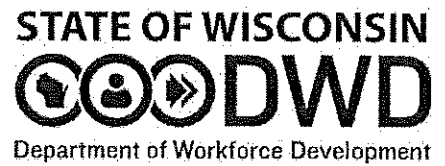


Department of Workforce Development
Secretary's Office
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-3131
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Scott Walker, Governor
Reginald J. Newson, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

The Wisconsin Department of Workforce Development announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 13-106

SUBJECT: Quarterly Wage Reporting Procedures, Settlement of Disputes and Compromise of Liabilities, License Revocation and Financial Matching, Business Transfers, Determining Eligibility for Benefits, and Unemployment Insurance Appeals

ADM. CODE REFERENCE: DWD 111, 113, 114, 115, 132, 140

APPROVED BY GOVERNOR: March 10, 2014

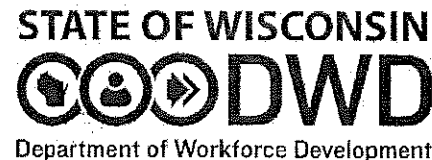
Dated this 10th day of March, 2014.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

A handwritten signature in cursive script, appearing to read "Howard Bernstein".

Howard Bernstein, Chief Legal Counsel

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Scott Walker, Governor
Reginald J. Newson, Secretary

DATE: March 10, 2014

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
PO Box 8953
Madison, WI 53708

FROM: Reginald J. Newson, Secretary 
Department of Workforce Development

SUBJECT: **Quarterly Wage Reporting, Settlement of Disputes and Compromise of Liabilities, License Revocation and Financial Record Matching, Business Transfers, Determining Eligibility of Benefits and Unemployment Insurance Appeals, chs. DWD 111, 113, 114, 115, 132 and 140 (Clearinghouse Rule #13-106)**

Introduction

The Department of Workforce Development ("DWD") is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DWD will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

Rule Content

DWD is proposing to amend chs. DWD 111, 113, 115, 132, and 140 and create ch. DWD 114. Amendments to these chapters, and the creation of ch. DWD 114 are necessary to align DWD's administrative rules to the changes under ch. 108, Stats., enacted under 2013 Wisconsin Act 20 (Act 20) and 2013 Wisconsin Act 36 (Act 36).

DWD is proposing amendments to the following:

Quarterly Wage Reporting

- Under ch. 108, Stats., employers are required to file a quarterly wage report with DWD. If an employer files a late quarterly wage report, s. DWD 111.07 details the process used in assessing a penalty against the employer and the amount of the penalty. The provisions with respect to the amount and process of assessing a penalty against the employer who files a tardy quarterly wage report are now set forth in s. 108.22, Stats., as a result of Act 36. Section DWD 111.07 should be repealed.

Settlement of Disputes and Compromise of Liabilities

- Chapter DWD 113 establishes standards for the settlement of disputes between the DWD and parties to determinations, decisions or actions and the compromises of liabilities for contributions, reimbursements in lieu of contribution, interest penalties and costs assessed under ch. 108, Stats. Act 36 permits DWD to waive or decrease the interest charged to an employer in limited circumstances as prescribed by administrative rule.

Business Transfers

- Successorship occurs when all or a portion of the former owner's UI account is transferred to the new owner due to a transfer of all, or a portion of the business. There are both mandatory and optional provisions for successorship. Act 36 provides that DWD may accept an optional successorship application that is filed late as a result of excusable neglect. DWD shall not accept a late application for successorship more than 90 days after the due date, regardless of whether there is excusable neglect for the application being late. The amendments to ch. DWD 115, which regulates business transfers, make the rule consistent with the provisions of Act 36.

Determining Eligibility for Benefits

- The law provides that under certain circumstances, former employees may be eligible for benefits even though they voluntarily quit their job. The law previously provided that one circumstance involves employees who terminate part-time employment because of the loss of the employees' full-time employment makes it economically unfeasible for the employees to continue the part-time employment. Act 20 repealed this exception which was contained in s. 108.04 (7) (k), Stats. Section DWD 132.03 solely clarified the provisions of s. 108.04 (7) (k), Stats., and should be repealed.

Unemployment Insurance Appeals

- Act 36 instructs DWD to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the rules with respect to the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License Revocation and Financial Record Matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes. The creation of ch. DWD 114 provides procedures for persons whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions.
- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

Public Hearings

DWD held one public hearing in Madison, WI, on January 21, 2014. No one attended the hearing.

DWD accepted written comments until January 31, 2014. One individual, Victor Forberger, commented in writing on the proposed rule.

DWD's Rule Changes in Response to Comments of Rules Clearinghouse, Public Hearings and Unemployment Insurance Advisory Council Comments

- The Wisconsin Legislative Council Rules Clearinghouse made a number of comments on the proposed hearing draft rule. DWD addressed all of these suggestions in the final draft rule.
- A summary of the written public comment received and DWD's response to the comment is attached.
- DWD's Rule Changes in Response to the Unemployment Insurance Advisory Council (Council) were as follows:

- Act 36 requires DWD to promulgate rules to specify procedures to be used by DWD prior to denying or revoking a license based on delinquent UI contributions. One of the steps in the process is that DWD shall send by certified mail a certified notice of liability. The draft rules provided that the license holder or applicant for a license has 10 calendar days from the date of mailing of the notice to submit the full payment or to enter into an installment payment plan. The Council recommended and DWD agreed to provide 14 calendar days instead of 10 calendar days.
- The draft rules provided that if a debtor who has entered into an installment payment plan fails to make a payment, DWD could issue a certificate of delinquency to the licensing agency without further notice. The Council recommended and DWD agreed that if a debtor fails to make a payment under the installment payment plan, the department shall give notice seven days prior to issuing a certificate of delinquency.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Environmental Impact

This rule will not have any negative environmental impact.

Summary of, and comparison with, existing or proposed federal statutes and regulations

Unemployment insurance was initiated on a national basis in the United States as Title III and Title IX of the Social Security Act of 1935 and is a Federal-State coordinated program. Each state administers its own program within national guidelines promulgated under federal law. As a condition of a state receiving its unemployment compensation administrative grant, 42 USC 503 (a) provides that the Secretary of the Department of Labor must find that the law of the state includes certain requirements. With respect to these rules, 42 USC 503 (a) (3) provides that state laws grant an opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment insurance are denied.

Comparison with rules in adjacent states

Waiving or Decreasing Interest Charged to Employers Delinquent in Paying UI Tax

Illinois	<p>The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)</p> <p>Good cause has been defined by Department rule to consist of any or all of the following:</p> <ul style="list-style-type: none">(a) Where the delay was caused by the death or serious illness of the employer or a member of his immediate family, or by the death, or serious illness of the person in the employer's organization responsible for the preparation and filing of the report or for making the payment.(b) Where the delay was caused by the destruction of the employer's business records by fire or other casualty without fault.(c) Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.(d) For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director pursuant to Section 2600 of the Act and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error. <p>Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)</p>
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	<p>The Director will waive interest for a nonprofit organization or for a local governmental entity, if:</p> <ul style="list-style-type: none"> (a) The organization or entity had never filed any of the reports or forms required of it under the Act; and (b) It had not been determined to be the “chargeable employer” as result of the filing of an unemployment insurance claim; and (c) Its chief operating officer files an affidavit with the Director in which he states that, upon learning of the organization or entity’s liability under the Act, he took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)
<p>Indiana</p>	<p>Indiana's Unemployment Insurance employer handbook states that "Delinquent employers should either pay the amount due, or contact the Indiana Department of Workforce Development as soon as possible to discuss payment options. Payment agreements are available to any employer that needs to arrange for payment overtime that has not previously defaulted on a payment agreement." There is no discussion of waiving or decreasing the interest owed by employers who are delinquent in paying unemployment insurance taxes.</p>
<p>Iowa</p>	<p>Chapter 96 of the Iowa Code does not include provisions for the waiver or forgiveness of interest charged to an employer who is delinquent in paying unemployment insurance taxes.</p>
<p>Michigan</p>	<p>Section 15 (b) of the Michigan Employment Security Act requires the Unemployment Insurance Agency to bill an employer for delinquent unemployment insurance taxes and to charge interest. The law does not include provisions to enable the agency to waive or decrease this interest once it is charged.</p>
<p>Minnesota</p>	<p>Minnesota statutes at section 268.067 states:</p> <ul style="list-style-type: none"> (a) The commissioner of employment and economic development may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant. This paragraph applies if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property.

	<p>(b) The commissioner may at any time compromise any unemployment insurance tax or reimbursement due from an employer under this chapter or Minnesota's Special Assessment for Interest owed to the federal government.</p> <p>(c) Any compromise involving an amount over \$10,000 must be authorized by an attorney licensed to practice law in Minnesota who is an employee of the department designated by the commissioner for that purpose.</p> <p>(d) Any compromise must be in the best interest of the state of Minnesota.</p>
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Revoke or Deny an Application for Licenses Based on Delinquent UI Contributions

Illinois	Illinois' unemployment insurance administrative code does not authorize the Illinois unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Indiana	Indiana's unemployment insurance law does not authorize the Indiana unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Iowa	Iowa's unemployment insurance law does not authorize the Iowa unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Michigan	Michigan's unemployment insurance law does not authorize the Michigan unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Minnesota	The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee, applicant, or employer owes unemployment insurance contributions of \$500 or more. A licensing authority that has received a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate. (M.S.A. § 268.0625 (Subdivision 1))

Creation of Standard Affidavit for UI Administrative Appeal Hearings

<p>Illinois</p>	<p>Illinois does not direct its unemployment insurance agency to create a standard affidavit for unemployment insurance administrative appeal hearings.</p> <p>A review of Illinois' unemployment insurance agencies document entitled Preparing for your Appeal Hearing only references affidavits by stating "Any document submitted in evidence must be supported by testimony from a person at the hearing who has direct knowledge of the document's contents. For example, third party affidavits or test results without someone who can testify as to their meaning or validity cannot overcome direct testimony from the opposing party. Likewise, business records must be supported by testimony during the hearing."</p>
<p>Indiana</p>	<p>Indiana does not provide parties with a standard affidavit to be used in UI appeals heard before administrative law judges.</p> <p>Indiana Code 22-4-17-6 (a) provides "Sec. 6. (a) The manner in which disputed claims shall be presented and the conduct of hearings and appeals, including the conduct of administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process, shall be in accordance with rules adopted by the department for determining the rights of the parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure."</p> <p>Indiana Code 22-4-17-7 provides "Sec. 7. In the discharge of the duties imposed by this article, any member of the board, the department, the review board, or an administrative law judge, or any duly authorized representative of any of them, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue and serve subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the disputed claim or the administration of this article."</p>
<p>Iowa</p>	<p>Iowa does not use a standard affidavit for UI appeals.</p>
<p>Michigan</p>	<p>Michigan does not utilize a standard affidavit for UI appeals. Referees conducting hearing shall accept competent, relevant, and material evidence.</p>
<p>Minnesota</p>	<p>Section 268.105 (b) of the Minnesota statutes provides that affidavits may be used in unemployment insurance appeals as competent evidence of the facts contained in it, but does not provide that the Minnesota unemployment insurance agency shall create a standard affidavit to be used in the hearings.</p>

Summary of Factual Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. Instead, the changes to the rules are required by recent legislative enactments and represent common sense amendments that will assist employers in their dealings with the UI system.

Analysis and supporting document used to determine effect on small business or in preparation of an economic impact analysis

This rule will have a positive impact on employers and unemployment insurance claimants.

Effect on Small Business

The rule modifications impacting small businesses will ease program requirements and likely reduce costs for small businesses. The small businesses that may be affected by this rule include the following:

- **Small Businesses that are Delinquent in Paying UI Taxes:**

1. DWD charges interest if employers are delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.
2. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

- **Small Businesses involved in UI Administrative Appeals:**

Act 36 directs DWD to prescribe rules regarding the use of a standard affidavit form that may be used by parties, including small businesses, in UI administrative appeals. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

Public Hearing Summary

DWD held a public hearing on January 21, 2014 in Madison. Following the public hearing, the hearing record remained open until January 31, 2014. No one attended the public hearings. DWD received one written comment.

Name/ Organization	Comment	DWD Response
Victor Forberger	<p style="text-align: center;">Waiver of Interest for Employers' Unemployment Taxes (Ch. DWD 113)</p> <ol style="list-style-type: none"> 1. Provide a definition and criteria for the terms "newly subject employer" and "has a history" of timely filing of tax reports and payments. 2. Clarify the language in s. DWD 113.025 (1) (f) relating to the waiver of interest and the appeal process. 	<p style="text-align: center;">Waiver of Interest (Response)</p> <p>These issues were addressed by the Unemployment Insurance Advisory Council (UIAC) and recommended changes were implemented.</p>
	<p style="text-align: center;">License Revocation (Ch. DWD 114)</p> <ol style="list-style-type: none"> 1. The 10-day response period for a debtor to cure all delinquencies prior to DWD's certification of delinquency should be extended to 14 or 21 days. 2. In the event the employer fails to respond to DWD's notice of delinquency, and the department certifies the employer delinquent to a licensing agency, the department should be required to notify the employer of this action and provide information on the steps the employer must take to cure the deficiency. 3. Create language that identifies whether the department or the employer is responsible for any fees associated with the employer restoring a license to a licensing department after the delinquency has been cured. 4. Create language that would require the department to provide an employer, who fails to make a payment pursuant to an installment payment plan, at least seven days before the department issues a certificate of delinquency to a licensing agency. 	<p style="text-align: center;">License Revocation (Response)</p> <ol style="list-style-type: none"> 1. This issue was addressed by the UIAC and the 10 day response period was increased to a 14 day response period. 2. The UIAC did not recommend changes to the rule provision. The Notice of Delinquency will clearly state if the employer does not pay all debts owed or enter into an installment payment plan the department will send a certification of delinquency to the licensing agency. 3. The UIAC did not recommend changes to the rule provision. The responsibility for the payment of fees associated with reinstating a license of an employer is determined by each individual licensing agency. 4. This issue was addressed by the UIAC and 7 days notice will be provided to the employer when there is a missed payment before issuing a certificate of delinquency.

Name/ Organization	Comment	DWD Response
<p>Victor Forberger (Continued)</p>	<p align="center">Financial Record Matching (Ch. DWD 114)</p> <ol style="list-style-type: none"> Identify criteria for the contracts between the department and financial institutions participating in the program and the rules should include means to resolve disputes between the financial institution, department and Wisconsin residents that may arise under the program. Identify procedures related to how the financial record matching program will function and safeguards and correctives that exist for mistakes or identify theft. 	<p align="center">Financial Record Matching (Response)</p> <p>The UIAC did not recommend changes to the rule provision. The provisions related to the financial record matching program are created to solely establish the 20 day time-line associated with the return of the agreement.</p>
<p align="center">Business Transfer (Ch. DWD 115)</p> <p>The term "excusable neglect" should be defined.</p>	<p align="center">Business Transfer (Response)</p> <p>The UIAC did not recommend changes to the rule provision. The meaning of "excusable neglect" is a term of art established by court precedent and does not require further definition.</p>	
<p align="center">Standard Affidavit Form (Ch. DWD 140)</p> <ol style="list-style-type: none"> The rules should provide clear guidance regarding the use and limitations of affidavits with respect to hearings. The affidavit should include some reference to the evidentiary issues created by a party using an affidavit. Extend DWD's hearing notice requirements to a 10 or 14 day notice for unemployment insurance hearing or eliminate the timeline requirement for a party to submit affidavits for unemployment insurance hearings. Update grammatical mistake under s. DWD 140.22 (3) (a). 	<p align="center">Standard Affidavit Form (Response)</p> <ol style="list-style-type: none"> This issue was addressed by UIAC. No changes to the rules were made. An instruction sheet will accompany the affidavit form. The UIAC did not recommend changes to the rule provision. The current language provides an administrative law judge may accept the affidavit as an exhibit even if it is submitted after the deadline. This issue was addressed by the UIAC and the recommended change was made. 	

PROPOSED ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
AMENDING, CREATING, AND ADOPTING RULES

1 The Wisconsin department of workforce development proposes the following order *to repeal*
2 DWD 111.07 and 132.03; *to renumber* DWD 140.001 (2) (a), *to amend* DWD 113.01 (1)
3 (intro.), 115.07 (2) (a) and 140.001 (1) and (2) (intro.); and *to create* DWD 113.01 (1) (c),
4 113.025, ch. DWD 114, 140.001 (2) (ag) and (am), and 140.22; *relating to* quarterly wage
5 reporting, settlement of disputes and compromise of liabilities, license revocation and financial
6 record matching, business transfers, determining eligibility of benefits, unemployment insurance
7 appeals and small business.

**Analysis Prepared by the Department of
Workforce Development**

Statutes Interpreted

Statutes Interpreted: Ch. 108, Stats.

Statutory Authority

Statutory Authority: ss. 108.14 (2) and (26), 108.22 (1) (cm), and 108.227 (1m), Stats.

Explanation of Statutory Authority

The Department of Workforce Development (DWD) has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance (UI) and reserves. Under s. 108.14 (2), Stats., DWD may adopt and enforce all rules necessary or suitable to carry out ch. 108, Stats. 2013 Wisconsin Act 20 (Act 20) and 2013 Wisconsin Act 36 (Act 36) granted additional statutory authority for the promulgation of rules including:

- Section 108.14 (26), Stats., instructs DWD to prescribe by rule a standard affidavit form that may be used by parties involved in UI administrative appeals.

- Section 108.22 (1) (cm), Stats., allows DWD to waive or decrease the interest charged to employers due to delinquent payment of UI taxes in limited circumstances as prescribed by administrative rule.
- Section 108.227 (1m), Stats., instructs DWD to promulgate rules regarding certification of a person delinquent for UI contributions whose license or credential is to be denied, not renewed, discontinued, suspended or revoked.

Related Statutes or Rules

Chapter 108, Stats., governs the state's unemployment insurance system and the related rules are chs. DWD 100, 111, 113, 115, 132, and 140.

Plain Language Analysis

DWD is proposing to amend chs. DWD 111, 113, 115, 132, and 140 and create ch. DWD 114. Amendments to these chapters, and the creation of ch. DWD 114 are necessary to align DWD's administrative rules to the changes under ch. 108, Stats., enacted under Act 20 and Act 36.

DWD is proposing amendments to the following:

Quarterly Wage Reporting

- Under ch. 108, Stats., employers are required to file a quarterly wage report with DWD. If an employer files a late quarterly wage report, s. DWD 111.07 details the process used in assessing a penalty against the employer and the amount of the penalty. The provisions with respect to the amount and process of assessing a penalty against the employer who files a tardy quarterly wage report are now set forth in s. 108.22, Stats., as a result of Act 36. Section DWD 111.07 should be repealed.

Settlement of Disputes and Compromise of Liabilities

- Chapter DWD 113 establishes standards for the settlement of disputes between the department and parties to determinations, decisions or actions and the compromises of liabilities for contributions, reimbursements in lieu of contribution, interest penalties and costs assessed under ch. 108, Stats. Act 36 permits DWD to waive or decrease the interest charged to an employer in limited circumstances as prescribed by administrative rule.

Business Transfers

- Successorship occurs when all or a portion of the former owner's UI account is transferred to the new owner due to a transfer of all, or a portion of the business. There are both mandatory and optional provisions for successorship. Act 36 provides that DWD may accept an optional successorship application that is filed late as a result of excusable neglect. DWD

shall not accept a late application for successorship more than 90 days after the due date, regardless of whether there is excusable neglect for the application being late. The amendments to ch. DWD 115, which regulates business transfers, make the rule consistent with the provisions of Act 36.

Determining Eligibility for Benefits

- The law provides that under certain circumstances, employees may be eligible for benefits even though they voluntarily quit their job. One circumstance involves an employee who terminates part-time employment because loss of the employee's full-time employment makes it economically unfeasible for the employee to continue the part-time employment. Act 20 repealed this exception which was contained in s. 108.04 (7) (k), Stats. Section DWD 132.03 solely clarified the provisions of s. 108.04 (7) (k), Stats., and should be repealed.

Unemployment Insurance Appeals

- Act 36 instructs the department to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the rules with respect to use of the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License Revocation and Financial Record Matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. The creation of ch. DWD 114 provides procedures for persons whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes.
- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

Summary of, and comparison with, existing or proposed federal statutes and regulations

Unemployment insurance was initiated on a national basis in the United States as Title III and Title IX of the Social Security Act of 1935 and is a Federal-State coordinated program. Each state administers its own program within national guidelines promulgated under federal law. As a condition of a state receiving its unemployment compensation administrative grant, 42 USC 503 (a) provides that the Secretary of the Department of Labor must find that the law of the state includes certain requirements. With respect to these rules, 42 USC 503 (a) (3) provides that state

laws grant an opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment insurance are denied.

Comparison with rules in adjacent states

Waiving or Decreasing Interest Charged to Employers Delinquent in Paying UI Tax

<p>Illinois</p>	<p>The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)</p> <p>Good cause has been defined by Department rule to consist of any or all of the following:</p> <ul style="list-style-type: none">(a) Where the delay was caused by the death or serious illness of the employer or a member of his immediate family, or by the death, or serious illness of the person in the employer's organization responsible for the preparation and filing of the report or for making the payment.(b) Where the delay was caused by the destruction of the employer's business records by fire or other casualty without fault.(c) Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.(d) For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director pursuant to Section 2600 of the Act and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error. <p>Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)</p>
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	<p>The Director will waive interest for a nonprofit organization or for a local governmental entity, if:</p> <ul style="list-style-type: none"> (a) The organization or entity had never filed any of the reports or forms required of it under the Act; and (b) It had not been determined to be the "chargeable employer" as result of the filing of an unemployment insurance claim; and (c) Its chief operating officer files an affidavit with the Director in which he states that, upon learning of the organization or entity's liability under the Act, he took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)
Indiana	<p>Indiana's Unemployment Insurance employer handbook states that "Delinquent employers should either pay the amount due, or contact the Indiana Department of Workforce Development as soon as possible to discuss payment options. Payment agreements are available to any employer that needs to arrange for payment overtime that has not previously defaulted on a payment agreement." There is no discussion of waiving or decreasing the interest owed by employers who are delinquent in paying unemployment insurance taxes.</p>
Iowa	<p>Chapter 96 of the Iowa Code does not include provisions for the waiver or forgiveness of interest charged to an employer who is delinquent in paying unemployment insurance taxes.</p>
Michigan	<p>Section 15 (b) of the Michigan Employment Security Act requires the Unemployment Insurance Agency to bill an employer for delinquent unemployment insurance taxes and to charge interest. The law does not include provisions to enable the agency to waive or decrease this interest once it is charged.</p>
Minnesota	<p>Minnesota statutes at section 268.067 states:</p> <ul style="list-style-type: none"> (a) The commissioner of employment and economic development may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant. This paragraph applies if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property. (b) The commissioner may at any time compromise any unemployment insurance tax or reimbursement due from an employer under this chapter or Minnesota's Special Assessment for Interest owed to the federal government.

	<p>(c) Any compromise involving an amount over \$10,000 must be authorized by an attorney licensed to practice law in Minnesota who is an employee of the department designated by the commissioner for that purpose.</p> <p>(d) Any compromise must be in the best interest of the state of Minnesota.</p>
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Revoke or Deny an Application for Licenses Based on Delinquent UI Contributions

Illinois	Illinois' unemployment insurance administrative code does not authorize the Illinois unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Indiana	Indiana's unemployment insurance law does not authorize the Indiana unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Iowa	Iowa's unemployment insurance law does not authorize the Iowa unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Michigan	Michigan's unemployment insurance law does not authorize the Michigan unemployment insurance agency to revoke or deny an application for an employer's license based on delinquent UI contributions.
Minnesota	The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee, applicant, or employer owes unemployment insurance contributions of \$500 or more. A licensing authority that has received a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate. (M.S.A. § 268.0625 (Subdivision 1))

Creation of Standard Affidavit for UI Administrative Appeal Hearings

<p>Illinois</p>	<p>Illinois does not direct its unemployment insurance agency to create a standard affidavit for unemployment insurance administrative appeal hearings.</p> <p>A review of Illinois' unemployment insurance agencies document entitled Preparing for your Appeal Hearing only references affidavits by stating "Any document submitted in evidence must be supported by testimony from a person at the hearing who has direct knowledge of the document's contents. For example, third party affidavits or test results without someone who can testify as to their meaning or validity cannot overcome direct testimony from the opposing party. Likewise, business records must be supported by testimony during the hearing."</p>
<p>Indiana</p>	<p>Indiana does not indicate that it provides parties with a standard affidavit to be used in UI appeals heard before administrative law judges.</p> <p>Indiana Code 22-4-17-6 (a) provides "Sec. 6. (a) The manner in which disputed claims shall be presented and the conduct of hearings and appeals, including the conduct of administrative law judges, review board members, and other individuals who adjudicate claims during a hearing or other adjudicative process, shall be in accordance with rules adopted by the department for determining the rights of the parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure."</p> <p>Indiana Code 22-4-17-7 provides "Sec. 7. In the discharge of the duties imposed by this article, any member of the board, the department, the review board, or an administrative law judge, or any duly authorized representative of any of them, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue and serve subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the disputed claim or the administration of this article."</p>
<p>Iowa</p>	<p>Iowa does not use a standard affidavit for UI appeals.</p>
<p>Michigan</p>	<p>Michigan does not utilize a standard affidavit to be used by parties for UI appeals. Referees, who conduct the hearings, shall accept competent, relevant, and material evidence.</p>
<p>Minnesota</p>	<p>Section 268.105 (b) of the Minnesota statutes provides that affidavits may be used in unemployment insurance appeals as competent evidence of the facts contained in it, but does not provide that the Minnesota unemployment insurance agency shall create a standard affidavit to be used in the hearings.</p>

Summary of factual data and analytical methodologies

This rule does not depend on any complex analysis of data. Instead, the changes to the rules are required by recent legislative enactments and represent common sense amendments that will assist employers in their dealings with the UI system.

Analysis and supporting document used to determine effect on small business or in preparation of an economic impact analysis

This rule will have a positive impact on employers by allowing DWD flexibility with problems encountered by employers within the UI system due to inadvertent mistakes.

Effect on small business

The rule modifications impacting small businesses will ease program requirements and likely reduce costs for small businesses. The small businesses that may be affected by this rule include the following:

- **Small Businesses that are Delinquent in Paying UI Taxes:**

1. DWD charges interest if an employer is delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.
2. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 provides that this collection tool may be used to collect UI contributions for which the employer has exhausted all legal rights to challenge the employer's liability. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

- **Small Businesses involved in UI Administrative Appeals:**

Act 36 directs DWD to prescribe rules regarding the use of a standard affidavit form that may be used by parties, including small businesses, in UI administrative appeals. Act 36 requires DWD to create a standard affidavit form in order to ease the burden encountered by employers involved in a UI appeal. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

Agency contact person

Questions and comments related to this rule may be directed to:

Janell Knutson
Department of Workforce Development
Division of Unemployment Insurance
P.O. Box 8942
Madison, WI 53708-8942
Telephone: (608) 266-1639
E-Mail: janell.knutson@dwd.wi.gov

Place where comments are to be submitted and deadline for submission

Janell Knutson
Department of Workforce Development
Division of Unemployment Insurance
P.O. Box 8942
Madison, WI 53708-8942
Telephone: (608) 266-1639
E-Mail: janell.knutson@dwd.wi.gov

A public hearing was held on January 21, 2014, and public comments were accepted until January 31, 2014.

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- 1 **SECTION 1.** DWD 111.07 is repealed.
- 2 **SECTION 2.** DWD 113.01 (1) (intro.) is amended to read:
- 3 DWD 113.01 (1) ~~As required under s. 108.10 (8), Stats., this~~ This chapter establishes
- 4 standards for the following circumstances:
- 5 **SECTION 3.** DWD 113.01 (1) (c) is created to read:
- 6 DWD 113.01 (1) (c) In limited circumstances, waiving or decreasing the interest charged
- 7 under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats.
- 8 **SECTION 4.** DWD 113.025 is created to read:

1 **DWD 113.025 Waiver of interest.** (1) Except as provided in s. DWD 113.02 or 113.03,
2 the department may grant a waiver or decrease of interest owed by an employer if the employer
3 satisfies all of the following conditions:

4 (a) The employer pays the full payment of any taxes and assessments due within 30 days
5 following resolution of all issues. Until the employer pays all of the correct amount of taxes and
6 assessments due, the department may not waive or decrease any of the interest owed by the
7 employer.

8 (b) The employer files any wage or tax report due within 30 days following resolution of
9 all issues. Until the employer files all of the wage or tax reports that are due, the department
10 may not waive or decrease any of the interest owed by the employer.

11 (c) The employer has no other outstanding reports, contributions, interest, penalty or
12 other fees due.

13 (d) The employer was determined within the last year to be subject to Wisconsin
14 unemployment insurance law or has a history of timely filing required reports, including wage
15 and tax reports, and of making payments in a timely manner.

16 (e) The employer or a business for which the employer is a successor, pursuant to the
17 requirements of s. 108.16 (8), Stats., has never previously received a waiver or decrease in
18 interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats.

19 (f) There has not been a hearing before an administrative law judge on an appeal under
20 s. 108.10, Stats., regarding the tax liability associated with the interest.

21 (2) If all of the conditions of sub. (1) are satisfied, the department may waive or decrease
22 the interest charged under s. 108.22 (1) (a) or 108.17 (2c) (c), Stats., if the interest charged
23 resulted from any of the following circumstances:

1 (a) The employer failed to pay taxes or underpaid taxes by the required due date
2 established by the department as a result of excusable neglect. An erroneous contention
3 regarding the unemployment insurance law or misunderstanding of the obligations under the law
4 shall not constitute excusable neglect.

5 **Note:** The following are examples of excusable neglect:

- 6 • Embezzlement by an accountant or an employee who is not related to the
7 employer such that the embezzlement caused the interest to be due.
- 8 • Inaccurate written communication given to the employer by the Wisconsin
9 Division of Unemployment Insurance that affirmatively misled the employer as
10 to its duties and obligations such that the inaccurate written communication
11 caused the interest to be due.

12
13 (b) An inadvertent mathematical miscalculation by the employer of the amount of tax due
14 resulting in a de minimis underpayment of taxes.

15 (3) A denial of a request for a waiver or decrease of interest under sub. (2) and s. 108.22
16 (1) (cm), Stats., is not an appealable decision.

17 **SECTION 5.** Ch. DWD 114 is created to read:

18 Chapter DWD 114

19 LICENSE REVOCATION AND FINANCIAL RECORD MATCHING PROGRAM

20 DWD 114.01 Definitions. (1) Except as provided in sub. (2), the definitions in ch. DWD
21 100 apply to this chapter.

22 (2) Notwithstanding ch. DWD 100, in this chapter:

23 (a) "Applicant for a license" means an employer as defined in s. 108.02 (13), Stats., or
24 any individual who is found personally liable under s. 108.22 (2) and (9), Stats., and applies for a
25 license as defined in s. 108.227 (1) (e), Stats.

26 (b) "Contribution" has the meaning given in s. 108.227 (1) (a), Stats.

1 (c) "Delinquent" means a license holder or applicant for a license who is liable for any
2 contributions or assessments which remain unpaid after the applicable due date.

3 (d) "Liable for delinquent contributions" has the meaning given in s. 108.227 (1) (d),
4 Stats.

5 (e) "Licensing department" has the meaning given in s. 108.227 (1) (f), Stats.

6 (f) "License holder" means an employer as defined in s. 108.02 (13), Stats., or any
7 individual who is found personally liable under s. 108.22 (2) and (9), Stats., and possesses a
8 license as defined in s. 108.227 (1) (e), Stats.

9 (g) "Nondelinquency certificate" has the meaning given in s. 108.227 (1) (g), Stats.

10 **DWD 114.10 Purpose.** This chapter specifies all of the following:

11 (1) Procedures to be used before taking action under ss. 108.227 (3) (b), 102.17 (1) (ct),
12 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4)(d), 103.92 (8), 104.07(7), or 105.13 (4), Stats., with
13 respect to a person whose license or credential is to be denied, not renewed, discontinued,
14 suspended, or revoked based on delinquent unemployment insurance tax contributions.

15 (2) Procedures under which the department shall enter into agreements with financial
16 institutions doing business in this state to operate the financial record matching program under s.
17 108.223, Stats.

18 **DWD 114.20 Certification of delinquency.** (1) After the department has issued an
19 initial determination as specified under s. 108.10, Stats., finding a license holder or applicant for
20 a license delinquent in making contributions as specified under s. 108.227 (1) (d), Stats., and
21 after all potential appeals by the license holder or applicant for a license are exhausted, the
22 department shall do any of the following:

23 (a) Issue a warrant as specified under s. 108.22 (2) and (3), Stats.

1 (b) Issue and provide by personally serving or mailing by certified mail to the last known
2 address of the license holder or applicant for a license, a certified notice of liability that includes
3 all of the following information:

4 1. The mailing date of the notice.

5 2. The payment amount demanded.

6 3. A statement that the department may issue a certificate of delinquency to a licensing
7 department that may result in the license or credential being denied, not renewed, discontinued,
8 suspended or revoked.

9 4. A statement that the license holder or applicant for a license has 14 calendar days from
10 the date of mailing of the notice to submit the full payment identified under subd. 2. or to enter
11 into an installment payment plan schedule that is established by the department under s. DWD
12 114.30.

13 (2) Upon request of any license holder or applicant for a license who has paid the full
14 amount demanded, has entered into and complied with an installment payment plan, or is
15 otherwise not liable for delinquent contributions, the department shall issue a nondelinquency
16 certificate to the license holder or applicant for a license and any licensing department that
17 received a certificate of delinquency.

18 (3) The department shall issue a certificate of delinquency to a licensing department if all
19 of the following apply:

20 (a) The department complied with the requirements under sub. (1) (a) and (b).

21 (b) The department received a request for a certification from a licensing department as
22 to whether a license holder or an applicant for a license is liable for delinquent contributions.

1 (c) The license holder or applicant for a license has not paid the full payment demanded
2 or entered into and complied with an installment payment plan.

3 **DWD 114.30 Installment payment plans.** (1) Any license holder or applicant for a
4 license who is unable to pay the full amount of the delinquent unemployment insurance
5 contributions, costs, penalties and interest may negotiate with the department to pay such
6 contributions, costs, penalties and interest in installments through a payment plan. The license
7 holder or applicant for a license shall provide a statement of the reasons such contributions,
8 costs, penalties and interest cannot be paid in full and shall set forth the plan of installment
9 payments proposed by the license holder or applicant for a license. Upon approval of such plan
10 by the department and the timely payment of installments set forth in the plan, collection
11 proceedings with respect to such contributions, costs, penalties and interest shall be withheld. If
12 the license holder or applicant for a license fails to make any installment payment as scheduled,
13 the department may cancel the installment payment plan and proceed to collect the unpaid
14 portion of such contributions, costs, penalties and interest in the manner provided by law, and
15 after providing 7 days notice to the license holder or applicant for a license, issue a certificate of
16 delinquency. The department may require license holders or applicants for a license who make
17 installment payments under this paragraph to do so by electronic funds transfer.

18 (2) A delinquent license holder or applicant for a license may enter into an installment
19 payment plan that will allow the delinquent license holder or applicant for a license to make full
20 payment of all delinquencies. The installment payment plan shall provide sufficient time and
21 payment terms of the license holder or applicant for a license to be able to pay all delinquencies
22 and shall consider the ability of the license holder or applicant for a license to be able to pay all
23 delinquencies.

1 (3) A license holder or applicant for a license in an active installment payment plan shall
2 pay current and subsequent quarterly contributions in full and on the date specified by the
3 department.

4 **DWD 114.40 Other enforcement actions not prohibited.** Certifying a license holder or
5 applicant for a license liable for delinquent contributions does not limit the department from
6 taking other actions required or permitted by law to collect contributions from the license holder
7 or applicant for a license.

8 **DWD 114.50 Financial record matching program.** A financial institution doing
9 business in this state shall enter into an agreement with the department to participate in the
10 exchange of data on a quarterly basis. To the extent feasible, the information required under this
11 agreement shall be submitted by electronic means as prescribed by the department. The financial
12 institution shall sign the agreement and return the agreement to the department within 20
13 business days of receipt of the agreement. The department shall review the agreement and, if all
14 conditions under s. 108.223, Stats., have been met, shall sign the agreement and provide the
15 financial institution with a copy of the signed agreement. Any changes to the conditions of the
16 agreement shall be submitted by the financial institution or the department at least 60 days prior
17 to the effective date of the change.

18 **SECTION 6.** DWD 115.07 (2) (a) is amended to read:

19 DWD 115.07 (2) (a) The department shall consider as timely under sub. (1) (d) any
20 written application from the transferee or its representative which is received by the department
21 on or before: July 31 of the year in which the transfer date is January 1 to March 31; October 31
22 of the year in which the transfer date is April 1 to June 30; January 31 of the year following the
23 year in which the transfer date is July 1 to September 30; and April 30 of the year following the

1 year in which the transfer date is October 1 to December 31, unless par. (b) applies. The
2 department shall accept a late application received no more than 90 days after its due date if the
3 transferee satisfies the department that the application was late as a result of excusable neglect.

4 **SECTION 7.** DWD 132.03 is repealed.

5 **SECTION 8.** DWD 140.001 (1) and (2) (intro.) are amended to read:

6 DWD 140.001 (1) IN GENERAL. Except as provided in sub. (2), ~~unless the context clearly~~
7 ~~indicates a different meaning,~~ the definitions in ch. DWD 100 apply to this chapter.

8 (2) IN THIS CHAPTER. Notwithstanding ch. DWD 100, the following words and phrases
9 have the designated meanings ~~unless the context clearly indicates a different meaning:~~

10 **SECTION 9.** DWD 140.001 (2) (a) is renumbered (2) (ar).

11 **SECTION 10.** DWD 140.001 (2) (ag) and (am) are created to read:

12 DWD 140.001 (2) (ag) "Affiant" means a person who swears to an affidavit.

13 (am) "Affidavit" means a written statement sworn under oath before a notary public or
14 other person authorized by law to verify sworn statements and must be based upon personal
15 knowledge or upon information and belief.

16 **SECTION 11.** DWD 140.22 is created to read:

17 **DWD 140.22 Standard affidavit form.** (1) IN GENERAL. (a) Personal knowledge is the
18 recognition of facts through firsthand observation or experience.

19 (b) Information and belief is not based on firsthand observation or experience but is
20 based on secondhand information that is sworn as true.

21 (c) The department's standard affidavit form for appeals under ss. 108.09 and 108.10,
22 Stats., is available at the department's website or by requesting a copy from the hearing office.

1 **Note:** The standard affidavit form can be found at the department's website:
2 <http://www.dwd.wisconsin.gov> or by contacting any of the following hearing
3 offices:

4
5 Eau Claire Hearing Office
6 715 S. Barstow Street, Suite #1
7 Eau Claire, WI 54701

8
9 Fox Valley Hearing Office
10 54 Park Place, Suite 800
11 Appleton, WI 54914

12
13 Madison Hearing Office
14 3319 W. Beltline Hwy., Room E308
15 P.O. Box 7975
16 Madison, WI 53707-7975

17
18 Milwaukee Hearing Office
19 819 N. 6th Street, Room 382
20 Milwaukee, WI 53203

21
22 (2) AFFIDAVIT REQUIREMENTS. (a) An affidavit must contain all of the following
23 information:

- 24 1. The name and address of the affiant.
- 25 2. The signature or mark of the affiant.
- 26 3. The date the statement was sworn.
- 27 4. The signature or mark of the notary public or other person authorized by law to
28 verify sworn statements.
- 29 5. The county and state where the statement was sworn.

30 (b) An affidavit based upon information and belief must state the source of the
31 information and the grounds for the belief.

1 (3) PROCEDURE. (a) A party may submit an affidavit as a potential exhibit by
2 simultaneously delivering the affidavit to the hearing office and a copy to the other party. The
3 administrative law judge conducting the hearing may refuse to consider an affidavit not received
4 by the hearing office and the other party at least 3 days prior to the hearing.

5 (b) At the hearing, the administrative law judge may accept the affidavit as evidence as
6 provided under s. DWD 140.16.

7 **SECTION 12. INITIAL APPLICABILITY.** The amendments to ch. DWD 113 and creation of
8 ch. DWD 114 first apply to any delinquencies existing on or after the effective date of this rule.

9 **SECTION 13. EFFECTIVE DATE** This rule shall take effect on the first day of the month
10 following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2)
11 (intro.), Stats.

Dated this _____ day of _____, 2014.

WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT

Reginald J. Newson, Secretary

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Repeal Modification

2. Administrative Rule Chapter, Title and Number

Chapters DWD 111 (QUARTERLY WAGE REPORTING PROCEDURES), 113 (SETTLEMENT OF DISPUTES AND COMPROMISE OF LIABILITIES), 114 (LICENSE REVOCATION AND FINANCIAL RECORD MATACHING), 115 (BUSINESS TRANSFERS), 132 (DETERMINING ELIGIBILITY FOR BENEFITS) and 140 (UNEMPLOYMENT INSURANCE APPEALS)

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

- Chapter DWD 111 was originally ch. ILHR 111. Chapter ILHR 111 was created by an order of the Department of Industry, Labor and Human Relations on January 13, 1989 and was effective as of March 1, 1989. Chapter ILHR 111 was renumbered ch. DWD 111 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
- Chapter DWD 113 was originally ch. ILHR 113 and was effective on March 1, 1994. Chapter ILHR 113 was renumbered ch. DWD 113 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
- Chapter DWD 114 is necessary to create due to the recent passage of 2013 Wisconsin Act 36 (Act 36). Act 36 created s. 108.227 (1m), Stats., that instructed the Department of Workforce Development (DWD) to promulgate rules. The rules are to specify procedures to implement the process whereby employers who are delinquent in paying unemployment insurance (UI) contributions may have various licenses revoked or have an application for a license denied. In addition, Act 36 enabled DWD to operate a financial record matching program whereby DWD, for various asset verification or determination purposes, will match data of delinquent debtors possessed by DWD with the records of financial institutions. The proposed rule will ensure that the program operated by DWD can be run consistently with similar programs run by the Departments of Children and Families, Revenue, and Health Services.
- Chapter DWD 115 was originally ch. Ind-UC 115 and this was renumbered to be chapter ILHR 115 pursuant to s. 13.93 (2m) (b). Chapter ILHR 115 was repealed and a new chapter ILHR 115 was created effective February 1, 1992. Chapter ILHR 115 was renumbered ch. DWD 115 pursuant to s. 13.93 (2m) (b), Stats., as compiled in the June 1997 Administrative Register No. 498.
- Chapter DWD 132 was originally ch. Ind 132. Chapter Ind. 132 was repealed as it existed on August 31, 1987 and a new ch. ILHR 132 was created effective September 1, 1987. Chapter ILHR 132 was renumbered ch. DWD 132 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
- Chapter DWD 140 was originally ch. Ind.-UC 140 and this was repealed and a new ch. ILHR 140 was created effective December 1, 1985. Chapter ILHR 140 was renumbered ch. DWD 140 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

-
4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

Unemployment Insurance Appeals

- Act 36 instructs the department to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the rules regarding the use of the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License Revocation and Financial Record Matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. The creation of ch. DWD 114 provides procedures for persons whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes.
- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

-
5. Describe the Rule's Enforcement Provisions and Mechanisms

The proposed rule will ease program requirements for employers involved with the UI program. As a result, additional enforcement provisions are not necessary. The proposed rule eases the burden faced by employers by creating:

- Standards for DWD to waive or decrease interest charged to an employer that is delinquent in paying UI contributions.
- Rules regarding the use of a standard affidavit form for UI administrative appeal hearings. Act 36 requires DWD to create a standard affidavit form in order to ease the burden encountered by employers involved in a UI appeal.
- Procedural protections for employers whose license or credential may be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires various state agencies and boards (licensing departments) that issue licenses to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. Act 36 requires DWD to promulgate rules for the process for when it certifies to a licensing department that it should deny or revoke a license based on delinquent UI taxes.

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

6. Repealing or Modifying the Rule Will Impact the Following
(Check All That Apply)

- State's Economy
 Local Government Units

- Specific Businesses/Sectors
 Public Utility Rate Payers
 Small Businesses

7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

The proposed rule implements the UI proposals contained in Act 36. As a result, the fiscal note for Act 36 incorporates the economic impact of the rule.

The rule modifications impacting businesses will ease program requirements and likely reduce costs for small businesses. The businesses, including small businesses, that may be affected by this rule include the following:

- **Businesses that are Delinquent in Paying UI Taxes:**

1. DWD charges interest if an employer is delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.

2. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

- **Businesses involved in UI Administrative Appeals:**

Act 36 instructs DWD to prescribe by rule a standard affidavit form that may be used by both claimants and employers, including small businesses, during UI administrative appeals. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

DWD posted the scope statement and proposed hearing draft on the DWD website and on the Wisconsin Administrative Rules' website for 14 days to solicit public comment on the economic impact of the rule. DWD did not receive any comments related to the economic impact of the proposed rule.

DWD held a public hearing in Madison on the proposed hearing draft rule and received one written comment by Attorney Victor Forberger. Mr. Forberger commented on the following and DWD addressed the comments as follows:

* Waiver of Interest for Employers' Unemployment Taxes
(Ch. DWD 113)

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Provide a definition and criteria for the terms "newly subject employer" and "has a history" of timely filing of tax reports and payments.
2. Clarify the language in s. DWD 113.025 (1) (f) relating to the waiver of interest and the appeal process. DWD has clarified the language to ensure there is no confusion over the DWD's intent.

The comments in 1. and 2. were addressed by the UIAC and recommended changes were implemented.

* License Revocation (Ch. DWD 114)

1. The 10-day response period for a debtor to cure all delinquencies prior to DWD's certification of delinquency should be extended to 14 or 21 days. This issue was addressed by the UIAC and the 10 day response period was increased to a 14 day response period.
2. In the event the employer fails to respond to the DWD's notice of delinquency, and DWD certifies the employer delinquent to a licensing agency, DWD should be required to notify the employer of this action and provide information on the steps the employer must take to cure the deficiency. The UIAC did not recommend changes to the rule provision. The Notice of Delinquency will clearly state if the employer does not pay all debts owed or enter into an installment payment plan, DWD will send a certification of delinquency to the licensing agency.
3. Create language that identifies whether DWD or the employer is responsible for any fees associated with the employer restoring a license to a licensing department after the delinquency has been cured. The UIAC did not recommend changes to the rule provision. The responsibility for the payment of fees associated with reinstating a license of an employer is determined by each individual licensing agency.
4. Create language that would require DWD to provide an employer, who fails to make a payment pursuant to an installment payment plan, at least seven days before the department issues a certificate of delinquency to a licensing agency. This issue was addressed by the UIAC and 7 days notice will be provided to the employer when there is a missed payment before issuing a certificate of delinquency.

* Financial Record Matching (Ch. DWD 114)

1. Identify criteria for the contracts between DWD and financial institutions participating in the program and the rules should include means to resolve disputes between the financial institution, DWD and Wisconsin residents that may arise under the program.
2. Identify procedures related to how the financial record matching program will function and safeguards and correctives that exist for mistakes or identify theft.

The UIAC did not recommend changes to the rule provision in comments 1. and 2. The provisions related to the financial record matching program are created to solely establish the 20 day time-line associated with the return of the agreement.

* Business Transfer (Ch. DWD 115)

The term "excusable neglect" should be defined. The UIAC did not recommend changes to the rule provision. The

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meaning of "excusable neglect" is a term of art established by court precedent and does not require further definition.

* Standard Affidavit Form (Ch. DWD 140)

1. The rules should provide clear guidance regarding the use and limitations of affidavits with respect to hearings. The affidavit should include some reference to the evidentiary issues created by a party using an affidavit.
2. Extend the DWD's hearing notice requirements to a 10 or 14 day notice for unemployment insurance hearing or eliminate the timeline requirement for a party to submit affidavits for unemployment insurance hearings.
3. Update grammatical mistake under s. DWD 140.22 (3) (a). The language under s. DWD 140.22 (3) (a) was updated to address this grammatical mistake.

The comments in 1. were addressed by the UIAC. No changes to the rules were made. An instruction sheet will accompany the affidavit form.

The UIAC did not recommend changes to the rule provision under comment 2. The current language provides an administrative law judge may accept the affidavit as an exhibit even if it is submitted after the deadline.

The comment in 3. was addressed by the UIAC and the recommended change was made.

9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

10. Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

11. Chapter 20, Stats. Appropriations Affected
s. 20.115(1)(q)

12. Fiscal Effect of Repealing or Modifying the Rule

- | | | |
|---|---|--|
| <input type="checkbox"/> No Fiscal Effect | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs |
| <input checked="" type="checkbox"/> Indeterminate | <input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Could Absorb Within Agency's Budget |
| | | <input type="checkbox"/> Decrease Cost |

13. Summary of Costs and Benefits of Repealing or Modifying the Rule

There are no costs and benefits of repealing and modifying the proposed rule that are independent of the fiscal effect of changes made to the UI program as result of passage of Acts 20 and 36.

14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No

15. Long Range Implications of Repealing or Modifying the Rule

The proposed rule will have a positive impact on employers by allowing DWD the flexibility to address problems encountered by employers within the UI system due to their inadvertent mistakes. The rule modifications will ease program requirements and likely reduce costs for all businesses, including small businesses.

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16. Compare With Approaches Being Used by Federal Government

Unemployment insurance was initiated on a national basis in the United States as Title III and Title IX of the Social Security Act of 1935 and is a Federal-State coordinated program. Each state administers its own program within national guidelines promulgated under federal law. As a condition of a state receiving its unemployment compensation administrative grant, 42 USC 503 (a) provides that the Secretary of the Department of Labor must find that the law of the state includes certain requirements. With respect to these rules, 42 USC 503 (a) (3) provides that state laws grant an opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment insurance are denied. Providing parties with the opportunity to use a standard affidavit form is consistent with this federal mandate.

None of the other proposed rules impact an area in which the federal government has dictated that state law or rules must conform to federal requirements.

17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

- Waiving or Decreasing Interest Charged to Employers Delinquent in Paying UI Tax

Illinois

The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)

Good cause has been defined by Department rule to consist of any or all of the following:

- (a) Where the delay was caused by the death or serious illness of the employer or a member of her immediate family, or by the death, or serious illness of the person in the employer's organization responsible for the preparation and filing of the report or for making the payment.
- (b) Where the delay was caused by the destruction of the employer's business records by fire or other casualty without fault.
- (c) Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.
- (d) For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error.

Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)

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The Director will waive interest for a nonprofit organization or for a local governmental entity, if all the following apply:

- (a) The organization or entity had never filed any of the reports or forms required of it under the UI law of Illinois.
- (b) It had not been determined to be the "chargeable employer" as result of the filing of a UI claim.
- (c) Its chief operating officer files an affidavit with the Director in which she states that, upon learning of the organization or entity's liability under the Act, she took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)

Iowa

Chapter 96 of the Iowa Code does not include provisions for the waiver or forgiveness of interest charged to an employer who is delinquent in paying UI taxes.

Michigan

Section 15 (b) of the Michigan Employment Security Act requires the UI Agency to bill an employer for delinquent UI taxes and to charge interest. The law does not include provisions to enable the agency to waive or decrease this interest once it is charged.

Minnesota

Minnesota statutes at section 268.067 states:

- (a) The commissioner of employment and economic development may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant. This paragraph applies if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property.
 - (b) The commissioner may at any time compromise any UI tax or reimbursement due from an employer under this chapter or Minnesota's Special Assessment for Interest owed to the federal government.
 - (c) Any compromise involving an amount over \$10,000 must be authorized by an attorney licensed to practice law in Minnesota who is an employee of the department designated by the commissioner for that purpose.
 - (d) Any compromise must be in the best interest of the state of Minnesota.
- Revoke or Deny an Application for Licenses Based on Delinquent UI Contributions

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Illinois

Illinois' UI administrative code does not authorize the Illinois UI agency to certify to other state agencies that those agencies should revoke or deny an application for an employer's license based on delinquent UI contributions.

Iowa

Iowa's UI law does not authorize the Iowa UI agency to certify to other state agencies that they should revoke or deny an application for an employer's license based on delinquent UI contributions.

Michigan

Michigan's UI law does not authorize the Michigan UI agency to certify to other state agencies that those state agencies should revoke or deny an application for an employer's license based on delinquent UI contributions.

Minnesota

The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee, applicant, or employer owes unemployment insurance contributions of \$500 or more. A licensing authority that has received a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate. (M.S.A. § 268.0625 (Subdivision 1))

- Creation of Standard Affidavit for UI Administrative Appeal Hearings

Illinois does not direct its UI agency to create a standard affidavit for UI administrative appeal hearings.

A review of a document created by the Illinois UI agency document entitled "Preparing for your Appeal Hearing" only references affidavits by stating "Any document submitted in evidence must be supported by testimony from a person at the hearing who has direct knowledge of the document's contents. For example, third party affidavits or test results without someone who can testify as to their meaning or validity cannot overcome direct testimony from the opposing party. Likewise, business records must be supported by testimony during the hearing."

Iowa

Iowa does not use a standard affidavit for UI appeals.

Michigan

Michigan does not utilize a standard affidavit to be used by parties for UI appeals. Referees, who conduct the hearings, shall accept competent, relevant, and material evidence.

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Minnesota

Section 268.105 (b) of the Minnesota statutes provides that affidavits may be used in UI appeals as competent evidence of the facts contained in it, but does not provide that the Minnesota UI agency shall create a standard affidavit to be used in the hearings.

18. Contact Name Janell Knutson	19. Contact Phone Number (608) 266-1639
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This document can be made available in alternate formats to individuals with disabilities upon request.

Wisconsin Department of Workforce Development

Final Regulatory Flexibility Analysis

Rule Subject: Quarterly Wage Reporting, Settlement of Disputes and Compromise of Liabilities, License Revocation and Financial Record Matching, Business Transfers, Determining Eligibility of Benefits and Unemployment Insurance Appeals

Adm. Code Reference: DWD 111, 113, 114, 115, 132, and 140

Rules Clearinghouse #: 13-106

Rule Summary

The Department of Workforce Development (DWD) is proposing changes to the unemployment insurance (UI) administrative rules that are required by or necessary as a result of the passage of 2013 Wisconsin Act 20 (Act 20) and 2013 Wisconsin Act 36 (Act 36). These Acts granted DWD additional statutory authorization for the promulgation of rules. DWD is proposing to amend chs. DWD 111, 113, 115, 132, and 140 and create ch. DWD 114. Amendments to these chapters, and the creation of ch. DWD 114 are necessary to align DWD's administrative rules to the changes under ch. 108, Stats., enacted under Act 20 and Act 36.

DWD is proposing amendments to the following:

Quarterly Wage Reporting

- Under ch. 108, Stats., employers are required to file a quarterly wage report with DWD. If an employer files a late quarterly wage report, s. DWD 111.07 details the process used in assessing a penalty against the employer and the amount of the penalty. The provisions with respect to the amount and process of assessing a penalty against the employer who files a tardy quarterly wage report are now set forth in s. 108.22, Stats., as a result of Act 36. Section DWD 111.07 should be repealed.

Settlement of Disputes and Compromise of Liabilities

- Chapter DWD 113 establishes standards for the settlement of disputes between DWD and parties to determinations, decisions or actions and the compromises of liabilities for contributions, reimbursements in lieu of contribution, interest penalties and costs assessed under ch. 108, Stats. Act 36 permits DWD to waive or decrease the interest charged to an employer in limited circumstances as prescribed by administrative rule.

Business Transfers

- Successorship occurs when all or a portion of the former owner's UI account is transferred to the new owner due to a transfer of all, or a portion of the business. There are both mandatory and optional provisions for successorship. Act 36 provides that DWD may accept an optional successorship application that is filed late as a result of excusable neglect, except if the optional successorship application is submitted more than 90 days after the due date. The amendments to ch. DWD 115, which regulates business transfers, make the rule consistent with the provisions of Act 36.

Determining Eligibility for Benefits

- The law provides that under certain circumstances, employees may be eligible for benefits even though they voluntarily quit their job. One circumstance involves an employee who terminates part-time employment because loss of the employee's full-time employment makes it economically unfeasible for the employee to continue the part-time employment. Act 20 repealed this exception that was contained in s. 108.04 (7) (k), Stats. Section DWD 132.03 solely clarified the provisions of s. 108.04 (7) (k), Stats., and should be repealed.

Unemployment Insurance Appeals

- Act 36 instructs DWD to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the rules with respect to the use of the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License Revocation and Financial Record Matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes. The creation of ch. DWD 114 provides procedural protections for individuals whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions.
- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

Small Business Affected

The rule modifications impacting small businesses will ease program requirements and likely reduce costs for small businesses. The small businesses that may be affected by this rule include the following:

- **Small Businesses that are Delinquent in Paying UI Taxes:**
 1. DWD charges interest if an employer is delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.
 2. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

- **Small Businesses involved in UI Administrative Appeals:**

Act 36 instructs DWD to prescribe by rule a standard affidavit form that may be used by both claimants and employers, including small businesses, during UI administrative appeals. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

Reporting, Bookkeeping and other Procedures

The amendments to the rules do not require businesses, including small businesses, to perform additional reporting, bookkeeping or other procedures.

Professional Skills Required

The amendments to the rules do not require businesses, including small businesses, to acquire additional professional skills to comply with the amendments.

Accommodation for Small Business

The rule amendments do not make special exceptions for small businesses due to the fact the changes to the UI program will positively impact businesses of all sizes.

The proposed rule amendments and creation of ch. DWD 114 include provisions that will benefit large and small businesses alike. For example, this rule amendment will:

- Create standards for DWD to waive or decrease interest charged to an employer that is delinquent in paying UI taxes.
- Provide procedural protections for employers who are subject to a denial or revocation of various licenses based on delinquent UI contributions.
- Create rules regarding the use of a standard affidavit form for UI administrative appeal hearings. Act 36 requires DWD to create a standard affidavit form in order to ease the burden encountered by employers involved in a UI appeal.

Conclusion

These amendments to the rules will benefit Wisconsin businesses, including many small businesses. These amendments will have no adverse impact on affected businesses and, as a result, the amendments are not subject to the small business delayed effective date under s. 227.22 (2) (e), Stats.

Dated this 26th day of February, 2014.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

By Robert Rodriguez
Robert Rodriguez, Administrator
Division of Unemployment Insurance