESPONDENT.

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

Before Gundrum, P.J., Grogan, and Lazar, JJ.

¶1 GROGAN, J. LIRC[1] and DWD[2] appeal from the circuit court order reversing LIRC's decision, which determined that Daniel Tarpey was eligible for unemployment insurance (UI) benefits based on his work for Abby Windows, LLC. LIRC had concluded that Tarpey's work for Abby Windows as a salesman of various home-improvement type products such as windows, doors, and siding did not fall within the exclusion from "employment" set forth in WIS. STAT. § 108.02(15)(k)16 (2023-24).[3] We conclude Tarpey sold "consumer products" and that the work he performed for Abby Windows falls within § 108.02(15)(k)16's exclusion from employment; accordingly, Tarpey is not entitled to UI benefits. We reverse LIRC's decision and affirm the circuit court's order.

I. BACKGROUND

¶2 Tarpey performed work as a Sales and Design Consultant for Abby Windows, an exterior renovation company, for approximately one year beginning in early 2022 and ending in early 2023.[4] During that time, Tarpey "went into prospective customer's homes and sold doors, windows, roofs, gutters, and siding." He did not, however, sell stand-alone products—rather, his sales included

[1] LIRC is the acronym for the Labor and Industry Review Commission.

[2] DWD is the acronym for the Department of Workforce Development.

[3] All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

[4] The facts recited herein come primarily from LIRC's decision and the materials and testimony presented at the appeal hearing before DWD's administrative law judge.

installation of the products purchased. Abby Windows paid Tarpey on a commission basis for each sale—specifically, he received a ten percent commission on the total sale price with half being paid at the outset and the other half being paid after the customer paid in full. It is undisputed that Abby Windows paid Tarpey solely on a commission basis; however, LIRC asserts that Tarpey's commission was at least in part for installation services and therefore not "substantially" related to the sale of "consumer products." It is also apparently undisputed that Tarpey performed his work by going to prospective customers' homes and that he did not work in or from an established retail office.[5]

¶3 Following a sequence of events not specifically relevant on appeal, Abby Windows informed Tarpey in January 2023 that his services were no longer required, and Tarpey thereafter filed for UI benefits. DWD initially determined that the work Tarpey performed for Abby Windows was qualifying employment under WIS. STAT. ch. 108 and that Tarpey was eligible to receive UI benefits. Abby Windows appealed that determination, however, and an appeal hearing was held before a DWD administrative law judge (ALJ) in March 2023.

¶4 During the appeal hearing, the ALJ heard testimony about, inter alia, the type of work Tarpey performed on Abby Windows' behalf, the nature of the products he sold, and how he was paid for the work he performed. The ALJ also heard testimony from Abby Windows explaining that Tarpey held a "direct seller" position, that he received a 1099 form, and that Abby Windows had checked the box for "excluded employment" on a DWD "Request for Wages" form regarding

[5] Tarpey also attended various "meetings and trainings and performed" tasks "such as picking up checks from homeowners[,]" although he was not paid for doing so.

Tarpey's work. In a written decision, the ALJ concluded that WIS. STAT. § 108.02(15)(k)16 applied to exclude the work Tarpey performed for Abby Windows from the definition of "employment" because the products he sold were "consumer products" that he sold door-to-door on a commission basis. In concluding that Tarpey sold "consumer products," the ALJ relied on the definition of "consumer product" set forth in 15 U.S.C § 2301(1).[6] Consequently, the ALJ determined Tarpey was ineligible for unemployment insurance benefits based on the work he performed for Abby Windows and reversed the initial determination.[7]

¶5 Tarpey filed an appeal with LIRC challenging the ALJ's conclusion. In his LIRC appeal brief, Tarpey argued that he sold "home improvements, not 'consumer products for use, sale or resale by the buyer'" and that "home improvements" do not fall within WIS. STAT. § 108.02(15)(k)16 because "home improvements" refers to "the sale of labor and materials for home improvement projects[.]" (Emphases omitted.) Tarpey also asserted that the "home improvement projects" he sold "involved extensive labor and materials for home

[6] Title 15 of the United States Code governs "Commerce and Trade," and Chapter 50, the chapter of Title 15 in which § 2301 is found, governs "Consumer Product Warranties." *See* 15 U.S.C. § 2301. Section 2301 defines "'consumer product'" as meaning "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed)." 15 U.S.C. § 2301(1). Black's Law Dictionary references 15 U.S.C. § 2301(1) in its definition of "consumer product." *See Consumer Product*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[7] The appeal hearing notice identified two potential issues to be addressed at the hearing: (1) whether Tarpey "perform[ed] services in covered employment" under WIS. STAT. § 108.02(15); and (2) whether Tarpey "perform[ed] services as an employee" under WIS. STAT. §§ 108.02(12) and 108.068. (Formatting altered.) The ALJ's written decision did not address the second issue, however, presumably because the ALJ determined that Tarpey did not perform services that fell within the definition of "employment." We note that LIRC remanded Tarpey's UI benefit claim to DWD for further investigation of the second noticed issue following its reversal of the ALJ's decision, and that issue is not before us on appeal.

improvement work such as the installation of new roofs, windows and doors" and contrasted what he sold with "consumer products[,]" which he said "are typically consumable and do not increase the value of, nor extend the life of, residential real estate." According to Tarpey, the ALJ erred in ignoring this distinction, as well as in relying on 15 U.S.C. § 2301(1), because doing so caused the ALJ to "ignore[] the true nature of the sales and the fact that the sales were never limited to just the sale of 'tangible personal property.'"

¶6 As an alternative to 15 U.S.C. § 2301(1), Tarpey suggested that LIRC look to 15 C.F.R. § 16.3 (2024) in defining what constitutes a "consumer product" because that section provides, as relevant, that "consumer product means any article produced or distributed for sale to a consumer for the use, consumption, or enjoyment of such consumer." *See* 15 C.F.R. § 16.3(d) (emphasis omitted). Tarpey, seemingly based on his categorization of his sales as being for "home improvements," also pointed to the definition of "home improvement" set forth in WIS. ADMIN. CODE § ATCP 110.01(2) (Nov. 2024) and the examples of "tangible personal property" listed in the Wisconsin Department of Revenue website, explaining that the Department of Revenue's "definition of tangible personal property does not mention labor, installation or home improvement projects." In essence, Tarpey used these definitions to support his assertion that the "home improvement projects" he sold do not fall within WIS. STAT. § 108.02(15)(k)16 because "tangible personal property can be moved from one location to another" and "has weight, and it can be measured" whereas the "home improvement projects" he sold clearly did not share these attributes.

¶7 In its brief before LIRC, Abby Windows argued that the ALJ's decision was correct because the work Tarpey performed fell within WIS. STAT. § 108.02(15)(k)16's "'direct seller' exclusion[.]" Like the ALJ, Abby Windows

took the position that 15 U.S.C. § 2301(1)'s definition of "consumer products" is controlling. Abby Windows further relied on ***National Safety Associates, Inc. v. LIRC***, 199 Wis. 2d 106, 543 N.W.2d 584 (Ct. App. 1995), for the general premise that it is appropriate to consider federal law in determining the meaning of "consumer products" because in ***National Safety Associates***, we looked to federal law—specifically, 26 U.S.C. § 3508(b)(2) (the federal direct seller statute)—to interpret a different phrase in an earlier version of § 108.02(15)(k)16.

¶8 In a written decision, LIRC determined that the ALJ erred in concluding that the work Tarpey performed fell within WIS. STAT. § 108.02(15)(k)16's exclusion from employment and reversed the ALJ's decision. In reaching this conclusion, LIRC explained that "[t]he question is whether [Tarpey's] sales were 'of consumer products for use, sale, or resale by the buyer[,]'" noted that WIS. STAT. ch. 108 "does not provide a definition for the term consumer products[,]" and rejected the definition of "consumer product" set forth in WIS. STAT. § 100.42 because it arose in a different context. LIRC then went on to cite ***National Safety Associates*** and explained that there, "the court found that the legislature intended to adopt a provision similar in scope to that found in 26 U.S.C. § 3508" and that "[t]he legislative history for the 2013 Act updating the Wisconsin statute indicates a further intent to mirror language found in 26 U.S.C. § 3508." However, LIRC noted, the federal statutes do not appear to "provide a clear answer for the meaning of the phrase consumer products" and that "[t]here are at least four different definitions for the term in different federal statutes, none of which are clearly applicable to unemployment insurance or tax law." In light of this lack of clarity, LIRC was "not persuaded that any of these definitions" were definitive as to the meaning of "consumer products" within the meaning of § 108.02(15)(k)16.

¶9 Having essentially rejected the possible definitions set forth in various federal statutes, LIRC next turned to ***Cleveland Institute of Electronics, Inc. v. United States***, 787 F. Supp. 741, 746-47 (N.D. Ohio 1992), a case in which the court looked to the legislative intent in enacting 26 U.S.C. § 3508, to construe the meaning of "consumer product." LIRC, following suit, turned to the legislative intent behind the enactment of and later amendment to WIS. STAT. § 108.02(15)(k)16 and noted first that § 108.02(15)(k)16 "is an exclusionary provision" because it excludes certain workers from being eligible for UI benefits and second that WIS. STAT. ch. 108 "is to be 'liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.'" (Citation omitted.) Thus, it said, § 108.02(15)(k)16 is to "be narrowly construed."

¶10 In considering WIS. STAT. § 108.02(15)(k)16's legislative history, LIRC concluded that "the types of sales the Wisconsin legislature intended to include when it enacted" § 108.02(15)(k)16 were "sales of products from 'producers such as Avon Products Inc., Amway, Mary Kay Inc., and Pampered Chef' made by 'micro-entrepreneurs working part-time to earn extra income.'"[8] According to LIRC, sales of those types of products are distinguishable from the sales Tarpey made because those "products are packaged and distributed for use, as delivered, by the purchaser" whereas Tarpey "made sales of installed construction materials." While acknowledging that Tarpey's sales included products "such as windows, doors, roofing materials, siding, and gutters[,]" LIRC

[8] *See* Hearing Materials, Assembly Committee on Labor (Oct. 23, 2013), available at https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2013/ab449/ab0449_2013_10_23.pdf.

said that the sales *also* included "professional installation by crews with specialized knowledge and tools" and that "[t]he materials [Tarpey sold] were not intended to be used by the homeowners prior to the professional installation." Accordingly, LIRC determined that § 108.02(15)(k)16 did not exclude the work Tarpey performed because Tarpey sold "construction materials and professional installation services, not consumer products."

¶11 Abby Windows thereafter sought review in the circuit court pursuant to WIS. STAT. § 108.09(7). The parties filed briefs in the circuit court and in a written decision, the court explained that the question of "whether products such as doors, roofs, windows, gutters, and siding constitute 'consumer products'" within the meaning of WIS. STAT. § 108.02(15)(k)16 is "an issue of first impression" and that the only issue in dispute related to the interpretation of "consumer products." Because WIS. STAT. ch. 108 does not define "consumer products," the court, relying on ***Sanders v. State of Wisconsin Claims Board***, 2023 WI 60, ¶¶14-16, 408 Wis. 2d 370, 992 N.W.2d 126, determined that the first step in interpreting "consumer products" was to confirm whether the phrase has "a peculiar meaning in the law" and that the answer to that question would inform whether it should turn to a legal or non-legal dictionary to define the phrase.

¶12 After concluding that "consumer products" is not defined in non-legal dictionaries, the circuit court determined that it must necessarily be a phrase with "a peculiar meaning in the law, or rather, several peculiar meanings in the law," and that it was therefore required to "consult a legal dictionary." Next, the court turned its attention to Black's Law Dictionary, which defines "consumer product" as "[a]n item of personal property that is distributed in commerce and is normally used for personal, family, or household purposes. 15 U.S.C.A. § 2301(1)." *See Consumer Product*, BLACK'S LAW DICTIONARY (12th ed. 2024).

Based on the reference to 15 U.S.C. § 2301(1), the court turned to that statute and noted that it "mirror[ed]" the Black's Law Dictionary definition but also "contain[ed] an additional parenthetical" stating that the definition of "consumer product" "includ[es] any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed." *See* ***id.*** Based primarily on the Black's Law Dictionary definition and the parenthetical in 15 U.S.C. § 2301(1)—and with some consideration given to how other statutes defined phrases such as "consumer products," "tangible personal property," and "personal property"—the court concluded that the "doors, roofs, windows, gutters, and siding" that Tarpey sold fell within the Black's Law Dictionary definition, particularly when viewed in conjunction with the parenthetical to the federal statute referenced therein, and that § 108.02(15)(k)16's exclusion therefore applied.

¶13 In reaching this conclusion, the circuit court acknowledged that the definition was broad and seemingly conflicted with WIS. STAT. ch. 108's public policy of liberal statutory construction. The court explained, however, that an interpretation that ultimately excludes a greater number of individuals from being eligible for UI benefits was not "absurd or unreasonable[,]" particularly where the legislature chose to provide for such an exclusion. Finally, the court explained that it was unnecessary to turn to the *legislative* history the parties had relied upon given its conclusion that the statutory analysis was plain and clear. However, it did consider WIS. STAT. § 108.02(15)(k)16's *statutory* history and explained that the 2013 addition of "consumer products" to the statutory language "did not result in any material change in the statute, and it should therefore be understood in the same sense as the original[.]" Accordingly, the court concluded that the products

Tarpey sold fell within § 108.02(15)(k)16's exclusion from employment and reversed LIRC's decision.

¶14 LIRC and DWD now appeal.[9]

II. STANDARD OF REVIEW

¶15 On appeal, we review LIRC's decision rather than that of the circuit court. ***Bevco Precision Mfg. Co. v. LIRC***, 2024 WI App 54, ¶7, 413 Wis. 2d 668, 12 N.W.3d 552, *review denied*, 2025 WI 8, 18 N.W.3d 710; ***Mevrosh 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, we may set aside LIRC's order only upon the specified grounds listed therein, including a determination "[t]hat [LIRC] acted without or in excess of its powers." *See* § 108.09(7)(c)6.a; ***Bevco***, 413 Wis. 2d 668, ¶7. "LIRC acts 'without or in excess of its powers' if it bases an order on an incorrect interpretation of a statute." ***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; ***DWD v. LIRC***, 2018 WI 77, ¶12, 382 Wis. 2d 611, 914 N.W.2d 625.

¶16 We do not give deference to an administrative agency's legal conclusions, including the agency's statutory interpretation, which presents a question of law we review de novo. *See* ***Bevco***, 413 Wis. 2d 668, ¶10; ***Tetra Tech EC, Inc. v. DOR***, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21 ("[W]e will review an administrative agency's conclusions of law under the same standard we

[9] Although Tarpey participated in briefing before the circuit court, he has not filed a brief or joined any other party's brief on appeal.

apply to a circuit court's conclusions of law—de novo."). We will accept LIRC's factual findings so long as "'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). "[U]nder the 'substantial evidence' standard, we will accept a factual conclusion that reasonable minds *could* reach after considering all of the evidence." ***Bevco***, 413 Wis. 2d 668, ¶8 (citing ***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.").[10]

III. DISCUSSION

¶17 This appeal requires interpretation of WIS. STAT. § 108.02(15)(k)16, which excludes the following from the definition of "employment":

> "Employment" as applied to work for a given employer other than a government unit or nonprofit organization, except as the employer elects otherwise with the department's approval, does not include service:
>
> ….

[10] LIRC asserts that we should afford its legal conclusions due weight. In making this assertion, LIRC points to an apparent inconsistency between ***Mueller v. LIRC***, 2019 WI App 50, ¶17, 388 Wis. 2d 602, 933 N.W.2d 645, and ***Anderson v. LIRC***, 2021 WI App 44, ¶11 n.5, 398 Wis. 2d 668, 963 N.W.2d 89, regarding the issue of whether we are to give LIRC's legal conclusions due weight given that our review arises under WIS. STAT. ch. 108 rather than WIS. STAT. ch. 227. *See* ***Amazon Logistics, Inc. v. LIRC***, 2023 WI App 26, ¶¶23-24, 407 Wis. 2d 807, 992 N.W.2d 168, *petition for review dismissed as improvidently granted*, 2024 WI 15, 411 Wis. 2d 166, 4 N.W.3d 294. We need not resolve this dispute here, however, because LIRC largely failed to apply the well-known statutory interpretation framework in reaching its decision, and we therefore do not accord its analysis deference, and moreover, because we review conclusions of law de novo. *See* ***id.***, ¶24 (explaining that "because … we review LIRC's conclusions of law de novo[,]" "'our conclusions remain the same'" regardless of whether or not we afford LIRC's interpretation due weight (citation omitted)).

> 16. By an individual who is engaged, in a home or otherwise than in a permanent retail establishment, in the service of selling or soliciting the sale of consumer products for use, sale, or resale by the buyer, if substantially all of the remuneration therefor is directly related to the sales or other output related to sales rather than to hours worked[.]

Id. The parties do not dispute that certain aspects of this statute apply to the work Tarpey performed—specifically, it is undisputed that Tarpey did not perform work "in a permanent retail setting" or that his compensation was commission based on sales rather than based on the hours he worked.[11] What the parties do dispute, however, is whether Tarpey sold "consumer products for use, sale, or resale by the buyer[.]" *See* ***id.*** To determine whether Tarpey was eligible for UI benefits, we must therefore determine what constitutes a "consumer product" within the meaning of § 108.02(15)(k)16.

¶18 On appeal, LIRC acknowledges the general statutory interpretation framework set forth in ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110; however, it emphasizes that we should focus on WIS. STAT. § 108.02(15)(k)16's "context and purpose" and says that pursuant to ***Kalal***, "a plain-meaning interpretation of statutory wording cannot contradict the statute's purpose as manifested by its intrinsic context, including explicit statements of legislative purpose[.]" *See* ***Kalal***, 271 Wis. 2d 633, ¶¶48-49. Applying these principles, LIRC says that because § 108.02(15)(k)16 provides for an exception to UI benefit eligibility, it should be interpreted narrowly and in favor of eligibility given that WIS. STAT. ch. 108 is to be liberally construed.

[11] LIRC asserts in its appellate brief, however, that Abby Windows failed to establish that "substantially all" of the commission Tarpey received was tied to the sale of "consumer products" because, it says, Tarpey also sold services. *See* WIS. STAT. § 108.02(15)(k)16.

¶19 As it relates to actually interpreting WIS. STAT. § 108.02(15)(k)16, LIRC says we should not rely on the definition of "consumer product" set forth in Black's Law Dictionary because it is pulled from but one of many definitions of "consumer product" set forth in federal statutes, including one that the court rejected in ***Cleveland Institute***, 787 F. Supp. 741, when it was tasked with construing the meaning of "consumer products" under the federal direct seller statute, 26 U.S.C. § 3508.

¶20 LIRC also says that based on our opinion in ***National Safety Associates***, which found that a different phrase in a prior version of WIS. STAT. § 108.02(15)(k)16 was ambiguous, it was reasonable for it to turn to federal law here, particularly 26 U.S.C. § 3508, in construing the meaning of "consumer products" as used in § 108.02(15)(k)16. LIRC likewise argues it was reasonable for it to turn to legislative history, from which it determined that in amending § 108.02(15)(k)16 to its current iteration, the legislature intended for the exclusion to apply only to "products packaged and distributed for use, as delivered, by the purchaser." In contrast, it says, the products Tarpey sold—"windows, gutters, roofing materials, etc."—were not products the buyer could use until they had been "installed in the buyer's house as part of a renovation project[,]" and moreover, because the sale included "installation of building materials into a house by craftsmen or skilled labor[,]" Tarpey's sales were readily distinguishable from those at issue in ***Cleveland Institute***. Finally, LIRC argues that at the very least, Tarpey's sales were for goods *and* services, and we must therefore apply the "predomina[nt] purpose" test to determine whether Tarpey sold a product or a service.

¶21 Abby Windows argues that LIRC disregarded ***National Safety Associates***, which it says is binding precedent (despite also arguing that this matter

presents an issue of first impression) as to "the interpretation of the direct seller exclusion[.]"[12] According to Abby Windows, because the ***National Safety Associates*** court determined a prior version of WIS. STAT. § 108.02(15)(k)16 was ambiguous and therefore looked to the federal direct seller statute for guidance, that federal guidance is, in essence, baked into § 108.02(15)(k)16, and we should therefore not interpret it more narrowly than the federal statute. Abby Windows also asserts that the 2013 revision to WIS. STAT. § 108.02(15)(k)16 did not limit the exception to "household goods[.]" *See* 2013 Wis. Act 104, § 1.

¶22 Unlike LIRC, Abby Windows suggests that Black's Law Dictionary *does* provide an appropriate definition of "consumer product" within the meaning of WIS. STAT. § 108.02(15)(k)16. According to Abby Windows, that multiple federal statutes define "consumer product" in various ways indicates that "consumer product" has a peculiar legal meaning and that we should therefore consult a legal dictionary. And, it says, because the Black's Law Dictionary definition of "consumer products" references one of those federal statutory definitions—15 U.S.C. § 2301(1)—we should apply that definition and conclude that § 108.02(15)(k)16 is unambiguous and that Tarpey sold "consumer products." Abby Windows also argues that it is unnecessary to consult legislative history because § 108.02(15)(k)16 is unambiguous and that LIRC erred in doing so. Moreover, it says, even if we were to consult legislative history, that history would show that the legislature was not solely focused on sales from companies such as

[12] While Abby Windows argues that LIRC "refus[ed]" to apply ***National Safety Associates, Inc. v. LIRC***, 199 Wis. 2d 106, 543 N.W.2d 584 (Ct. App. 1995), it is not entirely clear what exactly Abby Windows believes LIRC failed to apply given that ***National Safety Associates*** focused on the compensation-based requirement in construing a pre-2013 version of WIS. STAT. § 108.02(15)(k)16 that did not contain the phrase "consumer products." *See* ***National Safety Assocs.***, 199 Wis. 2d at 114-15.

Amway, Mary Kay, and Avon, as LIRC suggests, but rather that the legislature was *also* aware of direct sales companies that sold products such as satellite televisions and home security that would require some element of installation service. According to Abby Windows, this suggests that "[h]ad the legislature intended to limit the direct seller exception to those workers who sell goods only (or, indeed, tangible goods only), it had a prime opportunity to do so with relatively little additional effort."

¶23 Having reviewed the parties' briefs, the Record, and the relevant law, for the reasons that follow, we conclude that WIS. STAT. § 108.02(15)(k)16 applies to exclude Tarpey from eligibility for UI benefits.

¶24 "As with every statutory interpretation case, we begin with the statutory text[,]" ***State v. Brott***, 2023 WI App 45, ¶12, 409 Wis. 2d 96, 996 N.W.2d 78, *review denied*, 2024 WI 12, 6 N.W.3d 875, and the framework we apply in interpreting statutory language is well known and oft repeated. When reviewing statutory language, appellate courts "ascertain and apply the plain meaning of the statutes as adopted by the legislature." ***White v. City of Watertown***, 2019 WI 9, ¶10, 385 Wis. 2d 320, 922 N.W.2d 61. "[S]tatutory interpretation 'begins with the language of the statute[,]'" and the "language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." ***Kalal***, 271 Wis. 2d 633, ¶¶45-46 (citation omitted) ("Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results."). "To determine common and approved usage, we consult

dictionaries." ***Sanders***, 408 Wis. 2d 370, ¶14; ***State v. McKellips***, 2016 WI 51, ¶32, 369 Wis. 2d 437, 881 N.W.2d 258. "To determine the meaning of legal terms of art, we consult legal dictionaries." ***Sanders***, 408 Wis. 2d 370, ¶14.

¶25 A statute is unambiguous if the foregoing interpretative process "'yields a plain, clear statutory meaning[.]'" ***Kalal***, 271 Wis. 2d 633, ¶46 (citation omitted). If a statute "is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history." ***Id.*** "[A] statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses." ***Id.***, ¶47. "[D]isagreement about the statutory meaning" "is not enough" to render a statute ambiguous. ***Id.*** Rather, "the test for ambiguity examines the" statutory language "to determine whether 'well-informed persons *should have* become confused,' that is, whether the statutory … language *reasonably* gives rise to different meanings." ***Id.*** (citation omitted; omission in original).

¶26 Wisconsin's unemployment compensation law "embodi[es] a strong public policy in favor of compensating the unemployed[,]" and this policy is set forth in WIS. STAT. § 108.01. *See* ***Operton***, 375 Wis. 2d 1, ¶31. "Consistent with this policy, WIS. STAT. ch. 108 is 'liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.'" ***Operton***, 375 Wis. 2d 1, ¶32 (quoting ***Princess House, Inc. v. DILHR***, 111 Wis. 2d 46, 62, 330 N.W.2d 169 (1983), *superseded on other grounds by* WIS. STAT. § 108.02(15)(k)16, *as recognized in* ***National Safety Assocs.***, 199 Wis. 2d at 119)). "If a statute is liberally construed, 'it follows that the exceptions must be narrowly construed.'" *See* ***McNeil v. Hansen***, 2007 WI 56, ¶10, 300 Wis. 2d 358, 731 N.W.2d 273. Nevertheless, we begin, as we must, by "first ascertain[ing] the plain meaning of th[e] statutory

language" as set forth above, and "[o]nly if the plain meaning analysis reveals ambiguity in the statutory language may we liberally or strictly construe that language." *See* ***Amazon Logistics, Inc.***, 407 Wis. 2d 807, ¶26. Thus, if § 108.02(15)(k)16 is unambiguous, "we need not liberally construe that statutory subpart." *See* ***Amazon Logistics, Inc.***, 407 Wis. 2d 807, ¶27.

¶27 WISCONSIN STAT. ch. 108 does not define "consumer products" (nor does it define "consumer" or "products" individually), making it necessary to consult a dictionary to aid in our determination of what constitutes a "consumer product" within Wisconsin's unemployment compensation law. *See* ***Sanders***, 408 Wis. 2d 370, ¶14. First, however, we must determine whether the phrase "consumer products" has a "'common and approved usage'" or rather whether it has "'a peculiar meaning within the law,'" as the answer to this question will dictate whether we consult a non-legal dictionary or a legal dictionary. *See* ***id.*** (citations omitted).

¶28 Although non-legal dictionaries generally do not define the phrase "consumer product," "[w]e are not convinced" that this renders the phrase "a special or technical term" requiring that we resort to a legal dictionary. *See* ***McKellips***, 369 Wis. 2d 437, ¶32 (explaining that the phrase "computerized communication system" is not inherently "a 'legislative term of art'" simply because non-legal dictionaries do not define the phrase).[13] Much like in ***McKellips***, where our supreme court explained that the phrase "computerized communication system" was simply "three commonly understood words used

[13] Moreover, that different statutes define "consumer product" differently may suggest not that the phrase has a peculiar meaning in the law, but rather, that those statutes define the phrase to avoid having a common and ordinary understanding applied in a particular context.

together" that were individually defined in a non-legal dictionary, "consumer" and "products" are likewise two "commonly understood words used together[,]" both of which are defined in non-legal dictionaries. *See* ***id.*** Accordingly, "we can examine the dictionary definitions of each of these … common words to ascertain their meaning when used together." *See* ***id***.

¶29 Turning first to "consumer," the Merriam-Webster Dictionary, The American Heritage Dictionary of the English Language, and The Oxford English Dictionary all offer similar definitions:

- "[O]ne that utilizes economic goods." (Merriam-Webster Dictionary);[14]
- "One that consumes, especially one that acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing." (The American Heritage Dictionary of the English Language);[15]
- "A person who uses up a commodity; a purchaser of goods or services, a customer." (The Oxford English Dictionary).[16]

In other words, a "consumer" is reasonably and easily understood to mean someone who purchases something for that individual's personal use.[17] "Product" likewise has a similar meaning across these three dictionaries:

[14] *Consumer*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/consumer (last visited June 25, 2025).

[15] *Consumer*, The American Heritage Dictionary of the English Language, https://ahdictionary.com/word/search.html?q=consumer (last visited June 25, 2025).

[16] *Consumer*, The Oxford English Dictionary, https://www.oed.com/dictionary/consumer_n?tab=meaning_and_use#8411261 (second definition) (last visited June 25, 2025).

- "[S]omething produced: especially: commodity" or "[S]omething (such as a service) that is marketed or sold as a commodity." (Merriam-Webster Dictionary);[18]

- "Something produced by human or mechanical effort or by a natural process, as: **a**. An item that is made or refined and marketed[.]" (The American Heritage Dictionary of the English Language);[19]

- "An object produced by a particular action or process; the result of mental or physical work or effort." (The Oxford English Dictionary).[20]

Based on these definitions, a "product" is generally, but not always, some type of physical item.

¶30 When we consider these definitions of "consumer" and "product" together, we can readily discern that "consumer products" as used in the statute unambiguously refers to physical or tangible items or objects an individual purchases for that individual's personal use in some manner. It is also apparent based on the definitions set forth above that "consumer products" is broad enough

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[17] We note that these definitions of "consumer" reference "goods," which is a term that is listed as a synonym for "product." *See Product*, Thesaurus by Merriam-Webster, https://www.merriam-webster.com/thesaurus/product (last visited June 25, 2025).

[18] *Product*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/products (last visited June 25, 2025). "Commodity," in turn, has multiple definitions including "an economic good," "something useful or valued," "a good or service whose wide availability typically leads to smaller profit margins and diminishes the importance of factors (such as brand name) other than price," and "one that is subject to ready exchange or exploitation within a market." *See Commodity*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/commodity (last visited June 25, 2025).

[19] *Product*, The American Heritage Dictionary of the English Language, https://ahdictionary.com/word/search.html?q=product (last visited June 25, 2025).

[20] *Product*, The Oxford English Dictionary, https://www.oed.com/dictionary/product_n1?tab=meaning_and_use#28071189 (fifth definition) (last visited June 25, 2025).

to encompass those physical or tangible items or objects tied to (or that require) an incidental service such as installation or application of the product purchased. In other words, the mere fact that a physical or tangible product requires some type of incidental installation, application, or related service does not automatically transform the fundamental nature of the item into something that is not a "consumer product."

¶31 Although this definition of "consumer products" is admittedly broad in nature, this is largely so due to—and is, frankly, the natural consequence of—the unquantifiable number of products available to consumers. Stated differently, "consumer products" is a category that simply does not lend itself to a narrow definition. While LIRC suggests that such a broad interpretation reads "consumer products" out of the statute and violates the premise that we are to construe WIS. STAT. ch. 108 broadly, it is the legislature that chose to use an inherently broad term. That does not mean, however, that WIS. STAT. § 108.02(15)(k)16 is endlessly broad or that "consumer products" has no meaning, as other conditions must also be met before an individual's work is deemed to fall outside the definition of "employment" for purposes of Wisconsin's unemployment law—namely, in how and where these products are sold and in how the individual selling the products is paid. *See* § 108.02(15)(k)16. Thus, while what falls within the definition of "consumer products" is in and of itself an expansive list, the disqualification from UI benefit eligibility is nevertheless narrowed by these other qualifying requirements. If any one of these additional requirements is missing—for example, if the seller is paid by the hour—§ 108.02(15)(k)16 would not apply.

¶32 To the extent we conclude, based on the definitions set forth above, that the definition of "consumer products" is sufficiently broad to encompass incidental services such as installation or application that are tied directly to a

physical or tangible product, we are satisfied that the doors, windows, siding, and roofing Tarpey sold—which included incidental installation of those products—fall within the meaning of "consumer products" as set forth in WIS. STAT. § 108.02(15)(k)16. Each of these items are clearly products a customer purchases to use to protect the interior of a customer's home, and windows and doors are further used for additional purposes such as accessing the home and circulating or "airing out" the home under pleasant weather conditions. Had the legislature intended to exclude incidental services related to the installation of such products from falling within § 108.02(15)(k)16's exclusion, it certainly could have done so. It did not.

¶33 In concluding WIS. STAT. § 108.02(15)(k)16's plain language is unambiguous as it relates to the meaning of "consumer products," we necessarily reject multiple arguments LIRC raises on appeal. First, we need not consult external sources such as the legislative history and federal law LIRC relies upon heavily both on appeal and in its decision currently under review as "there is no need to consult extrinsic sources of interpretation" "[w]here statutory language is unambiguous[.]" *See* ***Kalal***, 271 Wis. 2d 633, ¶46. Accordingly, LIRC's selective reliance on extrinsic sources such as ***National Safety Associates***, which interpreted a different phrase in an earlier version of § 108.02(15)(k)16 that did not contain the language at issue here,[21] and ***Cleveland Institute***, 787 F. Supp. 741, which turned to legislative intent in interpreting the meaning of "consumer

[21] ***National Safety Associates*** construed a prior version of WIS. STAT. § 108.02(15)(k)16 that excluded from "employment" services performed "[b]y an individual whose remuneration consists solely of commissions, overrides, bonuses or differentials directly related to sales or other output derived from in-person sales to or solicitation of orders from ultimate consumers, primarily in the home[.]" *See* § 108.02(15)(k)16 (1993-94); ***National Safety Assocs.***, 199 Wis. 2d at 114.

products" as used in 26 U.S.C. § 3508 (the federal direct seller law) is both misplaced and unpersuasive.[22]

¶34 Second, we are likewise unpersuaded by LIRC's reliance on cases such as ***Linden v. Cascade Stone Co., Inc.***, 2005 WI 113, 283 Wis. 2d 606, 699 N.W.2d 189, and ***Van Sistine v. Tollard***, 95 Wis. 2d 678, 291 N.W.2d 636 (Ct. App. 1980), for the proposition that because Tarpey's sales included both a physical product and the installation of those physical products, we should apply the predominant purpose test in interpreting the meaning of "consumer products" and in determining whether Tarpey sold a "consumer product[]." Neither of those cases—nor the ones they relied upon—address statutory interpretation, which is the issue here. Rather, those cases considered the predominant purpose of the contracts at issue—whether the contract was predominantly one for goods or one for services—to determine the applicability of the economic loss doctrine, *see* ***Linden***, 283 Wis. 2d 606, ¶¶4-10, or whether the "mixed contract for goods and services is a sale of goods" for the purposes of applying the Uniform Commercial Code, *see* ***Van Sistine***, 95 Wis. 2d at 684.

[22] LIRC makes much of WIS. STAT. § 108.02(15)(k)16's legislative history—both in its briefs on appeal and in its decision that is currently under review—and its relation to the federal direct seller law. As we have explained, however, because we conclude that § 108.02(15)(k)16's plain language is clear and unambiguous, we need not consult the legislative history.

We also note that despite LIRC's reliance on ***Cleveland Institute of Electronics, Inc. v. United States***, 787 F. Supp. 741 (N.D. Ohio 1992), to support its reliance on legislative history in interpreting WIS. STAT. § 108.02(15)(k)16—legislative history it says indicates that § 108.02(15)(k)16 is modeled after the very federal statute at issue in ***Cleveland Institute***—LIRC interpreted § 108.02(15)(k)16 narrowly whereas the ***Cleveland Institute*** court reached the opposite conclusion and construed the term more broadly, stating that "the underlying purposes of [the federal direct seller law] are best served by interpreting the term 'consumer products,' as used in the statute, to include both tangible consumer goods and intangible consumer services." ***Cleveland Institute***, 787 F. Supp. at 750.

¶35 Third, to the extent LIRC concluded in its decision and argues on appeal that WIS. STAT. § 108.02(15)(k)16 is meant to track 15 U.S.C. § 3508, the federal direct seller law, such intention cannot be found in § 108.02(15)(k)16's plain language. Had the legislature specifically intended that we construe § 108.02(15)(k)16 in lock-step with 15 U.S.C. § 3508 or that we at the very least turn to it as an interpretive aid, it could have included such language in the statutes. It did not do so, however, despite clearly understanding that it *could* do so if it so desired. *See* WIS. STAT. § 108.015 (stating that "[u]nless the department otherwise provides by rule, s. 108.02(26) shall be interpreted consistently with 26 U.S.C. 3306(b)").

¶36 For all of the foregoing reasons, we conclude that LIRC failed to follow the well-known framework for statutory interpretation[23] when it determined that "consumer products" must be defined as "products [that] are packaged and distributed for use, as delivered, by the purchaser" and that Tarpey did not sell "consumer products" within the statutory meaning. Consequently, LIRC's interpretation and application of the plain-language meaning of "consumer products" as used in WIS. STAT. § 108.02(15)(k)16 was "without or in excess of its powers." *See* WIS. STAT. § 108.09(7)(c)6.a.

[23] Interestingly, LIRC identifies the proper interpretative framework in its appellate brief despite having largely failed to apply that very framework in its decision. Rather, LIRC simply confirmed that WIS. STAT. ch. 108 does not define "consumer products" and thereafter proceeded based on an apparent assumption that WIS. STAT. § 108.02(15)(k)16 is ambiguous—an assumption that is demonstrated by LIRC's immediate reliance on external sources such as federal law and legislative history in seeking to define "consumer products" without any prior meaningful engagement with the statutory text itself. As we have explained herein, LIRC erred in doing so as there is no need to consult extrinsic sources in the absence of ambiguity. *See* ***State ex rel. Kalal v. Circuit Ct. for Dane Cnty.***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110.

IV. CONCLUSION

¶37 Although Wisconsin's UI laws are generally to be construed liberally, in enacting WIS. STAT. § 108.02(15)(k)16, the legislature made a policy-based decision to exclude certain types of work an individual performs from the definition of "employment" for purposes of UI benefit eligibility. While it may seem arbitrary to exclude certain workers based simply on what they sell and how they are paid and where they perform the work, it is the legislature that is tasked with such policy-based decisions, and we must therefore "apply the policy the legislature has codified in the statutes, not impose our own policy choices—[because] to do otherwise would render this court little more than a super-legislature." *See* ***Columbus Park Hous. Corp. v. City of Kenosha***, 2003 WI 143, ¶34, 267 Wis. 2d 59, 671 N.W.2d 633. Because we conclude that Tarpey sold "consumer products" within the meaning of § 108.02(15)(k)16 and that § 108.02(15)(k)16 otherwise applies to the work Tarpey performed for Abby Windows, the circuit court did not err in reversing LIRC's order. We affirm the circuit court's order.

By the Court.—Order affirmed.

Recommended for publication in the official reports.

D25-01
Electronic Communication and Filing

Date: April 16, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Electronic Communication and Filing

1. Description of Proposed Change

Employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically, but all employers may file electronically. Electronic filing is more efficient for employers, ensures that reports are not lost in the mail, and reduces administrative costs for the Department. Employers who make contribution payments of at least $10,000 annually must make those payments by electronic funds transfer but any employer may do so. Currently, about 96% of employers file their tax and wage reports electronically and pay their contributions electronically. Current law also permits the Department to electronically communicate with those who opt for that form of communication—though not all Department communication can currently be sent electronically.

In 2024, the UI Advisory Council approved a Department proposal to make the electronic filing, electronic payment, and electronic communication provisions mandatory unless the person demonstrates good cause for being unable to use the electronic method. The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, includes a proposal identical to the one approved by the Council in 2024. In the Budget Bill, "good cause" is defined to include employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult, as determined by the Department. The Budget Bill also

provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication would be effective when the Department has the technological capability to fully implement it. The tax filing and payment provisions would be effective on January 1, 2027, so that employers have enough time to adjust to the new electronic filing and payment requirements.

The Department continues to modernize its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better customer service. This proposal will ensure the maximization of such efficiencies and service improvements while safeguarding the rights of those whose access to electronic means is severely limited or unavailable.

2. Proposed Statutory Changes

The proposed statutory changes would be identical to the UI Advisory Council-approved language from 2024 except that the effective date would be January 1, 2027 instead of February 1, 2025.

Section 108.14 (2e) of the statutes is amended to read:

108.14 (2e) The department ~~may~~ shall provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, ~~upon request to and with prior approval by the department, may~~ shall be used for departmental transmission or receipt of any document specified by the department that is related to the administration of this chapter and related federal programs in lieu of any other means of submission or receipt specified in this chapter. The secure means of electronic interchange shall be used by employing units, claimants, and other persons unless the person demonstrates good cause, as specified in s. 108.022, for being unable to use the secure means of electronic interchange. Subject to s. 137.25 (2) and any

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

Section 108.17 (2) of the statutes is amended to read:

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

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

Section 108.17 (2b) of the statutes is amended to read:

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

Section 108.17 (2g) of the statutes is repealed.

Section 108.17 (7) of the statutes is repealed.

Section 108.185 of the statutes is created to read:

108.185 Payment of contributions and reimbursements; good cause. Each employer, employer agent, person liable under s. 108.22 (9), and private agency liable under s. 108.22 (10) shall pay all contributions, reimbursements, interest, penalties, assessments, and other amounts due under this chapter by means of electronic funds transfer or another electronic method as approved by the department unless the employer, employer agent, person, or private agency demonstrates good cause, as specified in s. 108.022, for being unable to pay such amounts electronically.

Section 108.205 (1m) of the statutes is repealed.

D25-01
Electronic Communication and Filing

Section 108.205 (2) of the statutes is amended to read:

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

Section 108.22 (1) (ac) of the statutes is amended to read:

108.22 (1) (ac) In addition to any fee assessed under par. (a), the department may assess an employer or employer agent that is subject to the reporting requirement under s. 108.205 (2) and that fails to file its report in the manner and form prescribed under that subsection a penalty of $20 for each employee whose information is not reported in the that manner and form ~~prescribed under s. 108.205 (1m) (b) or (2)~~.

Section 108.22 (1) (ad) 1. of the statutes is amended to read:

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

Section 108.22 (1) (af) of the statutes is amended to read:

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

3. Effects of Proposed Change

a. **Policy:** The proposed change will result in increased efficiencies and improved experiences for claimants and employers.

b. **Administrative:** This proposal will require training of Department staff.

c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

The treatment of section 108.14 (2e) will take effect on the date specified in the notice published in the register. The other provisions will take effect on January 1, 2027.

D25-01
Electronic Communication and Filing

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

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

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

UI Trust Fund Impact:
This proposal is not expected to have an impact on the UI Trust Fund.

IT and Administrative Impact:
The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements.

If this proposal is implemented as a part of a new system, then the IT costs and administrative impacts will be attributed to that modernization effort.

UI Trust Fund Methodology:
There is not expected to be an impact on the UI Trust Fund. This proposal is expected to increase administrative efficiency.

IT and Administrative Impact Methodology:
Implementation is expected to be a part of a modernization effort.

D25-02
Worker Misclassification Penalties

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Worker Misclassification Penalties

1. Description of Proposed Change

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

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

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

The Joint Task Force on Payroll Fraud and Worker Misclassification recommended that the penalties for intentional worker misclassification be structured to deter repeat violations.[1] The Budget Bill (2025 AB 50 / 2025 SB 45) proposes to amend the administrative penalties statutes by having the penalties potentially apply to all employers. The Bill also eliminates the $7,500 and $10,000 caps on the administrative penalties and doubles the penalties for subsequent violations. The Bill amends the criminal penalties to potentially apply to any employer.

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

2. Proposed Statutory Changes[2]

Section 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.

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

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

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

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

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.

Section 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.

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.

D25-02
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. In addition, current law provides for criminal fines of up to $25,000 for employers who, after having previously been assessed such an administrative penalty, commit another violation. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an employee to adopt the status of a nonemployee; the penalty amount is $1,000 for each employee so coerced, but not to exceed $10,000 per calendar year. Penalties are deposited into the UI Program Integrity Fund.

The proposal does the following: 1) removes the $7,500 and $10,000 limitations on the administrative penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation; 2) removes the limitations on the types of employers to whom the prohibitions apply, making them applicable to any type of employer; and 3) specifies that DWD may make referrals for criminal prosecution for alleged criminal misclassification violations regardless of whether an employer has been subject to any other penalty or assessment under the UI law.

UI Trust Fund Impact:
This proposal is expected to have a positive but indeterminate impact on the UI Trust Fund.

IT and Administrative Impact:
The ongoing administrative impact to the UI program is indeterminate. There is no anticipated IT impact.

UI Trust Fund Methodology:
Because of the incentive this proposal creates for employers to correctly register as an employer and correctly list employees to avoid penalties, it is expected to have a positive but indeterminate impact on the UI Trust Fund.

IT and Administrative Impact Methodology:
The ongoing administrative impact to the UI program is indeterminate. There is no anticipated IT impact.

D25-03
Repeal Waiting Week

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Waiting Week

1. Description of Proposed Change

The 2011 Budget, 2011 Wis. Act 32, established a waiting week for unemployment insurance benefits, effective January 2012, which had not existed since 1977. During the pandemic, the waiting week was suspended because the federal government provided full funding of benefits for the first week of unemployment.

For every new benefit year, no benefits are payable for the first week a claimant would otherwise be eligible for benefits. The waiting week may be a week in which full or partial benefits are payable. The waiting week does not reduce a claimant's maximum benefit amount. A waiting period delays payments to qualified UI claimants that would otherwise spend the funds in Wisconsin supporting our state's economy. USDOL's Comparison of State Unemployment Laws 2023 reports that eight states do not have a waiting week.

Several legislative attempts have been made to eliminate the one-week waiting period including 2013 Assembly Bill 374, 2015 Assembly Bill 318, and Governor's 2021-23 Executive Budget. The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal the waiting week.

Like the 2025 Budget Bill, this proposal would repeal the one-week waiting week for unemployment insurance benefits.

2. Proposed Statutory Changes[1]

Section 108.02 (26m) of the statutes is repealed.

~~Waiting Period. "Waiting period" means any period of time under s. 108.04 (3) for which no benefits are payable to a claimant as a condition precedent to receipt of benefits.~~

Section 108.04 (3) of the statutes is repealed.

~~(a) Subject to par. (b), the first week of a claimant's benefit year for which the claimant has timely applied and is otherwise eligible for regular benefits under this chapter is the claimant's waiting period for that benefit year.~~

~~(b) Paragraph (a) does not apply with respect to benefit years that begin after March 12, 2020, and before March 14, 2021. The department shall seek the maximum amount of federal reimbursement for benefits that are, during the time period specified in this paragraph, payable for the first week of a claimant's benefit year as a result of the application of this paragraph.~~

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

The department shall apply any ineligibility under par. (be) against benefits and weeks of eligibility for which the claimant would otherwise be eligible after the week of concealment and within 6 years after the date of an initial determination issued under s. 108.09 finding that a concealment occurred. ~~The claimant shall not receive waiting period credit under s. 108.04 (3) for the period of ineligibility applied under par. (be).~~ If no benefit rate applies to the week for which the claim is made, the department shall use the claimant's benefit rate for the claimant's next benefit year beginning after the week of concealment to determine the amount of the benefit reduction.

[1] Additional cross-references may be amended.

3. Effects of Proposed Change

a. Policy. The proposed change would result in increased payment of unemployment insurance benefits to claimants who do not exhaust their benefit duration limit.

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 apply to benefit years beginning on the effective date of the

D25-03
Repeal Waiting Week

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Currently, a claimant does not receive weekly UI benefits until one week after becoming eligible, except for periods during which the waiting week is suspended. The one-week waiting period does not affect the maximum number of weeks a claimant is eligible for benefits.

This proposal repeals the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with their first week of eligibility.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by approximately $12 million annually.

IT and Administrative Impact:
There is not expected to be any measurable IT or administrative impact.

UI Trust Fund Methodology:
The elimination of the waiting week is expected to increase UI benefits by approximately 5%. For 2024, this would lead to an additional $18 million in benefits charged to the UI Trust Fund and an increase of $6 million in UI tax contributions. This is estimated to result in an expected reduction in the UI Trust Fund of $12 million annually.

IT and Administrative Impact Methodology:
Changes made during the COVID-19 pandemic allow the waiting period to be paused without any IT changes.

D25-04
Increase Maximum Weekly Benefit Rate

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Increase Maximum Weekly Benefit Rate

1. Description of Proposed Change

2013 Wis. Act 36 increased the maximum weekly benefit rate for unemployment insurance benefits from $363 to $370 starting January 2014. The maximum weekly benefit rate has not increased since then.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would increase the maximum weekly benefit rate from $370 to $497 per week for 2026. In January 2027 and each year thereafter, the maximum weekly benefit rate would be increased based on the consumer price index. If the consumer price index does not increase, then the maximum weekly benefit rate would remain the same.

Unemployment benefits, funded by employer contributions, provide temporary economic assistance to Wisconsin's eligible workers during times of unemployment. By contributing to the UI system, Wisconsin employers protect the pool of highly skilled workers and reduce the likelihood that workers affected by a layoff or temporary downturn will take their skills and talents to other states. Wisconsin maximum weekly benefit rate at $370 is significantly lower than neighboring states: Minnesota maximum weekly benefit rate $914; Illinois, $593; and Iowa, $602. Michigan passed legislation to increase its maximum weekly benefit rate to $614 over the next three years and then increase the rate by the Consumer Price Index annually thereafter.

This proposal mirrors the 2025 Budget Bill's proposal pertaining to maximum weekly benefit.

D25-04
Increase Maximum Weekly Benefit Rate

2. Proposed Statutory Changes[1]

Section 108.05 (1) (cm) of the statutes is created to read:

108.05 (1) (cm) For purposes of par. (r), the department shall set the maximum weekly benefit amount as follows:

1. For benefits paid for a week of total unemployment that commences on or after January 5, 2014, but before January 4, 2026, $370.

2. For benefits paid for a week of total unemployment that commences on or after January 4, 2026, but before January 3, 2027, $497

3. For benefits paid for a week of total unemployment that commences on or after January 3, 2027, the department shall set the maximum weekly benefit amount as provided under sub. (2).

Section 108.05 (1) (r) of the statutes is renumbered 108.05 (1) (r) (intro.) and amended to read:

(intro.) Except as provided in s. 108.062 (6) (a), each eligible employee shall be paid benefits for each week of total unemployment ~~that commences on or after January 5, 2014,~~ at ~~the~~ a weekly benefit rate ~~specified in this paragraph. Unless sub. (1m) applies, the weekly benefit rate shall~~ equal to 4 percent of the employee's base period wages that were paid during that quarter of the employee's base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar, except ~~that, if that amount~~ as provided under sub. (1m) and except as follows:

1. If the employee's weekly benefit rate calculated under this paragraph is less than $54, no benefits are payable to the employee ~~and, if that amount~~.

[1] Subject to revision to ensure cross-references are corrected.

2. If the employee's weekly benefit rate is more than ~~$370~~ the maximum weekly benefit amount specified in par. (cm), the employee's weekly benefit rate shall be ~~$370 and except that, if~~ the maximum weekly benefit amount specified in par. (cm).

3. If the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the remaining amount of benefits payable to the employee under s. 108.06 (1).

(s) The department shall publish on its Internet site a weekly benefit rate schedule of quarterly wages and the corresponding weekly benefit rates as calculated in accordance with this ~~paragraph~~ subsection.

108.05 (2) of the statutes is created to read:

INDEXING. (a) For benefits paid or payable for a week that commences on or after January 3, 2027, the department shall set the maximum weekly benefit amount under sub. (1) (cm) 3. and the wage limitation under sub. (3) (dm) 2. c. by doing the following:

1. Except as provided in subd. 2., calculating the percentage difference between the consumer price index for the 12-month period ending on July 31 of the prior year and the consumer price index for the 12-month period ending on July 31 of the year before the prior year, adjusting the prior year's amount or limitation by that percentage difference, and rounding that result to the nearest whole dollar.

2. If the consumer price index for the 12-month period ending on July 31 of the prior year has not increased over the consumer price index for the 12-month period ending on July 31 of the year before the prior year, setting the amount or limitation at the same amount or limitation that was in effect in the previous year.

(b) An adjustment under this subsection of the maximum weekly benefit amount under sub. (1) (cm) 3. and the wage limitation under sub. (3) (dm) 2. c. shall take effect on the 1st Sunday in January of each calendar year.

3. Effects of Proposed Change

a. Policy. The proposed change would increase the maximum weekly benefit rate to reflect increases in the average weekly wage.

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 be effective for weeks of unemployment beginning January 4, 2026.

D25-04
Increase Maximum Weekly Benefit Rate

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, a person who qualifies for UI receives a weekly benefit rate equal to a percentage of that person's past earnings, but the maximum weekly benefit rate is $370. The proposal changes the maximum weekly benefit rate in the following ways:

1. For benefits paid for weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the maximum weekly benefit rate is $497.
2. For benefits paid for weeks of unemployment beginning on or after January 3, 2027, the maximum weekly benefit rate is increased based upon the change in the consumer price index; it is then increased on the same basis annually thereafter.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $87.2 million annually.

IT and Administrative Impact:
This proposal is expected to have a one-time cost of $130,560 for IT changes to implement the increase in the weekly benefit rate and allow for the annual increase following the consumer price index. There would be an administrative cost of $39,168 for UI staff to implement the program. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
An increase in the maximum weekly benefit rate to $497 per week would increase UI benefit payments by approximately $131 million per year based upon recalculating 2023 benefit years at the $497 maximum weekly benefit rate and 12.2 weeks of paid duration. Of the $131 million, $8.5 million would be charged to reimbursable employers. The remaining $122.5 million would be charged to taxable employer accounts. In time, this would lead to an increase in UI taxes of $41 million per year. The final calculation would reduce the UI Trust Fund by approximately $81.5 million per year.

Using the recalculated benefit years and estimates for inflation for the price level in 2027, an increase of UI benefit payments by approximately $9.1 million annually would occur. Of this amount, $0.6 million would be charged to reimbursable employers with $8.5 million charged to taxable employer accounts. UI taxes would increase by approximately $2.8 million annually leaving a reduction to the UI Trust Fund of approximately $5.7 million annually.

The total impact would then be a $87.2 million reduction in the UI Trust Fund annually.

IT and Administrative Impact Methodology:
DWD estimates a cost of $130,560 to implement the IT changes to the UI benefit system if implemented while the benefits system is on the mainframe before modernization, as well as an administrative cost to implement such programs of $39,168.

D25-05
Increase and Index Maximum Wage Cap for the Partial Benefit Formula

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Increase and Index Maximum Wage Cap for the Partial Benefit Formula

1. Description of Proposed Change

The 2011 Unemployment Insurance Advisory Council agreed bill, 2011 Wis. Act 198, capped the amount of wages that a claimant may earn and still receive partial benefits at $500. Before Act 198, there was no wage cap in the statute, but a claimant would not receive unemployment benefits if they earned more wages than the partial benefit formula allowed. Section 108.05(3)(dm) currently provides that claimants are ineligible for benefits if they receive from one or more employers:

- Wages earned for work performed in that week of more than $500, or
- Holiday, vacation, termination or sick pay which, alone or combined with wages earned for work performed in that week, equals more than $500.

Claimants are also ineligible for partial benefits if they work 32 hours or more in a week.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would increase the $500 weekly maximum earned income disqualification to $672 for 2026. In January 2027 and each year thereafter, the cap would be increased based on the consumer price index. This proposal mirrors the Budget Bill provision.

2. Proposed Statutory Changes[1]

Section 108.05 (3) (dm) of the statutes is renumbered 108.05 (3) (dm) 1. and amended to read:

Except when otherwise authorized in an approved work-share program under s. 108.062, a claimant is ineligible to receive any benefits for a week if the claimant receives or will receive from one or more employers wages earned for work performed in that week, amounts treated as wages under s. 108.04 (1) (bm) for that week, sick pay, holiday pay, vacation pay, termination pay, bonus pay, back pay, or payments treated as wages under s. 108.04 (12) (e), or any combination thereof, ~~totaling~~ totaling more than ~~$500~~ the amount determined under subd. 2.

Section 108.05 (3) (dm) 2. of the statutes is created to read:

The department shall set the wage limitation under subd. 1. as follows:

a. For a week of unemployment that commences before January 4, 2026, $500.

b. For a week of unemployment that commences on or after January 4, 2026, but before January 3, 2027, $672.

c. For a week of unemployment that commences on or after January 3, 2027, the department shall set the wage limitation as provided under sub. (2).

[The indexing for future years would be calculated based on the consumer price index method proposed for the maximum weekly benefit rate increase.]

3. Effects of Proposed Change

a. Policy. The proposed change would result in a significant increase to the maximum wage cap for the partial benefit formula for 2026 followed by slight increases to the maximum wage cap for the partial benefit formula each year after 2026.

b. Administrative. This proposal will require training of Department staff.

[1] Additional cross-references may be amended.

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 be effective for weeks of unemployment beginning January 4, 2026.

D25-05
Increase and Index Maximum Wage Cap for the Partial Benefit Formula

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, a person who qualifies for UI is ineligible to receive any UI benefits for a week if the person receives or will receive wages or certain other earnings totaling more than $500 (wage cap) or if they work 32 hours or more per week. The proposal changes the wage cap in the following ways:

1. For weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the wage cap is increased to $672.
2. For weeks of unemployment beginning on or after January 3, 2027, the wage cap is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

UI Trust Fund Impact:
Assuming the current $370 maximum weekly benefit rate, this proposal is expected to reduce the UI Trust Fund by $240,000 annually.

Assuming a $497 maximum weekly benefit rate, this proposal is expected to reduce the UI Trust Fund by $1.8 million annually.

IT and Administrative Impact:
This proposal is estimated to have a one-time IT cost of $52,800. This proposal has an estimated one-time administrative cost of $15,840. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
Previously it was estimated that removing the weekly wage cap while leaving the 32-hour limit in place would have no impact on the UI Trust Fund since the 32-hour limit was still constraining claimants from receiving payments. However, with recent increases in wages, this is no longer the case.

It is important to note that changing the statutory weekly wage cap does not change the maximum earnings allowable under the partial wage formula. If earnings reduce a payment below the minimum $5 per week, no payment is made for that week. Assuming there is no earnings cap, for a $370 maximum weekly benefit rate, a claimant may earn up to $574.77 and still remain eligible for a $5 payment if they were working fewer than 32 hours. Analyzing all weekly claims that reported wages and hours worked in 2024 and assuming all weeks qualified for the maximum weekly benefit rate, there were 11,574 weekly claims that would receive a payment at the higher weekly wage cap after considering the 32-hour limit. These weeks would receive, on average, a partial weekly benefit of $33, leading to an increase in UI benefit payments of approximately $385,000 annually. Of this amount, $25,000 would be expected to be paid by reimbursable employers. UI tax contributions would be expected to increase by $120,000 annually. This results in an expected reduction in the UI Trust Fund of $240,000 annually.

Assuming a $497 maximum weekly benefit rate, the proposed weekly wage cap is determinative, since at $497, the partial wage formula maximum earnings amount is calculated to be $764.32 (higher than the proposed wage cap of $672). The higher maximum weekly benefit rate will also increase partial weekly payment amounts made. Analyzing 2024 claims that reported weekly earnings, considering the 32-hour limit, and assuming all claims qualify for the proposed $497 maximum weekly benefit rate, there would be 21,697 weekly claims that would be payable. On average, such claims would have a weekly benefit amount of $133 leading to an increase in UI benefits of $2.9 million annually. Of this amount, $200,000 would be expected to be paid by reimbursable employers. UI tax contributions would be expected to increase by $900,000 annually. This results in an expected reduction in the UI Trust Fund of $1.8 million annually.

IT and Administrative Impact Methodology:
DWD estimates a cost of $52,800 including changes to the claimant portal, payment processing, and the UI benefit system in general if implemented before those systems are modernized, as well as an administrative cost of $15,840.

AMENDED D25-06
REPEAL Social Security Disability Insurance Disqualification

April 17, 2025, Original

September 18, 2025, Amendment

Proposed by: DWD
Prepared by: Bureau of Legal Affairs
Office of Legal Counsel

1. Description of Proposed Change

Under the state statutes (s. 108.04(12)(f)), recipients of federal Social Security Disability Insurance ("SSDI") payments are ineligible for unemployment insurance benefits.

The Evers Administration Budget Bill (2025 AB 50 / 2025 SB 45) proposed to amend the prohibition on receipt of UI for SSDI recipients by removing the disqualification but reducing the amount of weekly UI benefits by the proportionate amount of the claimant's SSDI payment. Under the Budget Bill, SSDI payments were treated like pension payments under UI law (s. 108.05(7)) and offset the amount of UI benefit received.

The department's original proposal to the UIAC in April 2025 mirrored the Budget Bill proposal. Under it, SSDI recipients would be eligible for UI, but their UI benefit would be offset by SSDI received.

In July 2024, a federal district court found in *Bemke, et al v. Pechacek*, W.D. Wis. Case No. Case 3:21-cv-00560-wmc, that the state statute (s. 108.04(12)(f)) prohibiting SSDI recipients from receiving UI benefits was unlawful under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. In the same case, the court recently issued an injunction barring enforcement of s. 108.04(12)(f), allowing SSDI recipients to file for UI without the prohibition and without any offset, and ordered UI to process UI claims for those who were denied payment because of the SSDI prohibition under state law for claims filed between September 2015 and July 2025.

UI has begun processing claims for individuals who receive SSDI and, if they are

otherwise entitled to payment, they will be paid benefits without any offset. Additionally, under the court's order, on or before October 1, 2025, UI will provide notice to class members of their possible entitlement to unemployment benefits if they were denied UI benefits because they received SSDI between September 2015 and July 2025. Those eligible will receive UI benefits without an offset.

D25-06 Amendment: The Department is amending its proposal to repeal the SSDI disqualification provision and remove the offset provision. This will align with the effect of the court's order that is now allowing claimants who receive SSDI to be eligible for the full amount of their weekly benefit without a reduction for any SSDI received.

2. Proposed Statutory Changes

108.04 (2) (h) of the statutes is repealed.

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

3. Effects of Proposed Change

a. **Policy:** Under this proposed change, recipients of SSDI may receive UI benefits without offset, consistent with the federal court's order.

b. **Administrative:** This proposal will have no administrative impact because it comports with the status quo under the court order.

c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. Wisconsin is the only state to disqualify SSDI recipients from receiving UI benefits. Additionally, the department is not aware of any other states that offset UI benefits by SSDI received. This proposal will align Wisconsin law with all other states.

AMENDED D25-06
REPEAL Social Security Disability Insurance Disqualification

5. Proposed Effective/Applicability Date

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

AMENDED D25-06
REPEAL Social Security Disability Insurance Disqualification

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

Under current law, for each week in any month that a claimant is issued a benefit under the federal Social Security Disability Insurance program (SSDI payment), that claimant is ineligible for UI benefits. This proposal repeals that provision.

UI Trust Fund Impact:

This proposal is expected to have a small negative impact on the UI Trust Fund, but the actual magnitude is indeterminate. Employers who employ employees who receive SSDI are now paying into the Trust Fund for those employees.

IT and Administrative Impact:

This proposal would have minimum administrative impact. Individuals who receive SSDI would be treated like all other claimants and would not need to report SSDI received. No changes to the UI system would be required because, pursuant to the federal court order, the automatic disqualification for receipt of SSDI has already been removed.

UI Trust Fund Methodology:

There are strict federal limits on income a SSDI claimant can earn from employment (labeled Substantial Gainful Activity) while maintaining benefits. For disabled SSDI recipients, the maximum amount is $1,620 per month and for blind SSDI recipients, it is $2,700 per month.

If a disabled SSDI recipient earns the maximum amount of wages allowed by federal law each month, they would qualify for a $259 weekly benefit rate.

If a blind SSDI recipient earns the maximum allowed each month, they would qualify for a $370 weekly benefit rate under the current maximum.

D25-07
Repeal UI Drug Testing

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

AMENDED ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal UI Drug Testing

1. Description of Proposed Change

The 2015 Budget, 2015 Wis. Act 55,[1] created Wis. Stat. §§ 108.04(8)(b) and 108.133, requiring the Department, by administrative rule, to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to DWD, and a program for DWD to test certain UI applicants for unlawful use of controlled substances if their only suitable work is in an occupation that regularly conduct drug testing, as defined by the U.S. Department of Labor.[2]

Under the pre-employment drug testing program, if a reported individual is receiving UI benefits, the individual is presumed to have failed, without good cause, to accept suitable work and is ineligible for benefits.[3] If the drug test was failed, the individual may maintain eligibility for UI benefits if the individual enrolls in and complies with a substance abuse treatment program, completes a job skills assessment, and otherwise meets all program requirements.

Similarly, under the occupational drug testing program, an individual who is deemed ineligible for benefits could maintain eligibility by participating in a job skills assessment and substance abuse treatment program.

Under this law, DWD would pay the reasonable cost of drug treatment, however, the Legislature appropriated only $250,000 annually for administration of the program, testing, and

[1] The provisions in the Budget Bill for pre-employment and occupational drug testing were not presented to the UIAC for approval and were not included in the agreed bill.
[2] See 20 CFR § 620.3.
[3] However, the provisions of Wis. Stat. § 108.04(9) still apply.

treatment.

No claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules and denied benefits because of the employers' reports of a failed drug test as a condition of an offer of employment. Because no claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules, no claimants have maintained benefit eligibility by enrolling in and complying with a substance abuse treatment program and completing a job skills assessment.

The Legislature appropriates $250,000 of GPR funding annually ($500,000 per biennium) to DWD to fund and administer UI drug testing and treatment programs for both pre-employment and occupational drug testing programs. No GPR funds have been expended for substance abuse treatment programs as a result of pre-employment drug testing reports filed by employers. Unused appropriated GPR funds are transferred to the Program Integrity Fund at the end of the biennium.[4]

The Governor's 21-23 Executive Budget Bill proposed to repeal the UI pre-employment and UI occupational drug testing statutes and to provide that the GPR be used for administration of the UI program.

Similarly, the 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal the pre-employment and occupational drug testing statutes. Like the 2025 Budget Bill, this proposal would repeal the pre-employment and occupational drug testing statutes. Employees who are terminated for drug use may be found ineligible for benefits under the drug testing misconduct statute, section 108.04(5)(a), general misconduct, or substantial fault.

[4] 2017 Wis. Act 157, effective April 1, 2018.

D25-07
Repeal UI Drug Testing

2. Proposed Statutory Changes[5]

Section 108.04(8)(b) of the statutes is repealed.

Section 108.133 of the statutes is repealed.

Wis. Admin. Code Chapter DWD 131, "Pre-Employment Drug Testing, Substance Abuse Treatment Program and Job Skills Assessment," is repealed.

3. Effects of Proposed Change

Fiscal: The proposed change will save GPR funding of $500,000 per biennium. The proposal would not affect benefit payments or UI tax revenue. A fiscal estimate is attached.

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 first apply to initial claims filed on or after the effective date.

[5] Additional cross-references may also need to be amended.

D25-07
Repeal UI Drug Testing

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Current state law requires DWD to establish a program to test certain claimants who apply for UI benefits for the presence of controlled substances in a manner that is consistent with federal law. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. The bill eliminates the requirement to establish the drug testing program.

Also under current law, an employer may voluntarily submit to DWD the results of a pre-employment test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an individual declined to submit to the test. If DWD then verifies that submission, the employee may be ineligible for UI benefits until he or she requalifies. However, a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. The proposal eliminates the pre-employment drug testing provisions.

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

IT and Administrative Impact:
There is not expected to be any measurable IT or administrative impact.

UI Trust Fund Methodology:
The occupational drug testing and treatment program has not been established so its elimination would not impact UI benefit payments or tax contributions.

The pre-employment drug testing law has not resulted in any determinations denying benefits since 2016, so the elimination of pre-employment drug testing is not expected to impact UI benefit payments or tax contributions.

IT and Administrative Impact Methodology:
There are not expected to be any changes made outside normal business operations.

D25-08
Misconduct

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Misconduct

1. Description of Proposed Change

Current law provides that an employee's termination for attendance violations may disqualify them from receiving unemployment insurance benefits if misconduct or substantial fault are found. Attendance cases are reviewed under a three-step approach. First, the employee's conduct is analyzed under section 108.04(5)(e), which provides that the discharge is for misconduct if the following criteria are met:

> 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.

The Wisconsin Supreme Court, in the *Beres* case, held that section 108.04(5)(e) "allows an employer to adopt its own absenteeism policy that differs from the policy set forth in § 108.04(5)(e), and that termination for the violation of the employer's absenteeism policy will result in disqualification from receiving unemployment compensation benefits even if the employer's policy is more restrictive than the absenteeism policy set forth in the statute."[1]

A recent published Wisconsin Court of Appeals decision, *Bevco Precision Mfg. Co. v. Wisconsin Lab. & Indus. Rev. Comm'n,* 2024 WI App 54, interpreted the *Beres* decision to mean "that violation of an employer's attendance policy of which an employee is aware (as evidenced

[1] *Wisconsin Dep't of Workforce Dev. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 2018 WI 77, ¶ 5, 382 Wis. 2d 611, 616, 914 N.W.2d 625, 628.

by a signed acknowledgement of receipt) constitutes 'misconduct' for the purpose of disqualification from unemployment benefits, full stop."[2] This new decision means that the notice and reasons for absenteeism are not to be analyzed under the common law. Under *Bevco*, misconduct may now be found when an employer has a "no fault" attendance policy that results in termination regardless of the reasons for the absences and regardless of whether the employee gives notice of the absences.

If the employee's attendance violations do not fall within the parameters of section 108.04(5)(e), then the employee's conduct is analyzed under "general" misconduct, the standard in the current version of section 108.04(5)(introThis definition of misconduct from the Supreme Court's decision in the *Boynton Cab* case, limits "misconduct" to "conduct evincing such wilful or wanton disregard of an employer's interests . . . .".[3]

The Federal Unemployment Tax Act permits states to totally reduce (deny) unemployment benefits to a worker only for "discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income."[4] The US Department of Labor interprets federal law to mean that states may only find misconduct where the worker's conduct is "an intentional or controllable act or failure to take action, which shows a deliberate disregard of the employer's interests."[5] "Section 3304(a)(10) protects claimants' right to compensation by preventing states from enacting overly-severe denial provisions except

[2] *Bevco Precision Mfg. Co. v. Wisconsin Lab. & Indus. Rev. Comm'n,* 2024 WI App 54, ¶ 18, 413 Wis. 2d 668, 680, 12 N.W.3d 552, 558.
[3] *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636, 640 (1941).
[4] 26 USC § 3304(a)(10).
[5] *Benefit Denials*, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, https://oui.doleta.gov/unemploy/content/denialinformation.asp.

for serious offenses."[6] (See also the US Department of Labor's Employment and Training Handbook).[7]

This proposal, which adopts the same proposal in the 2025 Budget Bill, reinstates the general misconduct standard in conformity with federal standards. It provides that when determining misconduct for attendance violations or excessive tardiness, if the employee's notice and reason for an attendance violation are valid and if their conduct does not violate the current general misconduct standard, then misconduct is not found.

Additionally, the 2025 Budget Bill also proposes to legalize marijuana possession. Section 1717 of the Budget Bill provides that misconduct and substantial fault 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 of that use is permitted under s. 111.35." Under current law, an employment termination may also be found to be misconduct if it is the result of 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 had knowledge of the" policy and admitted to using the alcohol or drugs or tested positive for the use of alcohol or drugs. (Wis. Stat. § 108.04(5)(a)). If the use is lawful and under nonworking hours, this proposal provides that it is not misconduct or substantial fault, except as provided under s. 111.35.

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[6] Total Reduction/Cancellation of Wage Credits, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, Benefit Standards of Conformity Requirements for State UC Laws, available at https://oui.doleta.gov/unemploy/pdf/uilaws_wagecredits.pdf.

[7] The Legal Authority of Unemployment Insurance Program Letters and Similar Directives, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, Unemployment Insurance Program Letter No. 01-96 (Oct. 5, 1995) available at https://wdr.doleta.gov/directives/attach/UIPL1-96.cfm (explaining the legal effect of US-DOL directives, including that such directives "state or clarify the Department's position, particularly with respect to the Department's interpretation of the minimum Federal requirements for conformity or compliance, thereby assuring greater uniformity of application of such requirements by the States.").

2. Proposed Statutory Changes

Section 108.04 (5) (intro.) of the statutes is renumbered 108.04 (5) (cm) and amended to read: (cm) 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~~ paragraph 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~~ paragraph 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~~ paragraph.

(am) 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.

(bm) In addition to the conduct described in par. (am), "misconduct" includes all of the following:

Section 108.04 (5) (a) to (g) of the statutes are renumbered 108.04 (5) (bm) 1. to 7., and 108.04 (5) (bm) 5. and 7., as renumbered, are amended to read:

108.04 (5) (bm) 5. 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~~. For purposes of this subdivision, an employee's notice and reason for an occasion of absenteeism or tardiness shall be analyzed under the standard specified in par. (am).

7. 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 Indian 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 or revoked by the agency.

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.

3. Effects of Proposed Change

a. Policy: The proposed change will clarify the circumstances where attendance violations and marijuana use result in a finding of misconduct or substantial fault.

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 will apply to determinations issued on or after the effective date of the agreed-upon bill.

D25-08
Misconduct

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, if a claimant for UI benefits is terminated by their employer for misconduct connected with their work, the claimant is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria. And the claimant's wages paid by the employer that terminates the claimant for misconduct are excluded for purposes of calculating benefit entitlement. Current law defines "misconduct" using a general, common law standard derived from *Boynton Cab Co. v. Neubeck*, 237 Wis. 249 (1941), and enumerates several specific types of conduct that also constitute misconduct. Under one of these specific provisions, misconduct includes: 1) absenteeism on more than two occasions within the 120-day period before the date of the claimant's termination, unless otherwise specified by his or her employer in an employment manual of which the claimant has acknowledged receipt with his or her signature, or 2) excessive tardiness by a claimant in violation of a policy of the employer that has been communicated to the claimant. In *Department of Workforce Development v. Labor and Industry Review Commission (Beres)*, 2018 WI 77, the Wisconsin Supreme Court held that an employer could, under the language described above, institute an attendance policy more restrictive than two occasions within the 120-day period.

Current law also provides that an absence or tardiness occasion counts as misconduct only if the claimant did not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness. In *Bevco Precision Manufacturing v. Labor and Industry Review Commission*, 2024 WI App. 54, the Wisconsin Court of Appeals held that under *Beres*, this qualifying language did not apply if an employer had adopted its own standard on absenteeism and tardiness, as described above.

The proposal does all of the following:

1. Eliminates the language referencing "excessive tardiness."
2. Reverses the holding in *Bevco* by providing that a claimant's notice and reason for an occasion of absenteeism or tardiness are to be analyzed under the common law misconduct standard. Under the proposal, therefore, an employer may not establish its own policy for determining the reasonableness of absenteeism or tardiness. The proposal does not, however, affect the general ability of an employer to institute a standard for absenteeism and tardiness more restrictive than two occasions within the 120-day period before termination.
3. Clarifies, in another provision defining misconduct, that "tribal government" has the meaning given under state and federal law for what is considered an Indian tribe.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $2.2 million annually.

IT and Administrative Impact:
There is not expected to be any measurable IT or administrative impact.

UI Trust Fund Methodology:
Part 1 would remove excessive tardiness from being specifically investigated under the existing misconduct attendance provisions, but discharges due to tardiness would still be investigated under the standard misconduct provisions. It is likely that all or nearly all current misconduct findings for excessive tardiness would be found to be misconduct under the standard misconduct provisions.

Part 2 involves decisions UI has been making under *Bevco* since October 2, 2024. From that date through the end of 2024, there were 237 decisions denying benefits under the provisions specified in *Bevco*. Projecting out over the entire year, it is estimated that 846 decisions denying benefits would be issued each year. Using the 2024 average weekly benefit amount of $347 and the average duration of 12.2 weeks in 2024, the expected amount of additional benefit payments is $3.6 million annually. Considering an estimated $230,000 of reimbursable benefit payments and $1.1 million in additional tax revenue results in a reduction in the UI Trust Fund by $2.2 million annually.

Part 3 is a technical correction that is not expected to impact benefits paid or UI tax contributions.

IT and Administrative Impact Methodology:
This proposal would include only minor changes to documents to update cited statutes. This work would be included under the normal review of documentation and there would be no additional costs.

D25-09
Repeal Substantial Fault

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Substantial Fault

1. Description of Proposed Change

Under current law, a discharged employee is ineligible for unemployment insurance benefits if the discharge is for misconduct or substantial fault by the employee connected with their employment. In either case, the employee is ineligible for unemployment benefits until seven 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.

For misconduct discharges (but not for substantial fault), the wages paid by an employer which terminates the employee for misconduct are excluded from the employee's base period wages for purposes of benefit entitlement. This is known as cancellation of wage credits.

The 2013 Budget, 2013 Wis. Act 20, repealed a disqualification for attendance failures in section 108.04(5g) and replaced it with the disqualification 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.

3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

Act 20 also created a two-tiered approach for deciding certain absentee and tardiness issues. Under current law, absenteeism and tardiness cases are analyzed first under s. 108.04(5)(e), then under general misconduct (s. 108.04(5)(intro)). If disqualification does not result under s. 108.04(5)(e) or general misconduct, the next step is to analyze the reasons for discharge under substantial fault.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal substantial fault.

Like the 2025 Budget Bill, this proposal would repeal substantial fault. The substantial fault statute has been the subject of litigation to the courts, including the Supreme Court. Repealing substantial fault would result in more predictability for claimants and employers. The Department is unaware of any other state having an unemployment insurance benefit disqualification for substantial fault, but North Carolina previously had a substantial fault disqualification.

2. Proposed Statutory Changes[1]

Section 108.04(5g) of the statutes is repealed.

3. Effects of Proposed Change

a. Policy. The proposed change would result in payment of unemployment insurance benefits to claimants who would currently be denied on substantial fault grounds. The proposed change would result in more predictability for claimants and employers. The proposed change could result in less litigation on discharge issues.

b. Administrative. This proposal will require training of Department staff.

[1] Cross-references to the substantial fault statute would also be repealed.

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 apply to determinations issued on the first Sunday after the effective date of the repealed statute.

D25-09
Repeal Substantial Fault

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, a claimant for UI benefits whose work is terminated by his or her employer for substantial fault by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria. With certain exceptions, current law defines "substantial fault" to include those acts or omissions of a claimant over which the claimant exercised reasonable control and that violate reasonable requirements of the claimant's employer. The proposal eliminates this provision on substantial fault.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $3.8 million annually.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $19,200. This proposal is expected to have a one-time administrative cost of $5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
Substantial fault is the last step when considering a denial when someone is discharged:
(1) check for statutory misconduct (under a-g); if no denial then
(2) check for general misconduct; if no denial then
(3) check for substantial fault.

Under the proposed change, if the case doesn't meet the first two denial reasons, the determination would be an allow. So, any determination that is currently substantial fault would be an allow under this proposed change.

There was an annual average of 1,428 substantial fault decisions that denied benefits for the years 2022 to 2024. With the elimination of substantial fault decisions, these would now be situations where benefits were allowed. Using the 2024 average weekly benefit amount of $347 per week and the average duration of 12.2 weeks in 2024, the expected additional benefit payments is $6.0 million annually. Accounting for an estimated $400,000 of reimbursable benefit payments and $1.8 million in additional tax revenue leads to a reduction in the UI Trust Fund by $3.8 million annually.

IT and Administrative Impact Methodology:
DWD estimates a cost of $19,200 to make changes to forms and update information in the portal application, plus a one-time administrative cost of $5,760 to support implementation.

D25-10
Suitable Work

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Suitable Work

1. Description of Proposed Change

The definition of "suitable work" in the Unemployment Insurance law provides a standard for determining whether an unemployment benefit claimant has good cause for accepting work when offered. The Unemployment Insurance administrative rules currently define "suitable work" as "work that is reasonable considering the claimant's training, experience, and duration of unemployment as well as the availability of jobs in the labor market."[1]

Under the 2015 Unemployment Insurance Advisory Council agreed bill, 2015 Wis. Act 334, suitable work changes, a two-tiered approach is used to determine whether work refused is suitable based on when the job is refused. For claimants who refuse a job within the first six weeks of unemployment, the Department will compare the skill level and rate of pay to the claimant's most recent jobs and determine whether the hourly wage is at least 75 percent of what the claimant earned in their highest paying most recent job.[2] Beginning in the seventh week after the claimant became unemployed, suitable work means any work that the claimant is capable of performing, as determined by the Department.

Also, under current law, if a claimant has accepted work that was not suitable under the UI law, which the claimant could have refused with good cause, and the claimant terminates the

[1] Wis. Admin. Code DWD § 100.02(61).
[2] Wis. Stat. § 108.04(8)(d).

work within 30 calendar days, a claimant is eligible to receive UI benefits (generally, an individual is not eligible for UI benefits if they quit a job).

The Governor's 2021-23 Executive Budget included a proposal to change UI suitable work law to allow a claimant four additional weeks to find work that matches their skill level and replaces the majority of their lost wages. The Governor's 2021-23 Executive Budget also proposed to extend the period a UI claimant has to try out a job from 30 days to 10 weeks and, if the individual determined the job was not suitable, retain eligibility for UI benefits.

A proposal extending the time available to find and try out suitable work helps an individual avoid a significant deterioration in job quality or wages. An individual with unique or specialized skills may need a longer period to find work in their field due to, for instance, a scarcity of jobs in their field or because work may become more available during certain times of the year. Extending the period to look for suitable work, gives an individual a better chance to stay in their field and maintain their skills. Similarly, upon taking a position, it may take an individual more than 30 days to determine if the accepted work utilizes their skills, or if a monthly or annual pay rate is within 75 percent of their prior pay.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, proposes again the following changes related to suitable work: (1) extends the period, from 6 weeks to 10 weeks, that claimants must find work that is comparable to the work lost; and (2) allows claimants up to 10 weeks (a change from 30 days) to determine if a job taken is suitable.

This proposal adopts the proposed changes in the 2025 Budget Bill related to suitable work.

2. Proposed Statutory Changes[3]

Section 108.04 (7) (e) of the statutes is amended to read:

Paragraph (a) does not apply if the department determines that the employee accepted work that the employee accepted work that the employee could have failed to accept under sub. (8) and terminated the work on the same grounds and within the first ~~30 calendar days~~ 10 weeks after starting the work, or that the employee accepted work that the employee could have refused under sub. (9) and terminated the work within the first ~~30 calendar days~~ 10 weeks after starting the work. For purposes of this paragraph, an employee has the same grounds for voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) to (em) when it was offered, regardless of the reason articulated by the employee for the termination.

Section 108.04 (8) (d) (intro) of the statutes is amended to read:

With respect to the first ~~6~~ 10 weeks after the employee became unemployed, "suitable work," for purposes of par. (a), means work to which all of the following apply:

Section 108.04 (8) (dm) of the statutes is amended to read:

With respect to the ~~7th~~ 11th week after the employee became unemployed and any week thereafter, "suitable work," for purposes of par. (a), means any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.

[3] Subject to revision to ensure cross-references are corrected.

3. Effects of Proposed Change

a. Policy. The proposed change will provide claimants with more time to refuse work and continue to receive unemployment 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 first apply to determinations issued on or after the effective date of the proposal.

D25-10
Suitable Work

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Acceptance of Suitable Work

Summary of Proposal:
Under current law, if a claimant for UI benefits fails, without good cause, to accept suitable work when offered, the claimant is ineligible to receive benefits until he or she earns wages after the week in which the failure occurs equal to at least six times the claimant's weekly UI benefit rate in covered employment. Current law specifies what is considered "suitable work" for purposes of these provisions, with different standards applying depending on the amount of time that has elapsed since the claimant became unemployed. If the job refusal occurs within the first six weeks (known as the canvassing period), the department compares the skill and rate of pay to the claimant's most recent jobs and determines if the hourly wage is at least 75% of what the claimant earned in their highest paying most recent job. After six weeks have elapsed since the claimant became unemployed, the claimant is required to accept any work they are capable of performing, even if the pay is significantly lower than their most recent job.

This proposal modifies these provisions described above extending the canvassing period so that the claimant is not required to accept less favorable work until more than 10 weeks have elapsed since the claimant became unemployed.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $102,000 annually.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $19,200. This proposal is expected to have a one-time administrative cost of $5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
Reviewing previous data from 2019, 40 cases that had UI benefits denied due to refusal of suitable work were investigated to see if making a change from six weeks to 10 weeks would have impacted the decision. In one case, the claimant would not have been found ineligible because they failed to accept work within ten weeks of being unemployed. An additional six decisions may have been reversed under this proposed law change. This implies up to 17.5% cases denied for suitable work may be allowed under this proposal. Over the years 2022 to 2024, there were on average 219 denials for refusing suitable work. Using the 2024 average weekly benefit amount of $347 and the average duration of 12.2 weeks in 2024, the expected amount of additional benefits is up to $162,000 annually. Accounting for an estimated $10,000 of reimbursable benefits and $50,000 in additional tax revenue leads to a reduction in the UI Trust Fund by $102,000 annually.

IT and Administrative Impact Methodology:
DWD estimates a one-time cost of $19,200 to update information in the portal application as well as a one-time administrative cost of $5,760 to support implementation.

D25-10
Suitable Work

Quit Exception for Unsuitable Work

Summary of Proposal:
Under current law, unless an exception applies, a person who quits their job is generally ineligible to receive UI benefits until they requalify through subsequent covered employment. Under one such exception, if a claimant 1) accepts work that they could have refused under UI law, and 2) terminated the new work within 30 days after starting the work, the claimant remains eligible for UI benefits. Under the proposal, this exemption applies if the claimant terminated that work within 10 weeks after starting the work.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $1.495 million annually.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $19,200. This proposal is expected to have a one-time administrative cost of $5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
Using past data analysis under prior law (when Wisconsin allowed quits for up to 10 weeks), it is estimated that approximately 31% of allowed decisions were past the 30-day threshold. There were, on average, 1,842 decisions annually for the period 2022 to 2024. Using the 31% expected increase, there would be an additional 571 allow decisions annually. This would lead to an increase in UI benefits of approximately $2.4 million. There would be an expected annual increase of $155,000 in reimbursable benefits and $750,000 in additional tax revenue. Overall, this proposal is expected to lead to a reduction in the UI Trust Fund by $1.495 million annually.

IT and Administrative Impact Methodology:
DWD estimates the cost to update information in the portal application is $19,200, plus a one-time administrative cost of $5,760.

D25-11
Quit Exception for Relocating Spouse

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Quit Exception for Relocating Spouse

1. Description of Proposed Change

Employees who quit a job are generally ineligible for unemployment insurance benefits unless an exception applies.

As a condition of Wisconsin receiving federal grant money (American Recovery and Reinvestment Act of 2009 Funds), 2009 Wis. Act 11 created a quit exception. The exception permitted claimants to be eligible for unemployment insurance benefits (assuming they were otherwise qualified) if they quit their job to move with a spouse who was required to relocate for employment, and it would have been impractical for the claimant to commute from the new location.

The 2013 Budget Act, 2013 Wis. Act 20, amended and repealed several quit exceptions, including amending the "quit to relocate" exception in Wis. Stat. § 108.04(7)(t). The amended quit exception, effective January 2014, was narrowed to cover only a claimant whose spouse is on active duty with the U.S. Armed Forces, is required to relocate by the U.S. Armed Forces and it is impractical for the claimant to commute to work.

The 2025 Budget Bill, 2025 AB 50 / 2019 SB 45, effectively repeals the changes to this quit exception made by 2013 Wis. Act 20 and provides that the quit exception covers all spouses who move with a relocating spouse, not just those serving in the U.S. Armed Forces.

This proposal adopts the Budget Bill changes related to the quit exception.

2. Proposed Statutory Changes[1]

Section 108.04 (7) (t) 1. of the statutes is repealed.

~~1. The employee's spouse is a member of the U.S. armed forces on active duty.~~

Section 108.04 (7) (t) 2. of the statutes is amended to read:

The employee's spouse was required by ~~the U.S. armed forces~~ his or her employing unit to relocate to a place to which it is impractical for the employee to commute.

3. Effects of Proposed Change

a. Policy. The proposed change may encourage workers to relocate to take better jobs. This proposal may ensure that spouses of workers who relocate to take better jobs can receive unemployment insurance benefits after relocating if it is impractical for the spouse to commute, assuming that the spouse is otherwise eligible for unemployment insurance 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 be effective with the other provisions of the agreed bill.

[1] Cross-references may be amended.

D25-11
Quit Exception for Relocating Spouse

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, unless an exception applies, if an individual quits their job, the individual is generally ineligible to receive UI benefits until they requalify through subsequent employment.

Under one exception, if the employee's spouse is a member of the U.S. armed forces on active duty and is relocated, and the employee quits their job to relocate with their spouse, the employee remains eligible to collect UI benefits. This proposal expands this exception so that it applies to an employee who quits employment to relocate with a spouse who is required by any employer, not just the U.S. armed forces, to relocate.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $390,000 annually.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $28,800. This proposal is expected to have a one-time administrative cost of $8,640. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
When this quit exception was in effect in 2011, benefits were allowed in 417 claims under this provision. Comparing the number of initial claims in 2011 to the average of initial claims for 2022 through 2024, it is expected that 147 claims would be allowed under this provision. Using the average weekly benefit payment in 2024 of $347 and the average duration of 12.2 weeks in 2024, this would result in an expected increase in benefits of $622,000 annually. Of this amount, $40,000 would be expected to be reimbursable benefit payments. There would be an increase of $192,000 in UI tax contributions; with an expected decrease in the UI Trust Fund of $390,000 annually.

IT and Administrative Impact Methodology:
DWD estimates the cost to update information in the portal application to be $28,800, plus a one-time administrative cost of $8,640.

D25-12
Repeal Work Search and Work Registration Waivers from Statute

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Work Search and Work Registration Waivers from Statute

1. Description of Proposed Change

Federal law requires claimants to be actively seeking work and to register for work. In Wisconsin, unemployment benefit claimants must conduct at least four work searches each week and register for work, unless a waiver relieves them of these requirements.

Before 2017 Wis. Act 370 (enacted during the 2018 extraordinary session), the unemployment work search waivers were set forth in Wis. Admin. Code DWD § 127.02. The unemployment work registration waivers were in Wis. Admin. Code DWD § 126.03. Act 370 codified in statute the work search and work registration waivers that existed in Administrative Code chapters DWD 126 and 127 (2018). Act 370 also created statutory language to permit the Department to promulgate administrative rules that modify the statutory work search and work registration waivers or create additional work search or work registration waivers "to comply with a requirement under federal law or is specifically allowed under federal law." During the pandemic, the Department promulgated emergency rules to add waivers during the public health emergency. Those temporary waivers have expired.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal the work search waiver provisions in statute as created by Act 370, restore the applicable statutes to their pre-Act 370 language, and direct the Department to establish work search waivers by administrative rule, including by emergency rule for temporary waivers. The Budget Bill proposal would permit the Department to promulgate the emergency rule without making a finding of emergency and would permit the emergency rule to be extended up to 60 days without the prior approval of the

Joint Committee for Review of Administrative Rules and without a limit on the number of extensions. This proposal mirrors the 2025 Budget Bill proposal.

2. Proposed Statutory Changes[1]

Section 108.04 (2) (a) (intro.) of the statutes is amended to read:

Except as provided in ~~pars.~~ par. (b) ~~to (bd)~~, sub. (16) (am) and (b), and s. 108.062 (10) and (10m) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week only if all of the following apply:

Section 108.04 (2) (a) 3. of the statutes is repealed and recreated to read:

The claimant conducts a reasonable search for suitable work during that week and provides verification of that search to the department. The search for suitable work must include at least 4 actions per week that constitute a reasonable search as prescribed by rule of the department. In addition, the department may, by rule, require a claimant to take more than 4 reasonable work search actions in any week. The department shall require a uniform number of reasonable work search actions for similar types of claimants. This subdivision does not apply to a claimant if the department determines that the claimant is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the claimant has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the claimant's employment status and shall consider all of the following:

a. The history of layoffs and reemployments by the employer.

b. Any information that the employer furnished to the claimant or the department concerning the claimant's anticipated reemployment date.

[1] Subject to revision to ensure cross-references are corrected.

c. Whether the claimant has recall rights with the employer under the terms of any applicable collective bargaining agreement.

Section 108.04 (2) (b) of the statutes is repealed and recreated to read:

1. The department may, by rule, establish waivers from the registration for work requirement under par. (a) 2. and the work search requirement under par. (a) 3.

2. a. The department may promulgate rules under subd. 1. as emergency rules, using the procedure under s. 227.24, if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this subd. 2. a. as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subd. 2. a. Except as provided under subd. 2. b., a rule promulgated under this subd. 2. a. remains in effect only for 150 days.

b. Notwithstanding s. 227.24 (2), the secretary of workforce development may extend the effective period of an emergency rule promulgated under subd. 2. a. for a period specified by the secretary not to exceed 60 days. Any number of extensions may be granted under this subd. 2. b. Whenever the secretary extends an emergency rule under this subd. 2. b., it shall file a statement of its action with the legislative reference bureau. The statement shall identify the specific emergency rule to which it relates.

Section 108.04 (2) (bb) of the statutes is repealed.

Section 108.04 (2) (bd) of the statutes is repealed.

D25-12
Repeal Work Search and Work Registration Waivers from Statute

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

A claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to comply with the registration for work and work search requirements under par. (a) 2. or 3. or failed to provide verification to the department that the claimant complied with those requirements, unless the department has waived those requirements under par. (b)~~, (bb), or (bd)~~ or s. 108.062 (10m). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22.

3. Effects of Proposed Change

a. Policy. The proposed change would restore the law on work search and work registration waivers to the status quo before Act 370 and permit waivers to again be modified by rule.

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 be effective with the other provisions of the agreed bill.

D25-12
Repeal Work Search and Work Registration Waivers from Statute

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, a claimant for UI benefits is generally required to register for work and to conduct a work search for each week to remain eligible for benefits. Current law requires DWD to waive these requirements under certain circumstances, for example, if a claimant who is laid off from work reasonably expects to be recalled to work within 12 weeks, will start a new job within four weeks, routinely obtains work through a labor union referral, or is participating in a training or work share program. Under current law, DWD may modify the statutory waivers or establish additional waivers by rule only if doing so is required or specifically allowed by federal law.

This proposal removes the waiver requirements from statute and instead allows DWD to establish waivers for the registration for work and work search requirements by rule. DWD may establish a waiver by emergency rule if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted. This proposal allows the secretary to extend the emergency rule for up to 60 days at a time. Also, the proposal specifies that the work search requirement does not apply to a claimant who has been laid off but DWD determines that the claimant has a reasonable expectation to be recalled to work by the same employer. If this proposal is enacted, then DWD will apply the waivers in the administrative code, including the 8 plus 4 week recall waiver.

UI Trust Fund Impact:
This proposal is estimated to have no impact on the UI Trust Fund.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $19,200. This proposal is expected to have a one-time administrative cost of $5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
This proposal would revert statute to rule and policy matching the current statute, so there would be no impact.

IT and Administrative Impact Methodology:
DWD estimates a one-time cost of $19,200 to update information on the mainframe system forms and a one-time administrative cost of $5,760 to support implementation.

NOTE REGARDING FISCAL ANALYSIS

For ease of understanding, each fiscal analysis, with the exception of the change in the weekly earnings cap, is drafted with the assumption each proposal is a standalone change. There is possible interaction among the various proposals, but the interaction is not expected to be significant except in two cases – the end of the waiting period and increasing the maximum weekly benefit rate. When looking at the other estimates, the elimination of the waiting period would increase UI Trust Fund impacts by 5-8% and the increase in the maximum weekly benefit rate would increase UI Trust Fund impacts by approximately 23%.

2025 Unemployment Advisory Council Labor Proposals

1.) Increasing maximum weekly benefits

Under current law, a person who qualifies for UI receives a weekly benefit rate equal to a percentage of that person's past earnings, but the weekly benefit rate is capped at $370. The proposal changes the maximum weekly benefit rate in the following ways:
1. For benefits paid for weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the maximum weekly benefit rate is capped at $497.
2. For benefits paid for weeks of unemployment beginning on or after January 3, 2027, the maximum weekly benefit rate is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

2.) Waiting period

Currently, a claimant must wait one week after becoming eligible to receive UI benefits before the claimant may receive benefits for a week of unemployment, except for periods during which the waiting period is suspended. The waiting period does not affect the maximum number of weeks of a claimant's benefit eligibility.
The proposal deletes the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with his or her first week of eligibility.

3.) Increasing benefit wage cap

Under current law, a person who qualifies for UI is ineligible to receive any UI benefits for a week if the person receives or will receive wages or certain other earnings totaling more than $500 (wage cap). The proposal changes the wage cap in the following ways:
1. For weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the wage cap is increased to $672.
2. For weeks of unemployment beginning on or after January 3, 2027, the wage cap is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

4.) Unemployment insurance; worker misclassification penalties

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is $500 for each employee who is misclassified, not to exceed $7,500 per incident. In addition, current law provides for criminal fines of up to $25,000 for employers who, after having previously been assessed such an administrative penalty, commit another violation. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an employee to adopt the status of a nonemployee; the penalty amount is $1,000 for each employee so coerced, but not to exceed $10,000 per calendar year. Penalties are deposited into the unemployment program integrity fund.

The proposal does the following: 1) removes the $7,500 and $10,000 limitations on the administrative penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation; 2) removes the limitations on the types of employers to whom the prohibitions apply, making them applicable to any type of employer; and 3) specifies that DWD may make referrals for criminal prosecution for alleged criminal misclassification violations regardless of whether an employer has been subject to any other penalty or assessment under the UI law.

5.) Acceptance of suitable work

Under current law, if a claimant for UI benefits fails, without good cause, to accept suitable work when offered, the claimant is ineligible to receive benefits until he or she earns wages after the week in which the failure occurs equal to at least six times the claimant's weekly UI benefit rate in covered employment. Current law specifies what is considered "suitable work" for purposes of these provisions, with different standards applying depending on whether six weeks have elapsed since the claimant became unemployed. Once six weeks have elapsed since the claimant became unemployed, the claimant is required to accept work that pays lower and involves a lower grade of skill.

The proposal modifies these provisions described above so that the claimant is not required to accept less favorable work until *10 weeks* have elapsed since the claimant became unemployed.

6.) Quits due to relocations

Under current law, unless an exception applies, if an individual quits his or her job, the individual is generally ineligible to receive UI benefits until he or she qualifies through subsequent employment.

Under one such exception, if the employee's spouse is a member of the U.S. armed forces on active duty and is relocated, and the employee quits his or her job in order to relocate with his or her spouse, the employee remains eligible to collect UI benefits. The proposal expands this exception so that it applies to an employee who quits employment in order to relocate with a spouse who is required by any employer, not just the U.S. armed forces, to relocate.

7.) Substantial fault

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for substantial fault by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria. With certain exceptions, current law defines "substantial fault" to include those acts or omissions of a claimant over which the claimant exercised reasonable control and that violate reasonable requirements of the claimant's employer. The proposal eliminates this provision on substantial fault.

8.) Misconduct

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for misconduct by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria, and the claimant's wages paid by the employer that terminates the claimant for misconduct are excluded for purposes of calculating benefit entitlement. Current law defines "misconduct" using a general, common law standard derived from *Boynton Cab Co. v. Neubeck*, 237 Wis. 249 (1941), and enumerates several specific types of conduct that also constitute misconduct. Under one of these specific

provisions, misconduct includes 1) absenteeism on more than two occasions within the 120-day period before the date of the claimant's termination, unless otherwise specified by his or her employer in an employment manual of which the claimant has acknowledged receipt with his or her signature, or 2) excessive tardiness by a claimant in violation of a policy of the employer that has been communicated to the claimant. In *Department of Workforce Development v. Labor and Industry Review Commission (Beres)*, 2018 WI 77, the supreme court held that an employer could, under the language described above, institute an attendance policy more restrictive than two occasions within the 120-day period.

Current law also provides that absenteeism or tardiness count as misconduct only if the claimant did not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness. In *Bevco Precision Manufacturing v. Labor and Industry Review Commission*, 2024 WI App. 54, the court of appeals held that under *Beres*, this qualifying language did not apply if an employer had adopted its own standard on absenteeism and tardiness, as described above.

The proposal does all of the following:

1. Eliminates the language referencing "excessive tardiness."
2. Reverses the holding in *Bevco* by providing that a claimant's notice and reason for an occasion of absenteeism or tardiness are to be analyzed under the common law misconduct standard. Under the proposal, therefore, an employer may not establish its own policy for determining the reasonableness of absenteeism or tardiness. The proposal does not, however, affect the general ability of an employer to institute a standard for absenteeism and tardiness more restrictive than two occasions within the 120-day period before termination.
3. Clarifies, in another provision defining misconduct, that "tribal government" has the meaning given under state and federal law for what is considered an Indian tribe.

9.) Drug testing

Current state law requires DWD to establish a program to test certain claimants who apply for UI benefits for the presence of controlled substances in a manner that is consistent with federal law. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. The proposal eliminates the requirement to establish the drug testing program.

Also under current law, an employer may voluntarily submit to DWD the results of a preemployment test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an individual declined to submit to such a test. If DWD then verifies that submission, the employee may be ineligible for UI benefits until he or she requalifies. However, a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. The proposal eliminates these preemployment drug testing provisions.

10.) Quits due to non suitable work

Under current law, unless an exception applies, if a claimant for UI benefits quits his or her job, the claimant is generally ineligible to receive UI benefits until he or she qualifies through subsequent employment. Under one such exception, if a claimant quits his or her job and 1) the claimant accepted work that was not suitable work under the UI law or work that the claimant could have refused, and 2) the claimant terminated the work within 30 calendar days after

starting the work, the claimant remains eligible to collect UI benefits. Under the proposal, this exemption applies if the claimant terminated that work within *10 weeks* after starting the work.

11.) Work search and registration

Under current law, a claimant for UI benefits is generally required to register for work and to conduct a work search for each week in order to remain eligible. Current law requires DWD to waive these requirements under certain circumstances, for example, if a claimant who is laid off from work reasonably expects to be recalled to work within 12 weeks, will start a new job within four weeks, routinely obtains work through a labor union referral, or is participating in a training or work share program. Under current law, DWD may modify the statutory waivers or establish additional waivers by rule only if doing so is required or specifically allowed by federal law.

The proposal removes the waiver requirements from statute and instead allows DWD to establish waivers for the registration for work and work search requirements by rule. DWD may establish a waiver by emergency rule if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted, and the proposal allows the secretary to extend the emergency rule for up to 60 days at a time. Also, the proposal specifies that the work search requirement does not apply to a claimant who has been laid off but DWD determines that the claimant has a reasonable expectation to be recalled to work.

12.) Social security disability insurance payments

Under current law, in any week in any month that a claimant is issued a benefit under the federal Social Security Disability Insurance program (SSDI payment), that claimant is ineligible for UI benefits. The proposal eliminates that prohibition and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. The proposal requires DWD to allocate a monthly SSDI payment by allocating to each week the fraction of the payment attributable to that week.

13.) Electronic communications

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

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

14.) Unknown Imposter Penalty

Under current law, if any person makes a false statement or representation in order to obtain benefits in the same name of another person, the person may be required to repay the amount of the benefits obtained and to pay an additional amount equal to the amount of benefits obtained. Current law does not specify a penalty for when such a person makes a false statement or representation in order to obtain benefits in the name of another person but fails to obtain any benefits. The proposal provides that if a person makes a false statement or representation on an initial claim in order to intentionally obtain benefits in the name of another person, but fails to obtain benefits, the person is subject to a penalty of $5,000.

15.) Federal Administrative Financing Account; Reed Act Distributions

The Proposal creates a segregated fund to receive various program revenue moneys received by DWD under the UI law that are not otherwise credited to other segregated funds, including various moneys collected by DWD as interest and penalties under the UI law and all other nonfederal moneys received for the administration of the UI law that are not otherwise appropriated. Current law provides for the depositing these revenues in appropriations in the general fund. In addition, the proposal makes various changes to reorganize, clarify, and update provisions relating to the financing of the UI law; and to address numerous out-of-date or erroneous cross-references in the UI law.

Unemployment Reform Ideas for 2025-2026 Session

Program Integrity Measures

- **Work Search Verification -** Require the Department to randomly 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. Provide that a claimant is ineligible for benefits for any week in which the claimant refused a job offer or interview offer, or failed to attend a scheduled job interview, without good cause.

- **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, immigration 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.

- **Benefit Charge Liability –** Provide that an employer is not liable for benefit charges for an employee who quit to take another job (and then left the new employer), or who was fired for misconduct or substantial fault, then took another job (and then left the new job).

- **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 3.5%	16
3.6% to 5.5%	20
Greater than 5.6%	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.

Unemployment Insurance Advisory Council
Tentative Schedule for 2025-2026 Session

January 16, 2025	Scheduled UIAC Meeting Discuss Public Hearing Comments
March 20, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals **UI Fraud Report**
April 17, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Exchange of Labor & Management Law Change Proposals
May 15, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Discuss Labor & Management Proposals
June 19, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Discuss Labor & Management Proposals
July 17, 2025	Scheduled UIAC Meeting Discussion and Agreement on Law Changes for Agreed Upon Bill
August 21, 2025	Scheduled UIAC Meeting Review and approval of draft of Agreed Upon Bill
September 18, 2025	Scheduled UIAC Meeting Final review and approval of LRB draft of Agreed Upon Bill
October 16, 2025	**Scheduled UIAC Meeting** **Agreed Upon Bill Sent to the Legislature for Introduction** **UIAC Activities Report (due January 2026)**
November 20, 2025	Scheduled UIAC Meeting
December 18, 2025	Tentative UIAC Meeting
January 15, 2026	Tentative UIAC Meeting