



UNEMPLOYMENT INSURANCE ADVISORY COUNCIL **ACTIVITIES REPORT**

2024



January 31, 2024

The Honorable Tony Evers
Office of the Governor
115 East, State Capitol Building
Madison, WI 53702

Wisconsin State Legislators
State Capitol Building
Madison, WI 53702

Dear Gov. Evers and Members of the Legislature:

The Department of Workforce Development (DWD) is pleased to present the 2024 report on activities of Wisconsin's Unemployment Insurance Advisory Council.

Wisconsin's thriving economy rests on a long tradition of collaboration among employers, employees, educators, government entities, and community stakeholders. This collaborative spirit has contributed to recent historic economic successes such as a record-low monthly unemployment rate of 2.4% last year and an all-time high of 3,026,500 total nonfarm jobs in December 2023. Meanwhile, Gov. Tony Evers' groundbreaking efforts to remove employment barriers and address a worker quantity challenge that has been decades in the making are advancing Wisconsin's workforce and ensuring a robust talent pipeline for employers in need of workers.

Wisconsin's tradition of collaboration also is reflected in the Legislature's creation of the Unemployment Insurance Advisory Council almost a century ago. The council advises the Legislature and DWD on matters concerning Wisconsin's Unemployment Insurance (UI) program, and it recommends changes to improve the state's UI laws. Recommendations of the council represent the interests of employers and workers.

The council and the DWD look forward to continuing the collaborative spirit that has guided council activities for decades to further support and strengthen Wisconsin's UI program.

Sincerely,



Secretary-designee, Amy Pechacek
Department of Workforce Development

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EXECUTIVE SUMMARY

The Unemployment Insurance Advisory Council has worked to ensure interests of employers and employees are represented in Wisconsin's UI laws for close to a century. These laws have been foundational to the success of Wisconsin's UI program in supporting an economy that works for everyone, including those who are out of work through no fault of their own, and employers who financially support the program.

The 2024 Unemployment Insurance Advisory Council Activities Report summarizes council activities during a time of unprecedented transformation in the UI program and record-breaking performance of Wisconsin's labor market economy. In calendar year 2023, Wisconsin's monthly unemployment rate reached an all-time low of 2.4% and the state saw an all-time high of 3,026,500 total nonfarm jobs in December. The state's labor force participation rate remained above the national average, and initial and weekly unemployment claims reached seasonal historic lows. Meanwhile, Gov. Tony Evers' groundbreaking efforts to remove employment barriers and address a worker quantity challenge decades in the making helped thousands of workers and supported a robust talent pipeline for employers in need of workers.

During this time, Wisconsin continued its unprecedented, multi-year effort to modernize and strengthen its UI system, building on efforts launched in the wake of the COVID-19 pandemic using American Rescue Plan Act funds and other federal funds. Among the largest of modernization efforts is the replacement of a 1970s-era COBOL-based mainframe with a modern, secure, and agile system to process UI claims. Additional projects supported by federal funds have addressed equity and access to benefits, increased accuracy and security, introduced efficiencies, and improved customer service. More recently, DWD announced upcoming upgrades to the UI employer portal. In addition, federal funds allowed Wisconsin to build upon the state's program integrity and fraud prevention and detection efforts.

The significant progress Wisconsin has made to improve and modernize its UI program is grounded in a proud legacy that dates to 1932, when Wisconsin enacted the nation's first unemployment compensation law. The activities in this report continue this progress and reaffirm the critical role that the council plays in the success of Wisconsin's UI program.

INTRODUCTION

This report summarizes the deliberations of the Unemployment Insurance Advisory Council and outlines the position of the council concerning each proposed change to UI laws. This report is prepared by the DWD Secretary and provided to the Governor and Legislature as required by Wis. Stat. § 16.48(3). As this law was amended last session to change the reporting period for this report, the report covers relevant activities since 2022.





ABOUT THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

The Legislature created the council in 1932 to advise DWD and the Legislature on policy matters concerning the development and administration of UI law. For over 90 years, the council has acted as a catalyst for labor and management members to work together to ensure stability in the UI system and collaborate on positive changes to enhance the UI program.

The council's main responsibilities are:¹

- Advise the department in its administration of UI law;
- Report its views on pending legislation affecting the UI program to legislative committees; and
- Submit its recommended changes to Wisconsin's UI law to the Legislature.

The council examines potential UI law changes on an ongoing basis, providing a balanced forum where the interests of both employees and employers are considered. The council's final negotiated recommendations to change UI law are presented to the Legislature as an "agreed bill" for the Legislature's consideration.

The Legislature has traditionally recognized the value of the council process in bringing together the two groups most affected by the UI program: employees and employers. The Legislature's support of the council process has helped to ensure Wisconsin's UI law continues to conform to federal requirements, allowing Wisconsin to receive the federal funding necessary to administer the UI program and for employers to receive federal tax credits.

The council regularly communicates with the Legislature about specific issues that impact the UI program. Members of the Legislature are encouraged to attend council meetings and present their proposed changes to UI law to the council before introduction.

¹ The council responsibilities are specified in Wis. Stat. § 108.14(5)(a).

COUNCIL MEMBERSHIP

The DWD Secretary appoints council members to serve six-year terms. The council is composed of five management members representing the interests of employers, and five labor members representing the interests of employees. The management and labor members come from various backgrounds to portray the different sectors of Wisconsin's economy. State law requires one management member to be an owner of a small business or represent an association primarily composed of small businesses. In addition to these 10 voting members, a permanent classified employee of the department serves as the nonvoting chair of the council.²

Employer Representatives (Management Members)

David Bohl – General Counsel, J.H. Findorff & Son Inc.: Term expires Sept. 14, 2027.

Michael Gotzler – Shareholder, Littler Mendelson and Director, Wisconsin Association of Staffing Services: Term expires June 30, 2029.

Scott M. Manley – Executive Vice President of Government Relations, Wisconsin Manufacturers & Commerce: Term expires Aug. 31, 2027.

Susan G. Quam (Small Business Representative) – Executive Vice President, Wisconsin Restaurant Association: Term expires June 30, 2029.

Kathy Thornton-Bias – President and CEO, Boys & Girls Clubs of Greater Milwaukee: Term expires April 30, 2027.

Employee Representatives (Labor Members)

Di Ann Fechter – Business Representative, International Association of Machinists and Aerospace Workers District Lodge 10: Term expires Nov. 13, 2024.

Sally Feistel – Sub District Director, United Steelworkers District 7: Term expires May 31, 2026.

Corey Gall – President, Wisconsin Pipe Trades Association: Term expires Aug. 31, 2027.

Shane Griesbach – Business Representative, International Union of Operating Engineers Local 139: Term expires June 30, 2029.

Christopher Harris – Executive Board Member, United Steelworkers Local 7-209: Term expires Aug. 31, 2027.

Chair (non-voting)

Janell Knutson – Director, Bureau of Legal Affairs, UI Division, State of Wisconsin Department of Workforce Development.



² Wis. Stat. § 15.227(3)

COUNCIL PROCEDURES

Business Meetings

During the biennial term, council members negotiate proposed changes to Wisconsin's UI law and review administrative rules drafted by the department, and evaluate unemployment-related legislation proposed by lawmakers. The council typically meets monthly to allow labor and management the opportunity to exchange ideas and opinions so the interests of employers and employees are represented and considered. Council meetings are open to the public, and notice is provided under Wisconsin's open meetings law. In addition to the public part of council meetings, management and labor members can convene in separate, closed caucus sessions to discuss potential law changes.³

The chair leads council meetings and, generally, presents departmental proposals to change UI law to the council for review. Departmental proposals generally include an analysis and rationale of each suggested law change with a description of such change; the history and background of current law; potential federal conformity issues; the policy and fiscal effects; and the administrative feasibility and effect of the proposal. Council members deliberate department proposals, their own proposals, and any unemployment-related bills pending in the Legislature. A vote of seven of 10 voting council members is needed for the council to act on any matter.⁴



Public Hearing

The proposals for inclusion in the agreed bill are developed based on input from various sources including employer representatives, employee representatives, legislators, the department, and the public. Each biennium, the council holds a statewide hearing for the public to suggest possible changes to the UI program.

Before the public hearing, the council invites written comments on potential UI law changes. The public can send suggestions to the department by letter or email to a dedicated account. The department compiles all comments submitted directly or at the public hearing to present to the council. The council considers the public comments as they develop potential reform ideas for the upcoming agreed bill. The council held a public hearing in November 2022 and factored the input received from the public into the UI law changes included in the most recent agreed bill.

³ Closed caucus sessions are permissible under Wis. Stat. § 19.85(1)(ee).

⁴ Wis. Stat. § 108.14(5)(ag)

LAW CHANGES ENACTED DURING THE REPORTING PERIOD

As in the previous legislative session, the agreed bill was bifurcated into two bills: one bill encompassed the appropriations items that needed to be referred to the Joint Committee on Finance; the other bill included the policy items. The two bills were introduced in the Legislature in early 2022. While a public hearing was held in the Senate on SB 899, no action was taken on the appropriations bill in the Assembly. The policy bill (AB 910 / SB 897) was enacted on April 8, 2022, as 2021 Wis. Act 231. Following are summaries of significant provisions in 2021 Wis. Act 231:

Benefits Changes

Effect of a Criminal Conviction

Administrative determinations are typically issued before the department refers matters for criminal prosecution. But criminal prosecutions may result in court-ordered restitution in instances where the department has not yet issued an administrative determination that a debt is owed. Act 231 provides that final criminal conviction judgments are binding on criminal defendants for the purposes of related departmental determinations.

Departmental Error

Under prior law, the department waived the recovery of benefits that were erroneously paid if the overpayment was the result of departmental error, such as a computation error, misapplication or misinterpretation of law, or mistake of evidentiary fact. However, an amendment, modification, or reversal of a departmental determination by an appeal tribunal, the Labor and Industry Review Commission (LIRC), or a court is not departmental error for the purposes of waiving the overpayment. LIRC had waived some overpayments if it found an appeal tribunal allowed benefits in error, even if the appeal tribunal followed a LIRC or court decision that was later overturned. LIRC considered appeal tribunals part of the department since administrative law judges are department employees. Act 231 amends the law to provide an error made by an appeal tribunal is not departmental error.

Camp Counselor Exclusion

Federal unemployment law excludes the services of camp counselors from the definition of "employment" if specific criteria are met. Act 231 adds a corresponding exclusion to state law for private for-profit employers of camp counselors.

Tax Changes

Reimbursable Employer Debt Assessment Charging

When employers subject to reimbursement unemployment insurance financing ("self-insured") are charged for UI benefits resulting from identity theft, the department restores those charges to the employers' accounts from the UI balancing account. The 2015 – 2016 UIAC agreed bill (2015 Wis. Act 334) required the department to set aside \$2 million in the UI balancing account, plus interest, to restore identity theft charges to reimbursable employers' accounts. Nonprofit reimbursable employers may also need to pay an annual reimbursable employer debt assessment (REDA) payment for uncollectible benefit reimbursements owed to the department from other reimbursable employers who are no longer in business. Act 231 requires a limited amount of the reimbursable employer identity theft funds

set aside in the UI balancing account be made available to recover uncollectible reimbursements instead of assessing the REDA (or to reduce the amount of the REDA). This law change provides that the identity theft fraud funds may be used to pay the REDA only if the use of those funds would not cause the balance of the set aside funds to drop below \$1.75 million.

Fiscal Agent Election of Employer Status

Individuals who receive long-term health support services in their home through government-funded care programs are considered employers under Wisconsin's unemployment insurance law. These employers receive financial services from fiscal agents who directly receive and disperse funds from government programs. The fiscal agent must report employees who provide services for the employer to the department and pay UI taxes on behalf of the employer. Under current law, if the worker is a certain class of family member of the person receiving care, the worker is ineligible for UI benefits when the employment relationship ends. Act 231 permits private fiscal agents, not government units, to choose to be the employer of workers who provide care services under chapters 46, 47 and 51.

Work Share Amendments

2019 Wis. Act 185 and 2021 Wis. Act 4 temporarily provided more flexibility for work share plans such as: reducing the number of employees needed for a work share plan from 20 to two and increasing the highest amount an employee's hours can be reduced from 50% to 60%, which is the most allowed under federal law. Act 231 makes these changes permanent and permits a plan to extend up to 12 months in a five-year period.

Administrative Changes

Act 231 changes the deadlines for the department to submit certain statutorily required reports to the Legislature to improve the usefulness of the reports to the Legislature, the Governor, and the council. The deadline for the UI Financial Outlook Report was changed from April 15 of each odd-numbered year to May 31 of each even-numbered year. The deadline for the report summarizing the deliberations of the Unemployment Insurance Advisory Council was changed from May 15 of each odd-numbered year to January 31 of each even-numbered year.

Prohibiting DOR Collection of UI Debts

Prior law required state agencies and the Wisconsin Department of Revenue (DOR) to enter into an agreement for DOR to collect debts owed to agencies under certain conditions. Act 231 prohibits DOR from collecting debts on behalf of the UI division.

Administrative Rule Changes

In addition to the statutory changes in Act 231, the council acted on the department's draft administrative rule converting from SIC to NAICS codes for use in determining employer tax rates, along with other minor and technical changes. The draft rule was approved by the council at the January 2022 meeting and final rule became effective July 1, 2022.



2022 Financial Outlook Report Recommendations

The 2022 Financial Outlook Report projected the UI Trust Fund balance at the end of 2023 to be \$1.42 billion. In the 2022 Financial Outlook Report, the DWD Secretary recommended the council review and advance legislative measures that strengthen UI Trust Fund solvency while supporting the integrity of the UI system.

The Secretary urged the council to pursue a balanced approach to rebuilding the UI Trust Fund that acknowledges the imperative of delivering on UI's promise to fairly distribute benefits, as well as decrease and prevent, the economic burdens resulting from unemployment.

Noting that the UI Trust Fund will need to grow again to avoid borrowing in a future recession, the Secretary encouraged the council to review the UI financing system, including the rate schedules, to determine if any adjustments should be made to ensure adequate funding for a solvent UI Trust Fund that will be able to pay benefits in times of economic downturn without the financial burden on employers of borrowing. When reviewing UI Trust Fund financing, the Secretary encouraged the council to also consider benefit rates and eligibility policies that are sufficient to provide workers the financial assistance necessary to withstand temporary periods of unemployment.

The council reviewed the Financial Outlook Report and considered the Secretary's recommendations. No adjustments to the UI financing system, including the rate schedules, were included in the agreed bill.

However, the actual UI Trust Fund balance as of Dec. 31, 2023, was \$1.6 billion. During 2023, revenue was higher than projected and benefit payments were lower than projected.

The next Financial Outlook Report is due to the Governor, Legislature, and council in May 2024 and will have updated UI Trust Fund balance projections along with department recommendations.



2023 Agreed Bill Deliberations

The council members considered the comments gathered at the public hearing in November 2022, the departmental proposals, and their own proposals in the development of the agreed bill. At the Jan. 4, 2024 meeting, the council agreed to the following statutory changes in the pending agreed bill:

Appropriation Provisions

Various changes to the unemployment insurance law and making an appropriation (UIAC "Appropriations" Bill)

This proposed provision would create an administrative fund for receiving the employer interest and penalties collected under Wis. Stat. § 108.221(1) and any amounts the UI division collects that are not designated for another fund. Like other funds related to the UI program, the amounts in the newly created administrative fund would be designated as "nonlapsible." With the creation of the administrative fund, the department will be able to provide consistent treatment for the amounts collected and ensure amounts paid by employers remain within the UI program.

Benefit Provision

Imposter Penalty

The council proposes imposing a new imposter penalty of \$5,000. This penalty would be assessed against known imposters who make false statements with the intent to receive UI benefits in the name of another person. Specifically, this penalty relates to a fraudulent initial claim where the imposter attempts to receive benefits but does not actually receive any benefits.

Tax and Benefit Provision

Electronic Communication and Filing

The council proposes statutory changes to expand requirements for electronic filing, electronic communication, and electronic payments. Currently, employers with at least 25 employees must use electronic tax filing and make electronic payments. This proposal makes such provisions mandatory for all employers, unless the employer shows good cause for being unable to use electronic methods. Also, this proposal mandates electronic communication for claimants and employers, unless the claimant or employer has good cause for being unable to use electronic methods. Finally, the proposal provides that the department may use electronic records and electronic signatures. The provision related to electronic communication will become effective when the department has the technological capability to fully implement it.

LAW CHANGES RELATED TO UI NOT CONTAINED IN THE AGREED BILL

No other UI program-related bills were enacted during the reporting period.

OTHER DELIBERATIONS OF THE COUNCIL

2015 Wis. Act 334 created a new program integrity assessment of 0.01% and reduced employer taxes by the same amount, resulting in no tax increase for Wisconsin employers. The proceeds of this assessment are deposited into the UI Program Integrity Fund and used by the department for program integrity activities.

In July 2022, the council approved the DWD Secretary's request to implement the 0.01% program integrity assessment for 2023 and did so again in August 2023 for 2024. The proceeds from this assessment allow the department to continue anti-fraud and other program integrity efforts without raising taxes. The council recognizes the value of the assessment as it relates to the department's program integrity efforts, and has unanimously approved this request every year since the assessment was created.

ISSUES PENDING WITH THE COUNCIL

Rulemaking Proposal

Unemployment Insurance Appeal Hearings

UI appeal hearings are currently held by telephone, and processes are governed by departmental rules. The council is considering rule changes related to the following items:

- Hearing notices;
- In-person, telephone, and videoconference hearing procedures;
- Hearing records;
- Requests for reasonable accommodations for hearings;
- Requests for in-person hearings;
- Postponement of a benefit hearing when hearing exhibits are not timely sent to a party; and
- Release of UI records to a person who is not a party or a party's representative.

The proposed scope statement for UI hearings - DWD 140 is pending review and approval with the council.

CONCLUSION

Since its inception, the council process has fostered collaboration among those most invested in the UI program and developed reforms that maintain the integrity of the UI program and the solvency of the UI Trust Fund. This collaboration has ensured that UI benefits remain available to workers who lose their job through no fault of their own.

The council looks forward to continuing its positive working relationships with the Legislature and the Governor.



STATE OF WISCONSIN



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