STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance Advisory Council

Council Members: Please bring your calendars to schedule future meetings.
https://dwd.wisconsin.gov/uibola/uiac/

MEETING

Date: March 21, 2019

Time: 10:00 a.m. – 4:00 p.m.

Place: Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room F305

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the January 17, 2019 Council Meeting
3. Department Update
4. UI Trust Fund Update
5. Annual Fraud Report
6. Budget Bill (2019 AB 56 / 2019 SB 59)
7. Administrative Rules
    - DWD 126 & 127 Repeal of Codified Provisions
    - Scope Statement for DWD 102 & 147
8. Department Proposals for Agreed Bill
9. Senator Lena Taylor
10. Research Request
11. Correspondence

12. Updated Agreed Bill Timeline
13. Future Meeting Dates
14. Adjourn

Notice:

- The Council may not address all agenda items or follow the agenda order.
- The Council may take up action items at a time other than that listed.
- The Council may discuss other items, including those on any attached lists.
- The Council members may attend the meeting by telephone.
- The employee or employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items posted in this agenda, under sec. 19.85(1)(ee), Stats. The employee or employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- This location is handicap accessible. If you have a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.
- Today's meeting materials will be available online at 10:00 a.m. at https://dwd.wisconsin.gov/uibola/uiac/meetings.htm

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Natural Resources
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

January 17, 2019

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

Members Present: Janell Knutson (Chair), Scott Manley, Susan Quam, John Mielke, Mike Gotzler, Earl Gustafson, Mark Reihl, Shane Griesbach, Terry Hayden, and Dennis Delie

Department Staff Present: Caleb Frostman (Secretary), JoAnna Richard (Deputy Secretary), Andrew Rubsam, Jim Moe, Jennifer Wakerhauser, Mike Myszewski, Patrick Lonergan, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Jill Moksouphanh, Amy Banicki, Emily Savard, Karen Schultz, Tom Mund, Maureen McShane, Jana Pohorelsky (Intern), and Robin Gallagher.

Members of the Public Present: Brian Dake (WI Independent Businesses, Inc.), Chris Reader (WI Manufacturers & Commerce), Victor Forberger (Wisconsin UI Clinic), Mary Beth George (Rep. Sinicki's Office), Karl Dahlen (General Counsel, Labor & Industry Review Commission), Georgia Maxwell (Chairperson, Labor & Industry Review Commission), and Janet Kazmierczak, Cortney Draxler, Jessica Kessler, and Amber Mullett (Journey of Facilitation & Collaboration).

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:00 a.m. under Wisconsin's Open Meeting law. Council members introduced themselves and Ms. Knutson introduced Secretary Frostman and recognized Deputy Secretary JoAnna Richard, Georgia Maxwell (LIRC), Karl Dahlen (LIRC), Jennifer Wakerhauser (DWD Deputy Legal Counsel) and Journey of Facilitation students. Ms. Knutson welcomed new Council members Mr. Delie, who is fulfilling the remainder of Mike Crivello's term, and Ms. Quam, fulfilling the remainder of Ed Lump's term.

2. Approval of Minutes of the March 15, 2018 Council Meeting

Motion by Mr. Manley, second by Mr. Reihl, to approve the meeting minutes without correction. Mr. Delie abstained from voting and Ms. Feistal sent her approval electronically before the meeting. The motion carried unanimously.

3. Department Update

Secretary Frostman introduced himself and thanked the Council for their work and the opportunity to speak to them. After nine days in his role as the department Secretary, he is energized by the dedicated staff who truly believe in what they are doing. Growing up in Green Bay, Secretary Frostman attended college in Madison and eventually moved to Door County working in Economic and Workforce Development, which focused on work-based learning opportunities and other economic development-workforce endeavors. Secretary Frostman was most recently a member of the Legislature.

The vision of Governor Evers is inspiring and focuses on additional workforce recruitment, while taking a comprehensive, broad look at workforce and economic development so people can enter the workforce, advance, and stay in the workforce, as well as the quality of life metrics such as wage growth.

Secretary Frostman announced that Danielle Williams will be Assistant Deputy Secretary. Ms. Williams has a background in employment and labor law and has worked in the Legislature. JoAnna Richard has already started in her role as Deputy Secretary.

Council members welcomed Secretary Frostman and formally introduced themselves.

Mr. Manley (WI Manufacturers & Commerce) thanked Secretary Frostman for speaking to the Council and his comments on workforce are well taken. Every six months, WMC surveys their members. Approximately 75% of employers state they have difficulties not only finding workers, but finding workers with the right skills. The Unemployment Insurance program is a very important tool for workers who are without a job through no fault of their own and WMC is committed to keeping the number of people collecting UI as small as possible. Mr. Manley stated he looked forward to working with Secretary Frostman.

Ms. Quam (Wisconsin Restaurant Association) reported one in ten people work in the food service and hospitality industry in Wisconsin. There is a shortage of workers, which impacts the industry on all levels from management to hourly and part-time workers. Ms. Quam stated that WRA is committed to helping people find transitional or permanent jobs as they work through their career.

Mr. Mielke (Associated Building and Contractors) appreciated speaking with Secretary Frostman and thanked him for being at the Council meeting today. The construction industry is seeing the same concerns as his colleagues have expressed.

Mr. Gustafson (WI Paper Council) stated that it was a pleasure talking to Secretary Frostman. From the paper industry perspective, Mr. Gustafson reported there are four different kinds of grades of paper for communication, packaging, specialty and tissue. The demand for communication grade paper is being challenged and as the economy adjusts to that demand,

businesses are downsizing; however, the demand for packaging, specialty and tissue grades are increasing.

Mr. Gotzler (WI Association of Temporary Staffing Services), is excited to hear about the Governor's focus on workforce development as part of the agenda. Mr. Gotzler stated he works with employers in every industry, and with the workforce expanding in size and in skill sets, his association recognizes it goes hand in hand with the state's economic development. Mr. Gotzler looks forward to working together on this agenda.

Mr. Delie (WI AFL-CIO) appreciates the opportunity to serve on such a valuable council. Before his employment at AFL-CIO, Mr. Delie stated that when he worked in the paper industry, thousands of applications were received for available jobs and a business having to downsize was rare. Now, there are not enough employees to fill positions and it is difficult to keep employees.

Mr. Hayden (WI Pipe Trades Association) stated the WI Pipe Trades Association's major purpose is to provide a skilled workforce for employers. Mr. Hayden stated they are continually identifying, recruiting and developing the future workforce as well as upskilling the current workforce as the industry changes. Mr. Hayden looks forward to working with Secretary Frostman.

Mr. Greisbach (Operating Engineers, Local 139) stated he looks forward to working with Secretary Frostman. The UIAC is an important council for an operating engineers' representative. The majority of employees and employers in asphalt and concrete construction are seasonal and these jobs are a way of life for them.

Mr. Riehl (Carpenters Union) stated there are approximately 10,000 members in WI and Mr. Hayden provided a good summary of how trades unions operate concerning recruitment and supplying signatory contractors with manpower. Like many others, the Carpenters Union is experiencing worker shortages and is looking for skilled carpenters. The Carpenters Union has increased the number of apprentices, with over 1,200 apprentices in this trade in Wisconsin.

Department Update

Ms. Knutson reported that Amy Banicki, (Bureau of Benefits Director) is the current acting Deputy UI Administrator and will continue in that capacity until the position is filled.

In addition, Lili Crane (Bureau of Legal Affair Deputy Director) has retired. Jim Moe has been hired as the new Bureau of Legal Affairs Deputy Director. Mr. Moe was the Senior Administrative Law Judge at the UI Madison hearing office.

Trust Fund Update

Mr. McHugh provided the following 2018 UI Reserve Fund Highlights:

- Benefit payments declined $32.1 million (7.9%) from $408.0 million in 2017 to $375.9 million in 2018. The last time benefit payments were this low in Wisconsin was in 1994. In 2009, $3.1 billion in benefit payments were paid to 575,000 claimants, including benefits from federal programs.

- Total tax receipts declined $90.3 million (13.2%) from $683.1 million in 2017 to $592.8 million. The last year that tax receipts were this low was 2004. During the years 2011-2015 employers paid over $1 billion annually in state unemployment taxes.

- The unemployment Trust Fund balance at the end of 2018 was $1.7 billion, an increase of $259 million (17.6%) from 2017. The highest Trust Fund balance was in 2000 with a balance of $1.8 billion.

- The unemployment Trust Fund earned $36.9 million in interest in 2018, an increase of $7.2 million (24.2%) from 2017. The third quarter interest rate was 2.3%. Historically, this is a low interest rate, but it is increasing slowly. The Trust Fund is currently earning over $100,000 daily in interest. In 2011, when Wisconsin had the most debt, the department was paying $180,000-$190,000 interest daily. Total interest paid by Wisconsin during the last recession was $100 million.

Mr. McHugh also reported on the 2019 UI Employer Tax Rate Highlights. The department determines employer tax rates once a year and employers received the 2019 tax rate in October 2018. The statutes provide for four tax rate schedules depending on the June 30 Trust Fund balance. Schedule A is the highest tax rate schedule and the department moved from Schedule A to Schedule B in 2016, which decreased revenues by $97 million. In 2017, the department moved from Schedule B to Schedule C, resulting in an additional $38 million decrease in revenue; and in 2018, moved to Schedule D, with an additional $30 million decrease for a total decrease of $165 million moving from Schedule A to Schedule D.

Of approximately 140,000 employers for 2019, 38% (53,380 employers) will experience a decrease in their tax rate and 22.8% (32,042 employers) will experience an increase in their tax rate in 2019.

Nearly 25% of employers (7,533 employers) that experienced no change in tax rates for 2019 were already rated at the lowest possible tax rate; and an additional 6% remained at the maximum tax rate of 12%. Of the employers with no change in tax rate for 2019, 92% had a positive reserve fund balance.

Over 12,000 employers have a tax rate of zero. In addition, 59,057 employers have a tax rate more than zero and less than 1%. There are 2,475 employers at the maximum 12% tax rate. The number of employers in 2019 with a positive reserve fund (which is a result of employers paying

more into the fund than the department pays out in claims) is 132,946 (95%), and the number of employers with a negative reserve balance (which is a result of the department paying out more in benefit claims than employers pay in) is 7,449 (5%).

Between 2018 and 2019, the 53,389 employers with lower tax rates will pay $103 million less in unemployment taxes if their payroll remained the same. Likewise, the 32,042 employers with higher tax rates will pay $56 million more, holding payroll constant. This is not a forecast or projection. Since 2019, rates are based on the same schedule as 2018, the net reduction in taxes of $45 million (holding payroll constant) is solely due to the improvement of individual employer's experience.

Mr. McHugh provided additional details of employers by business sector including a calculation of taxes paid and benefits charged between 2015 to 2018, and the share of tax payments in 2019 by employee sector.

Mr. Hayden inquired what the average high cost multiple (AHCM) would be with the current Trust Fund balance. The U.S. Department of Labor (USDOL) UI Data Summary was released and showed the 2018 third quarter AHCM is .79. If the AHCM was 1, it is projected there would be enough money in the Trust Fund to pay benefit claims for one year. Mr. Reihl requested the total dollar amount needed in the Trust Fund for a AHCM of 1. Mr. McHugh will report this at the next meeting.

Worker Misclassification Quarterly Report

Mr. Myszewski reported on the Worker Classification Program, which has been operational since May 15, 2013. Since the beginning of the program, 2,083 worker classification investigations of all types have been conducted, resulting in 6,202 workers being reclassified as employees.

Since 2013, 745 cases were referred for audit (35.7%) which resulted in approximately $2.1 million in UI tax and interest assessed to employers, an average of $347 per worker, that has been misclassified.

The Worker Classification Unit conducted 511 investigations during last fiscal year. A total of 145 investigations have been conducted in the current fiscal year, which is a little low due to the time of year, weather, holidays and less construction activity.

The primary role of the unit is to go to construction sites and check those sites for misclassified workers. When construction slows down, investigations are being conducted with a special emphasis on non-construction industries.

Report on Public Hearing

Ms. Knutson reported on the statewide UI Public Hearing held on November 15, 2018, via videoconference from the UW-Madison. Locations included Green Bay, (where Mr. Griesbach attended), Milwaukee, Eau Claire, La Crosse, Superior and Wausau. A summary of the public comments, including the topic presented and any corresponding statute or administrative rule, and the name of the individual or business representative, account for the 11 people that attended the public hearing (five of those people registered and spoke at the public hearing) and 21 written comments that were received via electronic mail or first-class mail.

Mr. Rubsam informed the Council that 16 comments related to a change in administrative code to work search recall or work search in general. State Representative Zamarippa attended the Milwaukee public hearing and provided input on work search and the penalties for fraud. In addition, two individuals representing two different camps asked the Council to consider a proposed law change to implement an exclusion for students who work as camp counselors when they are not in school. There is a federal exclusion for camp counselors, but there is not a state exclusion.

Ms. Knutson indicated that any correspondence that appeared to be a request for information or concerns for their own personal situation, were forwarded onto the Bureau of Tax and Accounting or Bureau of Benefits for follow up and not tallied into the number of comments received during the public hearing.

Update on Legislation

Mr. Rubsam reported on 2017 Act 370 (Act 370) relating to work search and work registration waivers. The statute is nearly identical to administrative rules that identify waivers for claimants to avoid having to register or search for work. The statute does not provide any changes to the department's current practice and claimants should also not expect any changes. The statute now requires claimants to submit their work search activities each week in order to receive benefit payments. However, the department's current practice requires claimants to submit this information. Act 370 also provides the department may modify or add work search waivers if federal law permits, by administrative rule.

Ms. Knutson stated that USDOL is planning to issue guidance on work search; however, that has not yet happened.

Research Requests

Mr. Manley requested information relating to misclassification and how the department is adjudicating claims by workers who work through jobs such as Lyft, Uber, Amazon Delivery, GrubHub and other employment "gigs" where workers can pick up shifts depending on the worker's availability. How the state classifies independent contractors opposed to employees is not always clear and it is very difficult to determine in these types of employment "gigs." Mr. Manley would like a comparison on how UI law may differ from standards in Worker's Compensation or Equal Rights claims. Mr. Gustafson also would like information on how these

types of employers consider these workers, if they are considered independent contractors or employees, and if they oppose the claims that are filed. Ms. Knutson indicated that staff apply the current law and factors set forth in statute (s. 108.02 (12) (dm), Stats.) to each individual performing services.

Mr. Manley also requested a general update on the department's program integrity efforts and investigations, and if there is a position at the Department of Justice dedicated to UI fraud. Ms. Knutson reported that Worker's Compensation has a statute that provides money for an Assistant Attorney General at DOJ; and, UI is paying the other half for the Assistant Attorney General, currently Dan Lennington. In addition, Worker's Compensation is paying DOJ for a half position Worker's Compensation Investigator. Last year, 149 UI fraud cases were referred to DOJ, mostly Milwaukee County cases. Referrals to other counties are usually handled by the county's District Attorney. Mr. Manley suggested that the Attorney General or an Assistant Attorney General be invited to speak to the Council at the next meeting to discuss current work load, and how cases are handled and processed. In addition, Mr. Manley requested information on how many cases are handled and prosecuted by District Attorneys in other counties.

Mr. Riehl requested a 50-state comparison of weekly benefits including the maximum benefit rate, average benefit rate, and the 50-state average benefit rate.

Updated Agreed Bill Timeline

Ms. Knutson reported that department proposals for the Agreed Bill are expected to be introduced at the February 21 meeting. With the new administration, time to review and discuss proposals is necessary. The goal is to have the Agreed Bill introduced in the legislature by January 2020. Adjustments to the timeline, including additional meetings, may need to be made.

Future Meeting Dates

The Council meetings are typically scheduled the third Thursday of each month. The next meeting will be held February 21. A poll of Council members will be taken to ensure there is a quorum.

Adjourn

Motion by Mr. Riehl, second by Mr. Manley to go into closed caucus under Wis. Stat. § 19.85 (1)(ee) to deliberate items on the agenda at 11:30 a.m. and adjourn from caucus. The motion carried unanimously.

UI Reserve Fund Highlights

March 21, 2019

1. Benefit payments through February 2019 declined by $11.5 million or (10.5%) when compared to benefits paid through February 2018.

Benefits Paid	2019 YTD* *(in millions)*	2018 YTD* *(in millions)*	Change *(in millions)*	Percent *Change*
Total Regular UI Benefits Paid	$ 97.9	$ 109.4	$ (11.5)	(10.5%)

2. February 2019 year-to-date tax receipts declined by (11.6%) from the same time last year. Since this is the second year of Schedule D, all changes in taxes are a result of lower rates due to improved employer experience rating and not the result of a schedule change.

Tax Receipts	2019 YTD* *(in millions)*	2018 YTD* *(in millions)*	Change *(in millions)*	Percent *Change*
Total Tax Receipts	$ 58.5	$ 66.2	$ (7.7)	(11.6%)

3. The February 2019 Trust Fund ending balance was nearly $1.7 billion, an increase of 18.4% when compared to the same time last year.

   Historic highlights for the Trust Fund:

October 2000	Highest Trust Fund balance $1,868,355,466
February 2009	UI started borrowing
April 2011	Highest loan balance $1,720,031,063
July 2014	Loan Paid off

UI Trust Fund Balance	Feb 2019 *(in millions)*	Feb 2018 *(in millions)*	Change *(in millions)*	Percent *Change*
Cash Analysis Statement	$ 1,692.1	$ 1,429.6	$ 262.5	18.4%

4. Interest earned on the Trust Fund is received quarterly. Interest earned for the first quarter has not yet been paid. The U.S. Treasury annualized interest rate for the fourth quarter of 2018 was 2.3%. The Trust Fund earns over $110,000 daily. The interest earned in 2018 was $36.9 million compared to $29.7 million in 2017.

* All year-to-date (YTD) numbers are based on the February 28, 2019 Financial Statements

Taxes Paid and Benefits Charges

July 1, 2015 to June 30, 2018

	Rates	Payments Credited to Reserve Fund	Benefit Charges	Difference	% Taxable Payroll	% Benefit Charge	% Taxes Paid
	(Sorted by 2019 Tax Rates)	*(in millions)*			*(in percent)*		
	0%	$ 14.4	$ 6.4	$ 8.0	1%	1%	1%
1 →	More than 0% and less than 1%	408.4	118.6	289.8	42%	12%	30%
	1% and less than 2%	474.0	210.9	263.0	37%	21%	32%
	2% and less than 3%	148.8	82.9	65.9	8%	8%	9%
	3% and less than 4%	98.9	54.7	44.3	6%	5%	6%
	4% and less than 5%	111.8	88.3	23.5	3%	9%	6%
	5% and less than 6%	0.0	0.0	0.0	0%	0%	0%
	6% and less than 7%	65.4	71.9	(6.5)	1%	7%	4%
	7% and less than 8%	40.9	38.9	2.0	1%	4%	2%
	8% and less than 9%	14.4	21.2	(6.7)	0%	2%	1%
2 →	9% and less than 10%	23.0	27.6	(4.6)	0%	3%	1%
	10% and less than 11%	17.2	18.8	(1.6)	0%	2%	1%
	11% and less than 12%	19.4	33.3	(13.9)	0%	3%	1%
	12%	121.9	221.0	(99.1)	1%	22%	6%
	Total	$ 1,558.5	$ 994.4	$ 564.1	100%	100%	100%

The green colored rows reflect employers with positive reserve funds.

The peach colored rows are employers with reserve funds less than zero. The reserve fund balance reflects the amount of taxes paid in comparison to the amount of benefits paid for an individual employer's account.

FINANCIAL STATEMENTS

For the Month Ended February 28, 2019

Division of Unemployment Insurance

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED February 28, 2019

	CURRENT YEAR	PRIOR YEAR
ASSETS		
CASH:		
U.I. CONTRIBUTION ACCOUNT	655,154.18	372,709.97
U.I. BENEFIT ACCOUNTS	(336,619.42)	(480,102.32)
U.I. TRUST FUND ACCOUNTS (1) (2)	1,701,489,990.01	1,438,191,728.07
TOTAL CASH	1,701,808,524.77	1,438,084,335.72
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	74,770,444.35	84,110,073.38
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(35,609,308.46)	(38,394,691.65)
NET BENEFIT OVERPAYMENT RECEIVABLES	39,161,135.89	45,715,381.73
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (4) (5)	27,268,135.95	28,527,746.22
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	(18,557,118.07)	(19,760,680.22)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	8,711,017.88	8,767,066.00
OTHER EMPLOYER RECEIVABLES	23,732,872.70	23,375,188.33
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(8,012,949.76)	(9,604,404.66)
NET OTHER EMPLOYER RECEIVABLES	15,719,922.94	13,770,783.67
TOTAL ACCOUNTS RECEIVABLE	63,592,076.71	68,253,231.40
TOTAL ASSETS	1,765,400,601.48	1,506,337,567.12
LIABILITIES AND EQUITY		
LIABILITIES:		
CONTINGENT LIABILITIES (6)	28,984,110.99	30,541,319.52
OTHER LIABILITIES	10,649,722.21	9,664,034.66
FEDERAL BENEFIT PROGRAMS	246,493.98	328,466.14
CHILD SUPPORT HOLDING ACCOUNT	20,720.00	29,586.00
FEDERAL WITHHOLDING TAXES DUE	112,146.00	81,249.00
STATE WITHHOLDING TAXES DUE	1,766,901.70	1,831,567.68
DUE TO OTHER GOVERNMENTS (7)	543,261.41	427,920.05
TOTAL LIABILITIES	42,323,356.29	42,904,143.05
EQUITY:		
RESERVE FUND BALANCE	2,308,768,562.71	2,144,570,330.97
BALANCING ACCOUNT	(585,691,317.52)	(681,136,906.90)
TOTAL EQUITY	1,723,077,245.19	1,463,433,424.07
TOTAL LIABILITIES AND EQUITY	1,765,400,601.48	1,506,337,567.12

1. $1,933,575 of this balance is for administration purposes and is not available to pay benefits.

2. $2,103,000 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

3. The allowance for uncollectible benefit overpayments is 49.2%. The allowance for uncollectible delinquent employer taxes is 45.4%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.

4. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is $0. Deferrals for the prior year were $0.

5. $8,361,985, or 30.7%, of this balance is estimated.

6. $14,463,549 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. $14,520,562 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.

7. This balance includes SAFI Payable of $2,289. The 02/28/2019 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is $9,464. Total LIfe-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were $9,483,715.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED February 28, 2019

	CURRENT ACTIVITY	YTD ACTIVITY	PRIOR YTD
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,793,298,850.45	2,794,896,813.36	2,635,459,959.45
BALANCING ACCOUNT	(1,023,949,240.73)	(1,030,187,761.19)	(1,125,485,495.65)
TOTAL BALANCE	1,769,349,609.72	1,764,709,052.17	1,509,974,463.80
INCREASES:			
TAX RECEIPTS/RFB PAID	1,830,675.86	43,524,975.63	50,722,487.71
ACCRUED REVENUES	591,338.85	(2,348,554.73)	(3,631,466.62)
SOLVENCY PAID	611,705.64	15,006,935.55	15,461,540.00
FORFEITURES	(1,844.00)	5,408.00	92,285.00
BENEFIT CONCEALMENT INCOME	69,740.51	117,590.23	126,289.11
FUTA TAX CREDITS	7,177.61	7,177.61	1,716.90
OTHER CHANGES	8,620.47	67,466.63	88,134.43
TOTAL INCREASES	3,117,414.94	56,380,998.92	62,860,986.53
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	41,721,087.51	82,612,009.77	92,995,451.66
QUIT NONCHARGE BENEFITS	5,787,778.95	11,828,336.12	12,698,598.04
OTHER DECREASES	149,968.48	160,314.21	105,777.62
OTHER NONCHARGE BENEFITS	1,730,944.53	3,412,145.80	3,602,198.94
TOTAL DECREASES	49,389,779.47	98,012,805.90	109,402,026.26
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,308,768,562.71	2,308,768,562.71	2,144,570,330.97
BALANCING ACCOUNT	(585,691,317.52)	(585,691,317.52)	(681,136,906.90)
TOTAL BALANCE (8) (9) (10)	1,723,077,245.19	1,723,077,245.19	1,463,433,424.07

8. This balance differs from the cash balance related to taxable employers of $1,692,110,625 because of non-cash accrual items.

9. $1,933,575 of this balance is set up in the Trust Fund in two subaccounts to be used for administration purposes and is not available to pay benefits.

10. $2,103,000 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

03/11/19

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 02/28/19

RECEIPTS	-CURRENT ACTIVITY--	--YEAR TO DATE---	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	$1,830,675.86	$43,524,975.63	$50,722,487.71
SOLVENCY	611,705.64	15,006,935.55	15,461,540.00
ADMINISTRATIVE FEE	39.78	121.27	219.08
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	11,488.87	315,778.74	303,504.75
UNUSED CREDITS	(870,853.84)	54,014.24	850,494.91
GOVERNMENTAL UNITS	1,059,294.45	1,991,822.65	2,433,825.14
NONPROFITS	747,807.03	1,587,046.79	1,960,719.64
INTERSTATE CLAIMS (CWC)	28,487.47	308,518.94	82,449.08
ERROR SUSPENSE	(11,000.92)	2,328.42	5,298.82
FEDERAL PROGRAMS RECEIPTS	106,853.90	450,845.86	385,126.36
OVERPAYMENT COLLECTIONS	1,669,266.61	2,847,932.96	3,289,683.34
FORFEITURES	(1,844.00)	5,408.00	92,285.00
BENEFIT CONCEALMENT INCOME	69,740.51	117,590.23	126,289.11
EMPLOYER REFUNDS	(488,945.35)	(708,940.25)	(990,078.49)
COURT COSTS	40,129.03	76,928.84	80,239.49
INTEREST & PENALTY	348,243.71	636,545.72	575,779.20
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	109,167.27	179,280.85	161,140.76
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	200.00	4,200.00	540.41
SPECIAL ASSESSMENT FOR INTEREST	856.50	2,289.34	2,442.68
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	0.00	0.00
MISCELLANEOUS	4,122.11	4,128.46	10,761.97
TOTAL RECEIPTS	$5,265,434.63	$66,407,752.24	$75,554,748.96
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	$42,792,553.15	$84,895,698.93	$95,533,026.36
NONPROFIT CLAIMANTS	764,397.10	1,562,900.68	1,917,567.54
GOVERNMENTAL CLAIMANTS	1,013,641.81	2,040,098.16	2,406,837.00
INTERSTATE CLAIMS (CWC)	450,930.47	919,772.90	1,016,771.51
QUITS	5,787,778.95	11,828,336.12	12,698,598.04
OTHER NON-CHARGE BENEFITS	1,764,600.90	3,408,772.70	3,591,924.92
CLOSED EMPLOYERS	(262.00)	(262.00)	(897.60)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	162,853.73	559,759.39	399,337.24
EX-MILITARY (UCX)	54,238.90	111,960.15	133,267.58
TRADE ALLOWANCE (TRA/TRA-NAFTA)	108,531.33	231,807.87	555,333.57
DISASTER UNEMPLOYMENT (DUA)	5,634.00	11,324.00	0.00
2003 TEMPORARY EMERGENCY UI (TEUC)	(988.98)	(1,731.52)	(4,274.65)
FEDERAL ADD'L COMPENSATION $25 ADD-ON (FAC)	(24,366.08)	(45,465.13)	(69,941.53)
FEDERAL EMERGENCY UI (EUC)	(210,608.58)	(420,114.20)	(557,833.68)
FEDERAL EXTENDED BENEFITS (EB)	(17,617.56)	(33,205.24)	(60,317.89)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	(106.66)	(410.52)	(358.03)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(90.00)	(180.00)	(1,103.83)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(303.07)	(474.15)	(1,331.29)
INTEREST & PENALTY	288,302.01	536,812.53	588,911.06
PROGRAM INTEGRITY	378,403.45	451,269.08	429,213.34
SPECIAL ASSESSMENT FOR INTEREST	0.00	3,281.05	7,655.57
COURT COSTS	36,799.81	73,786.11	79,938.47
ADMINISTRATIVE FEE TRANSFER	81.49	176.60	190.30
FEDERAL WITHHOLDING	(4,420.00)	64,450.00	(54,718.00)
STATE WITHHOLDING	(857,982.38)	(179,413.90)	(266,068.45)
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	72,490.00	72,490.00	0.00
FEDERAL LOAN REPAYMENTS	(7,177.61)	(7,177.61)	(1,716.90)
TOTAL DISBURSEMENTS	$52,557,314.18	$106,084,262.00	$118,340,010.65
NET INCREASE(DECREASE)	(47,291,879.55)	(39,676,509.76)	(42,785,261.69)
BALANCE AT BEGINNING OF MONTH/YEAR	$1,749,100,404.32	$1,741,485,034.53	$1,480,869,597.41
BALANCE AT END OF MONTH/YEAR	$1,701,808,524.77	$1,701,808,524.77	$1,438,084,335.72

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED February 28, 2019

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BEGINNING U.I. CASH BALANCE	$1,738,358,077.02	$1,730,835,304.79	$1,471,761,579.73
INCREASES:			
TAX RECEIPTS/RFB PAID	1,830,675.86	43,524,975.63	50,722,487.71
U.I. PAYMENTS CREDITED TO SURPLUS	1,304,473.52	15,755,972.41	16,539,465.36
FUTA TAX CREDITS	7,177.61	7,177.61	1,716.90
TOTAL INCREASE IN CASH	3,142,326.99	59,288,125.65	67,263,669.97
TOTAL CASH AVAILABLE	1,741,500,404.01	1,790,123,430.44	1,539,025,249.70
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	41,721,087.51	82,612,009.77	92,995,451.66
BENEFITS CHARGED TO SURPLUS	7,596,201.96	15,328,306.13	16,406,574.60
TOTAL BENEFITS PAID DURING PERIOD	49,317,289.47	97,940,315.90	109,402,026.26
SHORT-TIME COMPENSATION EXPENDITURES	72,490.00	72,490.00	0.00
ENDING U.I. CASH BALANCE (11) (12) (13)	1,692,110,624.54	1,692,110,624.54	1,429,623,223.44

11. $1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

12. $326,247 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

13. $2,103,000 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

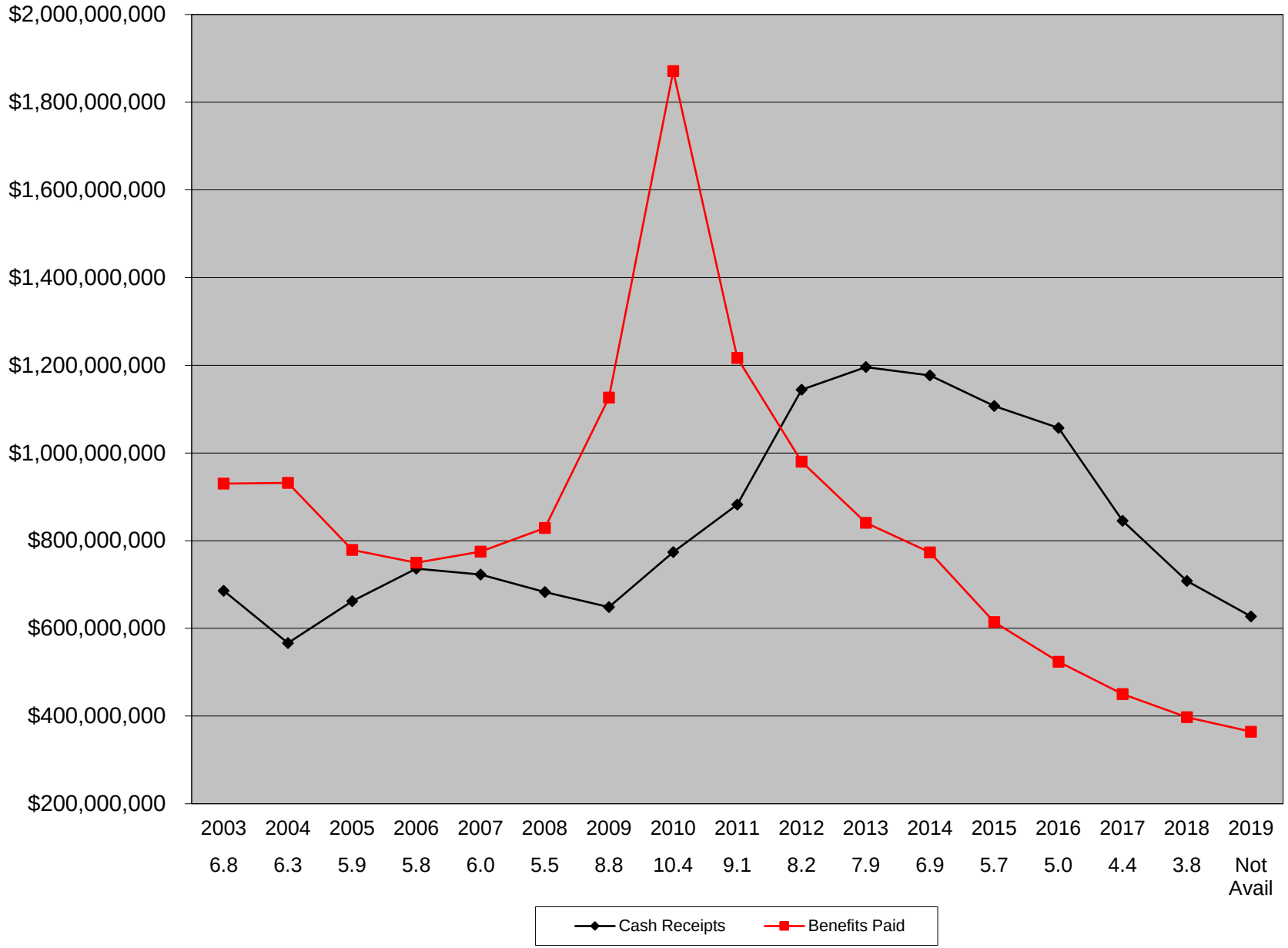
03/11/19

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED February 28, 2019

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	($610,301,757.10)	($617,016,324.88)	($715,103,113.34)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	611,705.64	15,006,935.55	15,461,540.00
FORFEITURES	(1,844.00)	5,408.00	92,285.00
OTHER INCREASES	694,611.88	743,628.86	985,640.36
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	1,304,473.52	15,755,972.41	16,539,465.36
TRANSFERS BETWEEN SURPLUS ACCTS	859.76	(3,967.18)	21,398.15
FUTA TAX CREDITS	7,177.61	7,177.61	1,716.90
TOTAL INCREASES	1,312,510.89	15,759,182.84	16,562,580.41
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	5,787,778.95	11,828,336.12	12,698,598.04
OTHER NON-CHARGE BENEFITS	1,808,423.01	3,499,970.01	3,707,976.56
BENEFITS CHARGED TO SURPLUS SUBTOTAL	7,596,201.96	15,328,306.13	16,406,574.60
SHORT-TIME COMPENSATION EXPENDITURES	72,490.00	72,490.00	0.00
BALANCE AT THE END OF THE MONTH/YEAR	(616,657,938.17)	(616,657,938.17)	(714,947,107.53)

03/11/19

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



WISCONSIN UNEMPLOYMENT INSURANCE

Integrity ★ Customer Service ★ Accountability

DWD

2019 Fraud Report to the

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

UCD-17392-P (R. 03/2019)

Inside

STATE OF WISCONSIN
DWD
Department of Workforce Development

Unemployment Insurance

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2 Work Search

3 Worker Classification

4-8 Tools Used in the Fight Against Fraud

9-12 Addenda

This report is presented to the Wisconsin Unemployment Insurance Advisory Council pursuant to Wis. Stat. §108.14(19). The report contains information relating to the detection and prosecution of unemployment insurance fraud in the preceding year.

"Wisconsin's Unemployment Insurance program is one of the strongest in the nation, and we owe much of its success to the hard work and dedication of our staff and the work of the Unemployment Insurance Advisory Council."

- Secretary Caleb Frostman, Wisconsin Department of Workforce Development

DWD
Department of Workforce Development

March 15, 2019

Dear Members of the Unemployment Insurance Advisory Council:

The Department of Workforce Development (DWD) is pleased to present the following report on the department's efforts to ensure the integrity of the Unemployment Insurance (UI) program. As you know, the UI program is a vital economic stability program, acting as a partial wage replacement for those who are out of work through no fault of their own while they rapidly transition back to employment.

The department's efforts to combat waste, fraud, and abuse of the UI program in 2018 have reduced the amount of fraud overpayments by $116,000, or 2.3 percent, when compared to 2017. Additionally, the number of cases of fraud against the UI program was reduced by 377 or 7.3 percent.

We owe it to Wisconsin workers who rely on the program during a period of unemployment and businesses who pay into the system to ensure the program remains solvent and available to those who qualify and need assistance.

The following report contains data on our efforts to reduce fraud and recover overpayments as well as the many strategies and tools the department employs to carry out these efforts.

In closing, we would like to thank the members of the council for your dedication to not only the program but the people of Wisconsin. We appreciate your commitment to the council process and thank you for your hard work in making Wisconsin's UI program one of the best in the nation.

Sincerely,

Caleb Frostman, Secretary
Department of Workforce Development

Mark Reihl, Administrator
Unemployment Insurance Division

UNEMPLOYMENT INSURANCE

- Providing a safety net to workers who lose jobs through no fault of their own;
- Offering family stability;
- Retaining of Wisconsin's talented workers to contribute to our economy.

A VITAL ECONOMIC STABILITY PROGRAM

OVERPAYMENTS CONTINUE TO DECLINE

Fraud overpayments accounted for only 1.2 percent of total unemployment benefits paid in 2018

Fraud Overpayments

The UI Division remains committed to ensuring the integrity of the UI program. Fraud against the Wisconsin UI program continues to decline. UI fraud overpayments declined by 2.31 percent from 2017 to 2018. This is in addition to a 42 percent decline in fraud overpayments from 2016 to 2017 (see Addendum A).

UNEMPLOYMENT BENEFIT OVERPAYMENTS CONTINUE TO DECLINE

		2017 Amount	2018 Amount	Dollar Reduction	Percent Reduction
	Total UI Payments	$453,715,534	$416,023,272	$37,692,262	-8.31%
+	**Fraud Overpayment**[1]	$5,016,369	$4,900,271	$116,098	-2.31%
	As Percent of Total Payments	1.1%	1.2%		
+	**Non-Fraud Overpayment**[1]	$8,922,443	$8,202,583	$719,860	-8.07%
	As Percent of Total Payments	2.0%	2.0%		
=	**OVERPAYMENT TOTALS**	**$13,938,812**	**$13,102,854**	**$835,958**	-6%

		2017 Number of Cases	2018 Number of Cases	Case Reduction	Percent Reduction
+	**Fraud Cases**	5,132	4,755	377	-7.35%
+	**Non-Fraud Cases**	48,484	44,634	3,850	-7.94%
=	**CASE TOTALS**	**53,616**	**49,389**	**4,227**	-7.88%

[1]Overpayment figures reflect the amounts detected in the stated calendar year. A portion of those overpayments were disbursed in prior calendar years.

Non-Fraudulent Overpayments

In Wisconsin, the division goes to great lengths to help ensure UI customers comply with the requirements of the law and that they are able to easily understand Wisconsin's UI system. UI provides a robust online application for applying for UI benefits, filing weekly claims and locating information for UI related questions on easy-to-use Internet platforms that can be accessed by nearly every type of electronic device. UI also operates a Help Center as a resource for those who need assistance using the online application or help locating answers to complex UI questions.

Even with these resources available, sometimes customers make unintentional errors. These instances are tracked separately from intentional fraud and are referred to as "non-fraudulent overpayments." As is the case with intentional fraud, the division's systems seek to prevent and detect these errors and collect these overpayments for deposit into the Trust Fund.

WORK SEARCH

Enhanced Online Weekly Work Search for Claimants

UI claimants are required to provide verification of having performed their work search actions each week when filing their weekly claim (unless the requirements are waived). Improvements to UI's online systems include a new stand-alone online application which allows claimants to enter their work search actions throughout the week, instead of having to wait until the week is over to submit their work search actions. These enhancements make the system more user-friendly, saving claimants' time and helping to prevent benefit claims filing errors, which helps to reduce improper payments.

Work Search Audits

The division has a well-established work search auditing program. UI claimants who are required to search for work must submit their work search record each week a claim is filed. These records are subject to random audits for program integrity purposes. These audits uncover mistakes made by claimants, instances of intentional fraud, and provide an opportunity for the division to educate claimants on what constitutes a valid work search action and what is needed for the division to verify the action.

In 2018, the division conducted 32,772 work search audits. Those audits resulted in 6,392 decisions where work search requirements were not met.

WORKER CLASSIFICATION

Protecting Workers, Protecting Employers

Worker misclassification contributes to waste and fraud in the UI program through the loss of UI tax revenue from employers who misclassify workers, and the creation of an unfair business climate that places businesses that follow the law at a competitive disadvantage. It also denies workers who are out of work through no fault of their own access to the UI benefits they may have been eligible for if they were properly classified.

In 2018, Wisconsin UI auditors conducted 2,459 audits, identified 8,677 misclassified workers and $1,530,762 was generated in UI taxes, interest, and penalties due to the division's efforts to detect worker misclassification. The division's efforts to combat worker misclassification include a robust program of worksite misclassification investigations combined with efforts to educate employers and workers through direct and paid media outreach.

Worker Classification Education

Wisconsin's worker classification website provides employers with a clear and understandable process to assist them in determining whether their workers are employees or independent contractors. The website also provides a mechanism to report suspected worker misclassification.

Wisconsin's Worker Classification website continues to be the most comprehensive website in the nation that educates employers on proper classification of workers as either employees or independent contractors

The department produced three radio public service announcements (PSAs), in both English and Spanish, to educate employers and workers on the issues of worker misclassification and the employer's responsibility to properly classify workers. The PSAs aired in the fall of 2017 and the spring of 2018 and were broadcast over 20,000 times across 190 Wisconsin radio stations.

Worker Classification Investigations

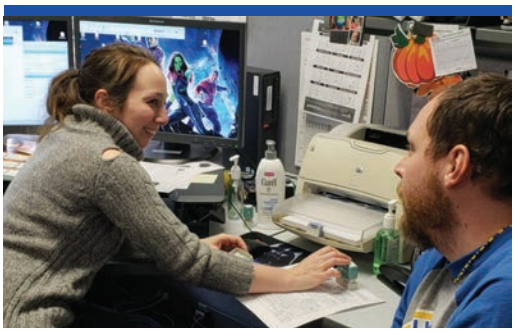
Worksite investigations are conducted by experienced division investigators, many of whom have law enforcement backgrounds in white collar and economic crime investigations. The division conducted 511 worker classification field investigations in 2018. In addition, investigative team members continue to present at construction industry events, labor union meetings and other public forums on worker misclassification, and hold meetings with individual contractors that have large numbers of misclassified workers.

"Worker misclassification negatively impacts the UI program through the loss of UI tax revenue deposited in the UI Trust Fund in addition to denying workers who are out of work through no fault of their own access to the temporary safety net provided by Unemployment Insurance."

- Terry Hayden, UIAC Member

TOOLS USED IN THE FIGHT AGAINST FRAUD

Prevention Tools



Data Analytics

The Wisconsin UI program has instituted cutting-edge data analytics aimed at protecting the UI Trust Fund through prevention of fraud. Identity theft is an ongoing concern in both the public and private sectors and poses a threat to the integrity of Wisconsin's UI program. A combined approach of analytic techniques, staff expertise and system improvements are used to detect this ever-changing threat.

The division's current process proactively identifies suspected fraudulent claims, allowing time to stop those claims, investigate them, and prevent improper payments.

Online Filing

The online claim filing systems were enhanced to increase efficiency, clarity, and ease of understanding, which in turn helps claimants file accurate claims. Due to enhancements to the online filing system and retirement of the antiquated telephone filing system finalized in 2017, approximately 98% of initial and weekly claims are currently filed online. This modernized online system includes the ability to file weekly claims in Spanish. Advantages to online filing include:

- The ability to enter work search information online;
- A mobile-friendly application, allowing claimants to file their claim using any smartphone, tablet, or computer;
- A convenient employer search tool to add important employer information to a claim;
- The ability for claimants to save their claim and return later that same day to complete the claim; and
- Clarifying help text to support greater self-service and accurate claim filing.

Education

Education is a key component to any prevention and deterrence effort. The division has improved notices regarding the potential legal and financial consequences of committing fraud, such as:

- Before logging into online benefit services, claimants must acknowledge they are aware committing UI fraud is illegal and they are aware of the penalties for doing so;
- Claimants who previously committed UI fraud receive a special message upon logging in reminding them of their prior act and the potential for increased penalties; and
- In the online initial and weekly claim applications, claimants must acknowledge more than once that the information they are providing is true.

A claimant handbook with detailed instructions on the claim filing process is available and claimants are responsible for knowing all the information provided in the handbook. This handbook is posted at dwd.wisconsin.gov/uiben/handbook.

The division offers written educational guidance for employers on how to protect themselves and the Trust Fund, including the pamphlet How to Protect Your Business from Higher Taxes. This guidance is posted at dwd.wisconsin.gov/dwd/publications/ui/uct_17287_p.pdf.

Additional resources available to both employees and employers include:

- UI Internet resources for both employers and employees, such as methods for reporting UI fraud and "Frequently Asked Questions about UI Benefit Fraud"; and
- An employer handbook containing information on how to properly classify a worker.

Additional Prevention Approaches

Other fraud prevention tools include:

- Benefit Payment Notices informing employers of UI benefit charges to their account;
- Non-citizen work authorization verification with United States Citizenship and Immigration Services (USCIS) when the claimant is not a U.S. citizen;
- Scanning employer tax and benefit charge information to identify potential fictitious employers; and
- New web resources on the UI Internet site detailing UI scams.

Detection Tools

Dedicated UI Workers

Staff vigilance is one of the division's best tools for detection. The Integrity and Quality Section within the Benefit Operations Bureau provides training to staff on methods for detecting and reporting fraud. The Integrity and Quality Section consists of experienced investigators who investigate the most complex and organized efforts to defraud the system. Members of this section also prepare and recommend cases for prosecution referral.

Post Verification of Wages

The division sends wage verification notices to employers when claimants, who had been reporting wages weekly, stop reporting wages in a week. This allows employers the opportunity to timely report any issues. **The division detected an estimated $149,921 in fraudulent UI claims in 2018 using this tool.**

Cross-Matches

The division utilizes numerous cross-matches that assist in detecting UI fraud:

Quarterly Wage Cross-Match – This cross-match compares benefit payment records with wage records submitted by employers covered under Wisconsin's UI program. Employers are required by law to submit these records to the division quarterly. This helps to verify wages are properly reported on unemployment claims.

Inmate Cross-Match – Claimants may not be eligible for UI benefits if incarcerated. This cross-match consists of one crossmatch that compares benefit payment records to incarceration records for all of Wisconsin's county jails and prisons. A second crossmatch compares benefit payment records to incarceration records for facilities nationwide.

Interstate Wage Record Cross-Match – This cross-match compares benefit payment records with quarterly wage records submitted by employers from other states. This helps to verify wages are properly reported on unemployment claims.

Wisconsin and National New Hire Cross-Match – Employers are required to report basic information about employees who are newly hired, rehired, or return to work after a separation from employment. Division staff cross-match UI payment records with new hire information. Wisconsin cross-matches quarterly federal wage data from the National Directory of New Hires reports for claimants who are former federal government employees.

Vital Statistics (Death Records) Cross-Match – The Wisconsin Department of Health Services provides a record of deaths in Wisconsin that is cross-matched with UI data to determine whether UI claims continue to be filed after a claimant is deceased.

SSDI Crossmatch – This new crossmatch, implemented in August 2018, compares individuals currently listed as applying/receiving SSDI with claimants filing initial and weekly unemployment claims. The crossmatch indicates an individual has applied for SSDI in the past.

Other Detection Approaches

Additional detection approaches utilized to preserve and protect the integrity of the UI Trust Fund include:

- Audits of employers - resulting in employer contribution assessments totaling $1.4 million in 2018;
- Employer complaints and tips from the public concerning suspected fraudulent claims;
- Using 1099 information from the Internal Revenue Service (IRS) to investigate employers who may be misclassifying employees as independent contractors;
- Contacts from local, state, and federal law enforcement officers regarding suspicious activities;
- Sophisticated fraud monitoring tools employed by U.S. Bank, which allow the department to monitor, predict, and respond quickly to suspected fraudulent activity; and
- Meetings with several other state agencies on a quarterly basis to discuss fraud trends and cases of mutual interest. The agencies share fraud tips to ensure fraud occurring across agencies is thoroughly investigated and stopped. In 2018, this model was presented by Wisconsin UI staff at two national conferences, the National Association of State Workforce Agencies (NASWA) UI Integrity conference and United Council of Welfare Fraud (UCOWF) and was of great interest to other states.

Compliance Tools

The Unemployment Insurance Advisory Council agreed-upon bill (2017 Wisconsin Act 157), enacted by the Legislature in April 2018, contained numerous law changes to encourage compliance with the reporting of required information necessary to pay benefits and assess taxes accurately, and to deter intentional acts of fraud against the UI system. Those measures in 2017 Wis. Act 157 include:

Levy Non-Compliance Penalty – Increasing the penalty for third parties who refuse to comply with a department levy from 25% to 50% of the amount of debt owed. The penalties collected will be deposited into the UI Program Integrity Fund.

Personal Liability for Tax: Repeal of the Ownership Requirement – Amending the tax personal liability statute to remove the requirement that an officer, employee, member, manager, partner, or other responsible person must have at least a 20% ownership interest to hold the person personally liable for willfully failing to file reports or payments.

Fiscal Agents Joint and Several Liability – Aligning state law with federal law so that a private agency that serves as a fiscal agent, or that contracts with a fiscal intermediary to serve as a fiscal agent, may be found jointly and severally liable with respect to the unemployment tax liability of a domestic employer. This will provide an incentive for fiscal agents to correctly report wages for employers and to properly pay UI tax.

Collection Tools

Wisconsin is very successful at recovering overpayments when they do occur. According to an internal UI longitudinal state study, over a ten-year period 82.5 percent of fraud and 80 percent of non-fraud overpayments are collected.

In 2018, the division recovered $20 million in overpayments, including more than $5.7 million in debts older than five years. This was achieved by utilizing the various mechanisms outlined below:

Tax Refund Intercept – The division is able to intercept employer and claimant state and federal tax refunds. The division participates in the Treasury Offset Program (TOP) to intercept federal tax refunds. By utilizing the tools available through TOP, the division recovered $2.6 million in fraud overpayments, penalties, and collection costs and almost $700,000 in non-fraud overpayments. In February 2017, the division started to recover delinquent tax contributions, interest, and penalties through TOP. In 2018, receipts related to employer TOP totaled almost $600,000. In addition, rather than have their tax refund intercepted, employers paid $300,000 upon receipt of the Notice of Intent to Certify Debt to IRS for a total collection attributable to employer TOP of almost $900,000.

Benefit Offset – Benefits are withheld from a claimant as an offset for an overpayment. The claimant does not receive UI benefit payments until the overpayment has been repaid.

Out of State Offset – Wisconsin UI can have another state withhold unemployment benefits to a claimant in that state to repay a Wisconsin overpayment.

Bankruptcy – Fraud debts are not dischargeable in bankruptcy. Division attorneys file adversary petitions to dispute discharge of the debt. A claim is also filed against the assets of the debtor.

Warrants – A lien is placed on the debtor's personal property to secure repayment of a delinquent debt.

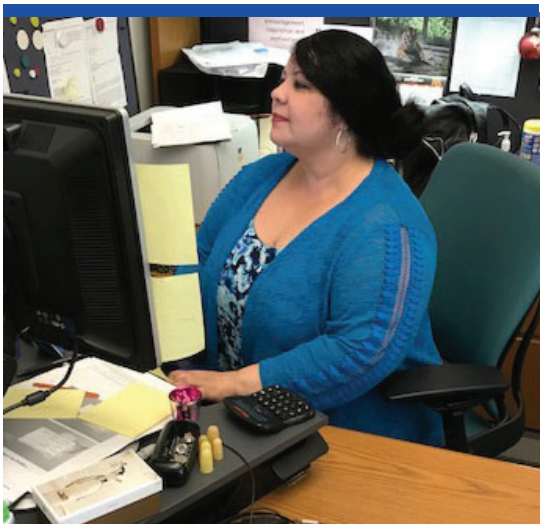
Levy Against Wages and Bank Accounts – A levy is issued against wages, bank accounts, or any property belonging to the debtor.

Financial Record Matching Program – A financial record matching program is used by UI debt collectors to identify the bank accounts of delinquent UI debtors.

Secured Liens for Benefit Overpayments – The 2017 UIAC agreed-upon bill included a change that gives the division enhanced ability to recover unemployment-related debts. The amended lien provision in state law provides consistency for claimant and employer debts. In addition, an amended provision is intended to assist in collecting fraud and non-fraud overpayments in bankruptcy court.

The UI Division recovered $20 million in overpayments in 2018, returning the funds to the UI Trust Fund

Prosecution



Criminal Referrals for UI Fraud

The division pursues criminal prosecution in cases of egregious fraudulent activity, and works cooperatively with district attorneys, the Wisconsin Department of Justice (DOJ), and federal prosecutors.

In 2018, 149 cases (with a total dollar amount of over $1.4 million) were referred for potential state criminal prosecution.

Professional division staff investigate complex fraud cases. Many of these professionals have past experience in law enforcement.

All criminal investigations completed by benefit fraud investigators are referred to our Bureau of Legal Affairs (BOLA) for review by legal and investigative staff to ensure the investigations meet division standards for prosecution.

After review, BOLA staff refer the cases to either a county district attorney or the DOJ. BOLA acts as the liaison between the division and the prosecuting agency as the case moves through the criminal justice system. BOLA staff serve as advocates at sentencing for the division and for the claimants and employers who properly utilize the UI program.

The UI Division continues to partner with the Worker's Compensation Division to jointly fund a full-time assistant attorney general (AAG) position at DOJ. The AAG prosecutes Unemployment Insurance fraud primarily in Milwaukee County and Worker's Compensation fraud statewide. The AAG also provides advice and guidance to local prosecutors on UI fraud cases.

In addition, the division works with the U.S. Department of Labor, Office of Inspector General on complex fraud cases.

Enhanced UI Fraud Penalties

Increased penalties for individuals who intentionally commit acts of unemployment benefit fraud went into effect in April 2018. Previously, the criminal penalty for knowingly making a false statement or representation to obtain UI benefits was an unclassified misdemeanor. 2017 Wisconsin Act 147 revised the criminal penalties for UI fraud to a structured scale that increases with the dollar amount of benefits fraudulently obtained, making the penalties for UI fraud consistent with those of other types of theft.

"DWD's enhanced program integrity efforts are critical to identifying and eliminating unemployment benefit fraud, which helps ensure a fair system with the financial resources to assist workers who lose their job through no fault of their own."

- Scott Manley, UIAC Member

ADDENDA

Addendum A – Overpayment Data

HISTORICAL DATA ON BENEFIT PAYMENTS 2014-2018

	Combined State & Federal	2018	2017	2016	2015	2014
	Total Federal & State UI Paid	$416,023,272	$453,715,534	$511,891,628	$605,481,027	$732,327,104
+	**Fraud Overpayment**[1]	$4,900,271	$5,016,369	$8,655,187	$13,384,998	$20,455,759
	Number of Cases	4,755	5,132	8,438	9,793	13,034
	Avg. Overpayment	$1,031	$977	$1,026	$1,367	$15,569
+	**Non-Fraud Overpayment**[1]	$8,202,583	$8,922,443	$8,902,765	$11,878,072	$16,891,299
	Number of Cases	44,634	48,484	59,362	78,851	105,758
	Avg. Overpayment	$184	$184	$150	$151	$160
=	**OVERPAYMENT TOTALS**	$13,102,854	$13,938,812	$17,557,952	$25,263,070	$37,347,058
	NUMBER OF CASES TOTAL	49,389	53,616	67,800	88,644	118,792
	Avg. Overpayment	$265	$260	$259	$285	$314

[1]Overpayment figures reflect the amounts detected in the stated calendar year. A portion of those overpayments would have been disbursed in prior calendar years.

FRAUD OVERPAYMENT DETECTION AMOUNTS AND DECISIONS BY SOURCE FOR 2017-2018

Detection Method	2018		2017	
	Amount	Decisions	Amount	Decisions
Wage Record Cross-Match	$1,397,016	1,130	$1,621,722	1,265
Agency Detection - Not Covered by Other Codes	$1,252,327	1,059	$1,331,325	1,140
State New Hire Cross-Match	$528,398	935	$502,833	965
Liable Employer Protests Benefit Charges	$417,559	501	$434,745	525
Tips and Leads from Other than Liable Employer	$383,799	243	$250,602	197
Audit of Work Search	$181,230	124	$210,709	184
Post Verification - No Wages Reported	$161,292	158	$161,322	134
Post Verification of Wages	$155,638	35	-	-
Claimant Initiated	$149,921	328	$192,267	434
National New Hire Cross-Match	$126,597	71	$123,782	70
Appriss Inmate Cross-Match	$55,053	85	$41,875	98
Interstate Cross-Match	$53,297	52	$62,124	65
Quality Control	$24,490	16	$22,212	16
Fictitious Employer Cases	$8,844	13	$9,078	19
Inmate Cross-Match	$2,960	3	$28,081	14
Field Audit Discoveries	$1,850	2	$3,783	1
Reversals	$0	0	$18,999	2
State Payroll Cross-Match	$0	0	$573	2
Federal Wage Cross-Match	$0	0	$337	1
Total	**$4,900,271**	**4,755**	**$5,016,369**	**5,132**

Addendum A continued - Overpayment Data

NON-FRAUD OVERPAYMENT DETECTION AMOUNTS AND DECISIONS BY SOURCE FOR 2017-2018

Detection Method	2018		2017	
	Amount	Decisions	Amount	Decisions
Audit of Work Search	$3,074,081	6,060	$3,099,373	6,137
Post Verification of Wages	$1,389,187	29,274	$1,404,792	31,494
Liable Employer Protests Benefit Charges	$1,006,383	2,517	$1,091,571	2,724
Agency Detection - Not Covered by Other Codes	$728,450	1,466	$1,064,338	1,844
Reversals	$578,859	313	$502,009	278
Claimant Initiated	$569,669	2,304	$826,493	3,054
Tips and Leads from Other than Liable Employer	$272,431	689	$258,182	690
Wage Record Cross-Match	$205,390	528	$245,547	579
State New Hire Cross-Match	$155,451	642	$199,917	807
Post Verification - No Wages Reported	$107,837	614	$114,559	602
Quality Control	$41,250	85	$58,172	108
SSDI Cross-Match*	$26,713	16	-	-
Appriss Inmate Cross-Match	$26,595	68	$39,670	123
Field Audit Discoveries	$14,956	34	$4,440	1
National New Hire Cross-Match	$3,371	17	$6,848	24
Federal Wage Cross-Match	$1,062	2	$0	0
Inmate Cross-Match	$886	4	$5,262	15
Interstate Cross-Match	$12	1	$1,270	4
Total	**$8,202,583**	**44,634**	**$8,922,443**	**48,484**

*SSDI crossmatch was implemented in August 2018

Addendum B – Collection Data

OVERPAYMENT RECOVERIES IN 2018 BY YEAR OF THE DECISION

Year Identified	Fraud	Non-fraud	Total
2018	$647,351	$4,882,716	$5,530,067
2017	$1,889,093	$1,616,101	$3,505,194
2016	$1,105,699	$362,652	$1,468,351
2015	$968,118	$231,163	$1,199,281
2014	$1,080,700	$269,253	$1,349,953
2013	$1,020,193	$321,946	$1,342,139
Older Than Five Years	$4,010,065	$1,735,525	$5,745,590
Total collected in 2018	**$10,721,219**	**$9,419,356**	**$20,140,575**

Addendum B continued – Collection Data

BENEFIT OVERPAYMENT RECOVERIES 2014 - 2018

Federal Tax Offset Program Recoveries	2018	2017	2016	2015	2014
Fraud	$2,584,192	$4,046,395	$5,713,579	$7,495,899	$8,206,781
Non-Fraud	$166,405	$293,010	$591,933	$867,815	$1,030,964
Other*	$508,653	$677,632	$549,526	$692,655	$409,503
Total	**$3,259,250**	**$5,017,037**	**$6,855,038**	**$9,056,369**	**$9,647,248**

State Tax Offset Program Recoveries	2018	2017	2016	2015	2014
Fraud	$627,995	$939,187	$1,323,466	$1,516,003	$2,219,663
Non-Fraud	$855,692	$907,126	$1,276,997	$1,655,580	$2,555,895
Other*	$248,908	$376,553	$390,332	$358,514	$255,895
Total	**$1,732,595**	**$2,222,866**	**$2,990,795**	**$3,530,097**	**$5,031,453**

Intercept of Unemployment Benefits	2018	2017	2016	2015	2014
Fraud	$411,538	$477,693	$619,255	$782,127	$1,325,031
Non-Fraud	$4,064,752	$4,360,089	$4,551,321	$5,481,994	$7,448,546
Other*	$9,247	$9,080	$10,482	$16,066	$12,076
Total	**$4,485,537**	**$4,846,862**	**$5,181,058**	**$6,280,187**	**$8,785,653**

Checks, EFT Payments, & Recoupments from Other States	2018	2017	2016	2015	2014
Fraud	$7,097,494	$8,789,594	$10,401,445	$10,925,165	$10,022,181
Non-Fraud	$4,332,507	$4,666,413	$5,461,918	$6,782,314	$7,650,981
Other*	$1,513,384	$1,749,807	$2,000,422	$1,726,034	$1,521,323
Total	**$12,943,385**	**$15,205,814**	**$17,863,785**	**$19,433,513**	**$19,194,485**

*Other includes items such as penalties and collection costs

Addendum B continued – Collection Data

FORFEITURE ASSESSMENT AND COLLECTION, BENEFIT AMOUNT REDUCTION AND PENALTY ASSESSMENT AND COLLECTION 2014-2018

Other Fraud-Related Activity	2018	2017	2016	2015	2014
Forfeitures Assessed	$137,705	$114,996	$295,848	$716,823	$2,073,555
Benefit Amount Reduction	$13,183,450	$13,912,308	$22,480,473	$30,152,510	$43,264,146
Penalties Assessed	$1,899,471	$1,961,063	$3,368,650	$2,532,081	$2,823,964
Recovered for All Years Assessed	**2018**	**2017**	**2016**	**2015**	**2014**
Forfeitures Collected	$267,229	$531,459	$1,109,493	$1,748,211	$3,309,935
BAR Satisfied	$4,115,052	$4,405,349	$5,292,259	$5,050,371	$5,133,741
Penalties Collected	$1,874,976	$2,313,408	$2,362,788	$2,133,735	$1,774,331
Overpayments Collected	**2018**	**2017**	**2016**	**2015**	**2014**
Fraud	$10,721,219	$14,252,869	$18,057,745	$20,719,194	$21,773,656
Non-Fraud	$9,419,356	$10,226,638	$11,882,169	$14,787,703	$18,686,386
Total	**$20,140,575**	**$24,479,507**	**$29,939,914**	**$35,506,897**	**$40,460,042**

STATE OF WISCONSIN
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D19-01
Reimbursable Employer Debt Assessment Charging

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Reimbursable Employer Debt Assessment Charging

1. Description of Proposed Change

When employers subject to reimbursement unemployment insurance financing ("self-insured") are charged for benefits that are based on identity theft, the Department restores those charges to the employers' accounts from the balancing account.[1] The 2015 – 2016 UIAC agreed bill (2015 Wis. Act 334) required that the Department set aside $2 million in the balancing account, plus interest, to pay identity theft charges to reimbursable employers' accounts. To date, less than $1,500 of identity theft charges have been restored from these funds. Approximately $104,000 of interest has accrued on the initial $2 million.

When non-profit reimbursable employers fail to pay for the benefits charged, the Department may apply payments from those employers' assurances.[2] Government units and Indian tribes are not required to submit an assurance to qualify for reimbursable financing. Currently, a non-profit reimbursable employer's assurance must be a surety bond, letter of credit, certificate of deposit, or another nonnegotiable instrument of fixed value.[3]

If a non-profit reimbursable employer closes but its assurance is insufficient to cover all benefit charges to that employer, the Department may attempt to collect the remaining charges. If a non-profit reimbursable employer's benefit charges are uncollectible, the Department assesses

[1] Wis. Stat. § 108.155.
[2] Wis. Stat. § 108.151(4).
[3] Wis. Stat. § 108.151(4)(a).

other non-profit reimbursable employers for the uncollectible amounts.[4] This is known as the reimbursable employer debt assessment or "REDA."

The REDA to recover uncollectible reimbursements must be at least $5,000 but no more than $200,000 and each non-profit employer assessed pays the assessment based on the employer's payroll. Employers for whom the assessment would be less than $10 are not assessed, which usually results in about half of non-profit reimbursable employers not being assessed the REDA. The REDA process has administrative costs for the Department and employers, such as the issuance of small bills to employers, answering employers' questions about the assessment, and collecting the assessment.

The Department proposes that a limited amount of the reimbursable employer identity theft fraud funds set aside in the balancing account be made available to recover uncollectible reimbursements instead of assessing the REDA (or to reduce the amount of the REDA). This would greatly reduce administrative costs to the Department and non-profit reimbursable employers and relieve those employers of having to pay the REDA. The Department proposes that the identity theft fraud funds be used to pay the REDA only if the use of those funds would not reduce the balance of the funds below $1.75 million. This would ensure that the bulk of the identity theft fraud funds are available for restoring identity theft charges.

The Department also proposes to increase the minimum amount of the REDA from $10 to $20, which would reduce the administrative costs of assessing the REDA.

[4] Wis. Stat. § 108.151(7).

2. Proposed Statutory Changes

Section 108.151 (7) (f) of the statutes is amended to read:

If any employer would otherwise be assessed an amount less than ~~$10~~ $20 for a calendar year, the department shall, in lieu of requiring that employer to pay an assessment for that calendar year, apply the amount that the employer would have been required to pay to the other employers on a pro rata basis.

Section 108.151 (7) (i) of the statutes is created to read:

In lieu of assessing the assessment under this subsection, the fund's treasurer may apply amounts set aside under s. 108.155(2) (a) to amounts determined to be uncollectible under par. (c). The fund's treasurer may not act under this paragraph if the amounts set aside under s. 108.155(2) (a), plus interest, are less than $1,750,000 as of June 1 of each year.

3. Effects of Proposed Change

a. Policy. The proposal will reduce administrative burdens and increase the efficiency of recovering uncollectible reimbursements.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D19-01
Reimbursable Employer Debt Assessment Charging

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Trust Fund Impact:

This law change proposal could have a negative Trust Fund impact of up to $330,000 in a given year. This impact could be greater, significantly less, or none depending on the year.

IT and Administrative Impact:

This law change proposal has no IT impact. One-time administrative impact is negligible.

This law change proposal will result in minimal ongoing administrative savings depending on the year. However, most of this savings comes from staff hours that would now be spent doing other higher-value added work.

Summary of Law Change Proposal:

This law change proposes that a limited amount of the reimbursable employer identity theft fraud (REITF) funds set aside in the balancing account be made available to recover uncollectible reimbursements instead of assessing the Reimbursable Employer Debt Assessment (REDA), or to reduce the amount of the REDA. The REITF funds will be used to pay REDA only if the use of those funds would not reduce the balance of the funds below $1,750,000. This proposal also increases the minimum amount of the REDA from $10 to $20.

Trust Fund Methodology:

This law change proposal could have a negative Trust Fund impact of up to $330,000 based the current amount of REITF funds available ($2 million plus $104,000 in interest). This impact would be due to writing off reimbursable debt in lieu of billing and is at the fund's treasurer's discretion. This Trust Fund impact could become greater if the amount of REITF funds increases; or, the impact could be significantly less, or none, if less REDA or no REDA is written off in a given year.

IT and Administrative Impact Methodology:

This law change proposal has no IT impact and negligible one-time administrative costs for staff training purposes.

The ongoing administrative savings is estimated as $3,169. This impact could be significantly less or none depending on the year. This is based on printing and mailing cost savings of approximately $700 when REDA is not assessed. It is also based on administrative staff time

savings of approximately 40 hours or about $2,469 when REDA is not assessed. However, these hours would now be spent doing other higher-value added work. If REDA is assessed, increasing the minimum amount of REDA from $10 to $20 reduces the ongoing administrative burden by eliminating several accounts requiring the assessment.

D19-02
Assessment for Failure to Produce Records

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Assessment for Failure to Produce Records

1. Description of Proposed Change

Under current law, employing units are required to maintain work records and must allow the Department to audit those records.[1] When the Department intends to audit an employer, it sends a written notice to the employer requesting information regarding the employer's employment records. If the employer does not respond, the Department issues a second written request to the employer. If the employer fails to respond to the second written request, the Department issues a subpoena to the employer.[2] When the Department issues a subpoena, the Department must pay a fee to have the subpoena served by a sheriff.

About 40% of employers served with audit subpoenas provide an inadequate response or fail to respond to the subpoena. When an employer fails to comply with a subpoena, the Department's remedy is to enforce the subpoena in Circuit Court requesting that the employer be held in contempt. This is a time-consuming process that the Department has started to use.

The Department proposes to change the law to assess an administrative penalty of the greater of $500.00 or 25 percent of the amount of additional UI tax on any adjustment made by the Department that results from a person's failure to produce subpoenaed records to the Department. The Department will rescind the penalty if the employer fully complies with the subpoena within 20 calendar days of the issuance of the penalty. The intent of this proposal is to ensure employer compliance with requests for wage data.

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[1] Wis. Stat. § 108.21(1).
[2] Wis. Stat. § 108.14(2m).

The Wisconsin Department of Revenue may impose a similar assessment for a taxpayer's failure to produce requested records.[3]

The assessment for failing to produce records would be deposited into the program integrity fund.

2. **Proposed Statutory Change**

Section 108.19 (1s) (a) 7. of the statutes is created to read:

7. Assessments under s. 108.215.

Section 108.215 of the statutes is created to read:

Penalty for failure to produce records. (1) The department shall assess a penalty of the greater of $500.00 or 25 percent of the amount of additional amounts due under this chapter on any adjustments made by the department that results from any person who fails to comply with a department subpoena for records.

(2) The department may issue a penalty under this section only if the subpoena contains a warning that, if the requested records are not produced by the date specified on the subpoena, the department shall assess the penalty under this section.

(3) The penalty under this section shall be an appealable determination under s. 108.10.

(4) The department shall set aside an assessment issued under this section if the department determines that the person has fully complied with the subpoena within 20 days after the determination assessing the penalty is issued.

(5) Assessments under this section shall be deposited into the unemployment program integrity fund.

[3] Wis. Stat. § 71.80(9m): WI-DOR may impose a penalty of "the greater of $500 or 25 percent of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records."

3. Effects of Proposed Change

a. Policy. This proposal should result in the Department completing a higher percentage of audits of employer accounts and should reduce delays in the audit process.

b. Administrative. The audit staff will need to be trained on the changes resulting from this proposal. The Department must make technology changes to implement this proposal.

c. Fiscal. A fiscal estimate will be provided at a later date.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle and would apply to subpoenas issued after the effective date of the proposal.

D19-03
Fiscal Agent Election of Employer Status

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Fiscal Agent Election of Employer Status

1. Description of Proposed Change

Individuals who receive long-term support services in their home through government-funded care programs are employers under Wisconsin's unemployment insurance law. These employers receive financial services from fiscal agents, who directly receive and disperse government program funds. The fiscal agent is responsible for reporting employees who provide services for the employers to the Department, and for paying unemployment tax liability on behalf of the employer.[1] Currently, approximately 16,000 employers in Wisconsin receive government-funded care and use a fiscal agent.

During the previous legislative session, the Legislature enacted the Department's proposal to permit the Department to assess fiscal agents with joint and several liability for the unemployment tax of employers who use fiscal agents.[2]

2011 WI Act 198 created a provision that permits home health care providers to elect to be the employer of workers who provide home health care services under chapter 49.[3] A home health care provider electing coverage as the employer must notify the recipient of the election and must be treated as the employer for federal unemployment tax purposes.

The Department proposes another law change related to fiscal agents that would permit private fiscal agents (not government units) to elect to be the employer of workers who provide care services under chapters 46, 47, and 51. The fiscal agents would be required to inform the

[1] Wis. Stat. § 46.27(5)(i).
[2] Wis. Stat. § 108.22(10).
[3] Wis. Stat. § 108.065(3).

recipient of care of the election and would need to be treated as the employer for federal unemployment tax purposes. This proposal is expected to simplify unemployment insurance reporting requirements for fiscal agents.

If the worker is one of a certain class of family members of the person receiving care, the worker is currently ineligible for unemployment benefits when the employment relationship ends.[4] Under this proposal, a worker who is a family member of the person receiving care would be an employee of the fiscal agent and would be eligible for unemployment benefits. Benefits would be charged to the fiscal agent's account, which would affect its experience rating.

2. Proposed Statutory Changes

Section 108.065 (3m) of the statutes is created to read:

Notwithstanding s. 108.02 (13) (k), a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent for recipients of services under chs. 46, 47, or 51 may elect to be the employer of one or more workers who provide services for those recipients. As a condition of eligibility for election to be the employer under this subsection, the private agency shall notify in writing the recipient of services of its election, for purposes of the unemployment insurance law, to be the employer of any worker providing such services to the recipient. To be eligible for election under this subsection, the private agency must be treated as the employer of the worker for purposes of 26 USC 3301 to 3311.

[4] Wis. Stat. § 108.02(15)(km) ("'Employment,' as applied to work for a given employer other than a government unit or a nonprofit organization, except as the employer elects otherwise with the department's approval, does not include service provided by an individual to an ill or disabled family member who is the employing unit for such service, if the service is personal care or companionship. For purposes of this paragraph, 'family member' means a spouse, parent, child, grandparent, or grandchild of an individual, by blood or adoption, or an individual's step parent, step child, or domestic partner. In this paragraph, 'domestic partner' has the meaning given in s. 770.01 (1).")

3. Effects of Proposed Change

a. Policy. This proposal will simplify reporting requirements for fiscal agents.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D19-03
Fiscal Agent Election of Employer Status

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Trust Fund Impact:

The immediate Trust Fund impact of this law change proposal cannot be determined. It may result in additional tax revenue as well as additional benefit payments. The assumption is that over time this proposal would have a net-zero impact on the Trust Fund.

IT and Administrative Impact:

This law change proposal is not expected to have an IT impact.

The one-time administrative *cost* is estimated at 80 hours or $3,830. The ongoing administrative *savings* is estimated at 3 FTE positions or a savings of $300,000 annually; however, these staff savings would be absorbed through other higher value-added work.

Summary of Proposal:

This law change proposal would permit private fiscal agents (not government units) to elect to be the employer of workers who provide care services to individuals who receive long-term support services in their home through government-funded care programs. The fiscal agents would be required to inform the recipient of care of the election and would need to be treated as the employer for federal unemployment tax purposes.

Trust Fund Methodology:

Though this law change proposal would result in the employer accounts of individuals who receive long-term care to be converted and condensed into the employer accounts of fiscal agents, it is assumed that the overall amount of tax revenue and benefits paid would remain neutral. However, this does not take into account the 108.02(15)(km) exclusion (*the exclusion of personal care services performed by an individual to an ill or disabled family member who directly employs individual).* The fiscal agent, now the employer in lieu of the family member receiving care, would be required to report such caregivers' wages and pay unemployment taxes on these employees, which could potentially affect the fiscal agents experience rating.

Excluded wages are not reported to the Unemployment Insurance Division, thus the amount of employee wages currently excluded that would now become reportable cannot be determined.

In 2018, there were approximately 93 determinations excluding wages from benefit claims under 108.02(15)(km). Assuming the individual had no other base period wages this would result in approximately $354,330 in additional benefits paid annually (assuming an average weekly benefit amount of $300 and average weeks paid of 12.7). Adjusting for taxes, this would result

in an approximately $233,857 cost to the Trust Fund. However, this does not take into account the additional tax revenue on employee whose wages would no longer be excluded from UI coverage.

In summary, this proposal could result in:

- More tax revenue received and more benefits paid based on previously excluded wages under 108.02(15)(km); however, this amount cannot be established.
- Fewer benefit overpayments based on the 108.02(15)(km) exclusion estimated at $100,000 annually. This is because under this proposal these benefits would now be payable. However, most overpayments are collected (at least 80%) thus this would not have a significant impact on the Trust Fund.

The Trust Fund impact of this law change proposal cannot be determined. It may result in additional tax revenue as well as additional benefit payments as more workers now become covered employees. The assumption is that over time taxes will balance to offset benefit payments so that the net effect to the Trust Fund will be approximately zero.

IT and Administrative Impact Methodology:

Per subject matter experts, this law change proposal is not expected to have an IT impact. There would be minimal changes needed within SUITES.

Per subject matter experts, this law change proposal is estimated to have a one-time administrative cost of approximately 80 hours or about $3,830 to collapse 14,400 employer accounts into approximately 18 fiscal agent accounts, assuming the majority (per subject matter expert) would take the election.

This proposal would significantly reduce the ongoing administrative burden and decrease confusion about employer identities. Subject matter experts estimate the ongoing administrative staff savings of approximately 3 FTE positions or about $300,000 annually. However, these staff savings would be absorbed through other higher value-added work.

D19-04
Clarification of Employee Status Statute

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Clarification of Employee Status Statute

1. Description of Proposed Change

When an individual performs services for pay for an employing unit, it is presumed the individual is an employee for purposes of Wisconsin Unemployment Insurance law.[1] The employing unit must prove that the individual meets the conditions of a two-part test to overcome that presumption and be excluded from the definition of employee.[2]

In 1982, the Wisconsin Supreme Court decided *Star Line Trucking Corp. v. Dep't of Indus., Labor & Human Relations*, 109 Wis. 2d 266, 325 N.W.2d 872 (1982). *Star Line* held that the mere inclusion of required Public Service Commission Administrative Code language regarding the "exclusive possession, control, and use of the motor vehicle" in a trucking lease contract was insufficient to show that the carrier has direction and control over the driver. The Public Service Commission rule required motor vehicle leases to include the possession, control, and use language.

Under current law, in deciding whether an individual meets the conditions of the two-part test the Department and appeal tribunals are prohibited from considering "documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses" when analyzing certain factors of the test.[3] This provision was included in

[1] Wis. Stat. § 108.02(12)(a).
[2] Wis. Stat. §§ 108.02(12)(bm) and (c).
[3] Wis. Stat. §§ 108.09(2)(bm) and 108.09(4s). *See also* Wis. Admin. Code DWD §§ 105.02 and 107.02 ("The department believes it is unreasonable to consider mandates of law as evidence because they have not been imposed on the relationship between the parties of their own volition.")

the unemployment law in 1995, when the Worker's Compensation employee status test was adopted.[4]

The Department proposes to amend sections 108.09(2)(bm) and 108.09(4s) to provide that all issues of unemployment insurance employee status may only be determined under Wisconsin unemployment statutes and rules. This proposal will provide consistency in determining individuals' eligibility for unemployment benefits and employers' unemployment insurance tax liability by limiting the employee status inquiry to the provisions of the unemployment insurance law.

Under this law change, for example, it would be clear that the Department would not rely on the fact that a salon requires its cosmetologists to have a cosmetology license when analyzing the cosmetologists' services under the employee status test because cosmetologists are required by law to have a license to perform those services in Wisconsin.

2. Proposed Statutory Changes

Section 108.09(2)(bm) of the statutes is renumbered 108.02 (12) (cm) and amended to read:

(cm) In determining whether an individual meets the conditions specified in ~~s. 108.02 (12) (bm) 2. b. or c. or (c) 1., the department shall not consider~~ paragraphs (a), (bm), and (c), only this chapter and the rules promulgated by the department under the authority granted to the department by this chapter shall apply. Any other state or federal law, rule, regulation, or guidance shall not apply. ~~documents~~ Documents granting operating authority or licenses shall not be considered ~~or any other state or federal laws or federal regulations granting such authority or licenses~~.

[4] 1995 WI Act 118.

D19-04
Clarification of Employee Status Statute

Section 108.09(4s) of the statutes is repealed:

~~Employee status. In determining whether an individual meets the conditions specified in s. 108.02 (12) (bm) 2. b. or c. or (c) 1., the appeal tribunal shall not take administrative notice of or admit into evidence documents granting operating authority or licenses, or any state or federal laws or federal regulations granting such authority or licenses.~~

3. Effects of Proposed Change

a. Policy. The proposed change will prevent confusion and provide consistency when determining whether an individual's services meet the conditions for the individual to be classified as an employee under unemployment insurance law.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective for services performed on and after January 1, 2020.

D19-04
Clarification of Employee Status Statute

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Trust Fund Impact:

This law change proposal would have a positive but negligible impact on the Trust Fund.

IT Impact and Administrative Impact:

This law change proposal would have no IT impact and a negligible one-time administrative impact.

Summary of Proposal:

This proposal amends sections 108.09(2)(bm) and 108.09(4s) to provide that all issues of unemployment insurance employee status may only be determined under Wisconsin unemployment statutes and rules. This proposal will provide consistency in determining individuals' eligibility for unemployment benefits and employers' unemployment insurance tax liability by limiting the employee status inquiry to the provisions of the unemployment insurance law.

Trust Fund Methodology:

Cases from 2017 dealing with employee status that may be affected by this law change proposal that were appealed to the ALJ level were reviewed for this estimate. In these cases, the claimants were consistently ruled as employees on the adjudication level, but that classification may have been overturned at the ALJ level and the claimants ruled as independent contractors. This may be because employee status was not determined exclusively under Wisconsin unemployment statutes and rules. This law change proposal intends to bring consistency to the employee status ruling by limiting the employee status inquiry to the provisions of the unemployment insurance law. However, based on the quantity of cases appealed, it would not have a significant impact on the Trust Fund.

IT and Administrative Impact Methodology:

Per subject matter experts, this proposal is codifying current practice and would not have any IT or administrative impact on the adjudication level. This is expected to have a negligible one-time administrative impact on the ALJ level due to staff training.

D19-05
Clarification of Exemptions Laws

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Clarification of Exemptions Laws

1. Description of Proposed Change

The Department uses administrative remedies to collect delinquent unemployment insurance taxes from employers and benefit overpayments from claimants. These administrative procedures enable the Department to save time and expense by avoiding the lengthy traditional process of filing suit and then collecting on a judgment. Unemployment insurance debts become perfected liens on all the debtor's real or personal property in Wisconsin.[1] The Department issues warrants for debts, which are filed with a circuit court clerk.[2] The Department may also levy personal property.[3]

Under the unemployment law, certain wages and assets are exempt from levy but there are no exemptions for seizures by executing warrants.[4] State law (outside the unemployment law) provides certain exemptions when property is seized by execution,[5] but some state agencies are excepted from those protections.[6]

Other statutes provide state agencies with similar administrative levies to collect debts, including debts owed the Department for unpaid worker's compensation insurance payments[7] and debts owed the Department of Revenue for delinquent income and franchise taxes.[8] While each

[1] Wis. Stat. § 108.22(1m).
[2] Wis. Stat. § 108.22(2) and (3).
[3] Wis. Stat. § 108.225.
[4] Wis. Stat. § 108.225(16) and (17).
[5] Wis. Stat. § 815.18.
[6] Wis. Stat. § 815.18(3).
[7] Wis. Stat. § 102.85, implemented through Wis. Stat. §102.835.
[8] Wis. Stat. § 71.91(5m) and (6)

of those administrative levy laws provides for very limited exemptions for debtors, those collection laws are also specifically excepted from the broader exemption from execution law that protects debtors' assets.[9] The unemployment insurance collections provisions are not referenced in those exceptions.

Current law sets forth very limited exemptions to the Department's administrative debt collection powers and therefore the Department finds the exemption from execution law does not apply to its administrative levies, which are not executions. The proposed law change clarifies that debtor exemptions outside of the unemployment law do not apply to the Department's administrative collection procedures for unemployment debts. The provisions currently contained in unemployment law which provide that the first $1,000 in a bank account and certain wages are exempt from levy to recover benefit overpayments or fraud penalties will remain in place. This will align the Department's unemployment collections authority with its worker's compensation collection authority as well as with the Department of Revenue's authority to collect delinquent taxes.

2. Proposed Statutory Changes

Section 108.22 (3m) of the statutes is created to read:

(3m) The exemptions of property from seizure and sale in ss. 815.18 to 815.21 do not apply to an action or proceeding by the department under this chapter or under ch. 811, s. 812.01 to 24, or ch. 815 to collect amounts due under this chapter.

Section 108.225 (17) of the statutes is amended to read:

(17) EXEMPTIONS. The first $1,000 of an account in a depository institution is exempt from any levy to recover a benefit overpayment or penalty imposed under s. 108.04 (11) (bh). No

[9] Wis. Stat. § 815.18 (3).

other property, including property described in ss. 815.18 to 815.21, is exempt from levy except as provided in sub. (16).

Section 815.18 (3) of the statutes is amended to read:

(3) EXEMPT PROPERTY. The debtor's interest in or right to receive the following property is exempt, except as specifically provided in this section and ss. 70.20 (2), 71.91 (5m) and (6), 74.55 (2), ~~and~~ 102.28 (5), 108.22 (3m), and 108.225 (16) and (17):

3. Effects of Proposed Change

a. Policy. The proposed change will result in increased recovery of debts owed to the Department and decrease Department legal personnel time involved with defending collections procedures. The law change will align Wisconsin's unemployment insurance collection procedures with delinquent workers compensation insurance and Department of Revenue delinquent tax collection procedures.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D19-05
Clarification of Exemptions Laws

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Trust Fund Impact:

This law change proposal does not change current levy practices and will not have an impact on the Trust Fund.

IT and Administrative Impact:

This law change proposal does not have an IT or administrative impact.

Summary of Proposal:

This proposal clarifies that debtor exemptions outside of the unemployment law apply to the Department's administrative collection procedures for unemployment debts. This will align the Department's unemployment collections authority with its worker's compensation collection authority as well as with the Department of Revenue's authority to collect delinquent taxes.

Trust Fund Methodology:

Per subject matter experts, this proposal does not change current levy practices, thus there would be no Trust Fund impact.

IT and Administrative Impact Methodology:

Per subject matter experts, this proposal does not change current levy practices, thus there would be no IT or administrative impact.

D19-06
SUTA Dumping Penalty

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
SUTA Dumping Penalty

1. Description of Proposed Change

A transferee of a business transfer is a mandatory successor to the unemployment insurance account of a transferor if: (1) the transferor and transferee are owned, managed, or controlled by the same interests; (2) the transferee continues the transferor's business or employs the same employees; and (3) the same unemployment financing provisions apply to the transferor and transferee.[1] Assessing mandatory successor status to a transferee dissuades employers from closing down a business with a high unemployment insurance tax rate and opening a "new" business to obtain a lower tax rate. This is known as "SUTA dumping."

If a substantial purpose of a business transfer is to obtain a reduced contribution rate, the transferee will not receive the lower contribution rate.[2]

The federal SUTA Dumping Prevention Act[3] requires states to enact "meaningful civil and criminal penalties" for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to "dump" their unemployment insurance experience.

Current law penalizes for making false statements to the Department regarding a mandatory successor investigation and for advising others to do so.[4] If the person making the false

[1] Wis. Stat. § 108.16(8)(e).
[2] Wis. Stat. §§ 108.16(8)(em) and (im).
[3] 42 U.S.C. § 503(k).
[4] Wis. Stat. § 108.16(8)(m).

statement or the person who advised the person to make the false statement are not employers, the person forfeits up to $5,000.

The Department proposes to create meaningful civil and criminal penalties for knowingly violating or attempting to violate mandatory successor requirements. The amount of the penalty will be the greater of $25,000 or an amount equal to the amount of UI tax owed by the predecessor entity, to be deposited into the program integrity fund. Similar criminal penalties will be created.

The Department also proposes to modify the forfeiture for making false statements or advising someone to make false statements to be a penalty of $5,000 that will be deposited into the program integrity fund. This will make the treatment of the existing forfeiture provision consistent with the new proposed penalty.

2. Proposed Statutory Changes

Section 108.16 (8) (m) 2. of the statutes is amended to read:

2. If the person is not an employer, ~~the person may be required to forfeit not more than~~ the department shall assess the person a penalty of $5,000 in a determination under s. 108.10, which shall be deposited in the unemployment program integrity fund.

Section 108.16 (8) (mm) of the statutes is created to read:

1. Any person identified under pars. (em) or (im), or any person that knowingly advises another person to transfer a business asset or activity solely or primarily for the purpose of obtaining a lower contribution rate, including by willful evasion, nondisclosure, or misrepresentation, is subject to the following penalties:

a. If the person is an employer, the department shall assess the employer a penalty that is the greater of $25,000 or the amount of contributions owed by the employer on the date of the transfer.

b. If the person is not an employer, the department shall assess the person a penalty of $25,000 in a determination under s. 108.10.

c. The person is guilty of a Class A misdemeanor.[5]

2. Assessments under a. and b. shall be deposited in the unemployment program integrity fund.

3. For the purposes of this paragraph and par. (m), "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the statute violated.

Section 108.16 (8) (o) of the statutes is amended to read:

Paragraphs (e) 1., (em), (h), (im), ~~and~~ (m)<u>, and (mm)</u> shall be interpreted and applied~~, insofar as possible,~~ to meet the minimum requirements of any guidance issued by or regulations promulgated by the U.S. department of labor.

Section 108.18 (1) (a) of the statutes is amended to read:

Unless a penalty applies under s. 108.16 (8) (m), each employer shall pay contributions to the fund for each calendar year at whatever rate on the employer's payroll for that year ~~duly~~ applies to the employer ~~pursuant to~~ <u>under</u> this section.

Section 108.19 (1s) (a) 7. of the statutes is created to read:

<u>Assessments under ss. 108.16 (8) (m) 2. and (mm).</u>

3. <u>Effects of Proposed Change</u>

a. <u>Policy.</u> The proposed is expected to deter employers from attempting to "dump" their unemployment insurance experience rating and delinquent taxes.

b. <u>Administrative</u>. This proposal will require training of Department staff.

c. <u>Fiscal</u>. A fiscal estimate is attached.

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[5] The maximum penalty for a Class A misdemeanor is up to $10,000 fine or imprisonment up to 9 months, or both.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review. The SUTA Dumping Prevention Act requires states to enact "meaningful civil and criminal penalties" for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to "dump" their unemployment insurance experience.

5. Proposed Effective/Applicability Date

This proposal would be effective for transfers of business occurring on or after January 1, 2020.

D19-06
SUTA Dumping Penalty

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Trust Fund Impact:

This law change proposal would save the Trust Fund up to $7,000 annually in increased taxes, which is considered a positive but negligible impact on the Trust Fund.

IT and Administrative Impact:

The one-time IT impact would be approximately 250 hours or $22,000. The one-time administrative impact would be approximately 30% of the IT impact or $6,600. The total one-time impact is estimated at $28,600.

Any penalties would flow to the UI Program Integrity Fund.

Summary of Proposal:

This law change proposal would create meaningful civil and criminal penalties for knowingly violating or attempting to violate mandatory successor requirements. The amount of the penalty will be the greater of $25,000 or the amount of UI tax owed by the predecessor entity at the time of the transfer, to be deposited into the UI Program Integrity Fund. Similar criminal penalties will be created. This law change proposal would also modify the forfeiture for making false statements or advising someone to make false statements to be a penalty of $5,000 that will be deposited into the UI Program Integrity Fund.

Trust Fund Methodology:

Based on 2017 data, the Trust Fund impact would be up to $7,000 annually in increased tax revenue, if SUTA dumping is eliminated based on incentivized compliance.

IT and Administrative Impact Methodology:

Based on subject matter expert assessment, the one-time IT impact would be approximately 250 hours or $22,000. This estimate is based on changes required to SUITES. The one-time administrative impact would be approximately 30% of the IT impact or $6,600. The total one-time impact is estimated at $28,600.

Note: If the IT work for both SUTA Dumping Penalty and Assessment for Failure to Produce Records Penalty were done at the same time, the IT impact would be approximately 250 hours <u>total</u> for both.

Any penalties would flow to the UI Program Integrity Fund. Based on 2017 data, approximately 7 employers during that timeframe could have been subject to the $25,000 penalty (or $140,000 total based on an 80% penalty collection rate), none of which included false statements that would be subject to the $5,000 penalty. This penalty is intended to enforce tax compliance.

D19-07
Departmental Error

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Departmental Error

1. Description of Proposed Change

Current law provides that the Department "shall waive recovery of benefits that were erroneously paid if the overpayment was the result of a departmental error…."[1] "Departmental error" includes errors that the Department made "in computing or paying benefits which results exclusively from...a mathematical mistake, miscalculation, misapplication or misinterpretation of law or mistake of evidentiary fact, whether by commission or omission…."[2] But an amendment, modification, or reversal of a Department determination by an appeal tribunal, the commission, or a court is not departmental error for the purposes of waiving the overpayment.[3]

The Department disagrees with the Labor and Industry Review Commission's interpretation of these statutes in determining when to waive benefit overpayments. To guard against erroneous interpretations of law the Department proposes to amend the definition of "departmental error" to confirm the Department's interpretation of the statute. Under the proposed changes, a departmental error would include only certain errors made by the Department in issuing initial determinations, not appeal tribunals.

The Commission currently waives some overpayments if the Commission finds that an appeal tribunal allows benefits in error. The Commission considers appeal tribunals to be part of the Department because the administrative law judges are Department employees. Based on the Department's review of the legislative history of the departmental error and overpayment waiver

[1] Wis. Stat. § 108.22(8)(c)1.a.
[2] Wis. Stat. § 108.02(10e)(am)1.
[3] Wis. Stat. § 108.22(8)(c)2. (created by 1993 Act 373.)

statutes, the Department believes that the intent of these statutes was originally to limit the finding of department error to errors made by Department staff, not appeal tribunals, the Commission, or the courts. So, the Department proposes a law change to clarify that an error by an appeal tribunal is not "departmental error."

2. Proposed Statutory Change

Section 108.02 (10e) (c) of the statutes is created to read:

(c) "Departmental error" does not include an error made by an appeal tribunal.

3. Effects of Proposed Change

a. Policy. The proposed change will result in the increased recovery of benefits that were erroneously paid to claimants.

b. Administrative. This proposal will require training for benefits staff.

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D19-07
Departmental Error

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This law change proposal would save the UI Trust Fund approximately $5,200 annually. The Trust Fund savings may be less going forward. This would be considered a positive but negligible impact on the Trust Fund.

IT and Administrative Impact:

This law change proposal would have no IT impact and a negligible one-time administrative impact.

Summary of Proposal:

This law change proposal is intended to clarify that an error by an appeal tribunal is not "departmental error."

Trust Fund Methodology:

To determine the impact of the proposed change, 2015-2017 data was reviewed for LIRC determinations that found departmental error based on appeal tribunal determinations. There were no LIRC decisions that found departmental error in 2016 or 2017 and in 2015, there were approximately 10 determinations. The total overpayment for all affected determinations was approximately $6,560, which claimants would now be required to pay back if departmental error could not be found on appeal tribunal determinations. At an 80% collection rate, this results in an average savings to the Trust Fund of $5,200 annually. Since there were no LIRC decisions that found departmental error in 2016 or 2017, the Trust Fund savings may be less going forward.

IT and Administrative Impact Methodology:

This law change proposal would not have an IT impact. It may have a negligible administrative impact to train staff on these changes.

D19-08
Appropriations Revisions and Technical Corrections

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Appropriations Revisions and Technical Corrections

1. Description of Proposed Change

The Department receives federal funds to operate the unemployment insurance program. It also collects interest and penalties from employers and penalties from claimants. The amounts that the Department receives are appropriated under state law for certain purposes. State law previously provided that amounts related to the administration of the unemployment insurance program were to be deposited into the "Unemployment Administration Fund." That fund was eliminated in 1985 Wisconsin Act 29 and the appropriations were transferred to the general fund. Chapter 108 was amended to repeal references to the Unemployment Administration Fund and to refer to the "Administrative Account."[1] The Department proposes to eliminate the "Administrative Account" and clarify the unemployment insurance appropriations references in Chapter 108. This will ensure that funds are deposited correctly and that payments are made from the correct appropriation.

The Department proposes various technical corrections, including those described above, as follows:

[1] Wis. Stat. § 108.20.

D19-08
Appropriations Revisions and Technical Corrections

Section	Change	Reason
20.445(1)(gh)	Repeal	No longer used.
108.02(26)(c)9.	Repeal the exclusion from gross income for amounts received under qualified group legal services plans.	Corresponding federal exclusion in 26 USC § 120 has been repealed.
108.02(26)(c)14.	Repeal the exclusion from gross income for amounts received under the federal Medicare Catastrophic Coverage Act.	Corresponding federal Act has been repealed.
108.145	Amend	Correct cross-reference to federal law.
108.16(6m)(a)	Amend	Add additional references for balancing account charges.
108.19(3)	Repeal	No longer used.
108.19(4)	Amend	Clarify that the Department may use certain funds for program administration if federal law is changed.
108.195	Create	Move the special assessment for interest and the program integrity fund to this section for better organization.
108.20	Repeal	Delete references to the administrative account and replace with references to specific appropriations statutes for increased certainty.
108.223(2)(b)	Amend	Correct typo and clarify language.
Various	Amend references to the federal Social Security Act and Unemployment Tax Act to the specific statutes	This is preferred drafting style and ensures that cross-references are correct.
Various	Amend statutes to clarify language.	Current drafting conventions result in standardized statute language.

2. <u>Proposed Statutory Changes</u>

See attached.

3. <u>Effects of Proposed Change</u>

a. <u>Policy.</u> The proposed change will clarify the appropriations statutes related to the unemployment insurance program and correct typos and cross-references in the statutes.

b. <u>Administrative</u>. This proposal will require training of Department staff.

c. Fiscal. A fiscal estimate will be provided at a later date.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

State of Wisconsin
2019 - 2020 LEGISLATURE

LRB–0378/P2
MED:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 20.445 (1) (gg), 20.445 (1) (gm), 25.17 (1) (x), 108.02 (1), 108.02 (26) (c) 9., 108.02 (26) (c) 14., 108.14 (7) (c), 108.14 (23) (d), 108.19 (3) and 108.20; ***to renumber*** 108.04 (7) (h); ***to renumber and amend*** 108.14 (12) (e), 108.14 (18), 108.19 (1), 108.19 (1m), 108.19 (1n), 108.19 (1p), 108.19 (1q), 108.19 (1s), 108.19 (2), 108.19 (2m) and 108.19 (4); ***to consolidate, renumber and amend*** 108.14 (12) (a) to (d), 108.161 (1) and (1m) and 108.161 (5) and (6); ***to amend*** 20.445 (1) (gc), 20.445 (1) (gd), 20.445 (1) (gh), 20.445 (1) (n), 20.445 (1) (nb), 20.445 (1) (nd), 20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 108.02 (2) (c), 108.02 (13) (c) 2. a., 108.02 (14), 108.02 (15) (j) 5., 108.02 (15) (k) 5., 108.02 (17m), 108.02 (19), 108.04 (11) (f), 108.04 (12) (b), 108.04 (16) (d) 1., 108.04 (18) (a), 108.04 (18) (b), 108.07 (5) (intro.), 108.07 (5) (a), 108.07 (5) (c), 108.07 (6), 108.09 (5) (b), 108.10 (intro.), 108.13 (4) (a) 2., 108.14 (2m), 108.14 (3m), 108.14 (8n) (a), 108.14 (8n) (e), 108.14 (16), 108.14 (26), 108.141 (1) (h), 108.141 (3g) (a) 3. b., 108.141 (7) (a), 108.141 (7) (b), 108.145, 108.15 (3) (d), 108.151 (2) (d), 108.152 (1) (d), 108.155 (2) (a) and (d), 108.16 (5) (c), 108.16

(6) (k), 108.16 (6) (m), 108.16 (6m) (a), 108.16 (6x), 108.16 (8) (f), 108.16 (9) (a), 108.161 (title), 108.161 (2), 108.161 (3), 108.161 (3e), 108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9), 108.162 (7), 108.17 (2m), 108.17 (3), 108.17 (3m), 108.18 (3) (c), 108.18 (7) (a) 1., 108.18 (7) (h), 108.19 (1e) (a), 108.19 (1f) (a), 108.19 (1f) (c), 108.22 (1) (am), 108.22 (1m), 108.22 (8e), 108.223 (2) (b), 108.23, 108.24 (3) (a) 3. a. and 108.24 (3) (a) 4.; ***to repeal and recreate*** 108.19 (title); and ***to create*** 20.427 (1) (g), 108.19 (1) (d), 108.19 (1e) (cm), 108.19 (1m) (e), 108.195 (title) and 108.195 (2) (title) of the statutes; **relating to:** various changes relating to financing of and appropriations for the unemployment insurance program and correcting and updating cross–references in the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.427 (1) (g) of the statutes is created to read:

20.427 **(1)** (g) *Agency collections.* All moneys received from fees or other charges for copying of documents, generation of copies of documents from optical disc or electronic storage, publication of books, and other services provided in carrying out the functions of the commission.

****NOTE: This creates an appropriation for LIRC to receive moneys for various purposes, including transcript fees under s. 108.09 (5) (b).

SECTION 2. 20.445 (1) (gc) of the statutes is amended to read:

20.445 **(1)** (gc) *Unemployment administration.* All moneys received by the department under s. 108.19 ~~not otherwise appropriated under this subsection~~ (1) for the administration of ch. 108.

****NOTE: See the note under SECTION 84.

SECTION 3. 20.445 (1) (gd) of the statutes is amended to read:

20.445 **(1)** (gd) *Unemployment interest and penalty payments.* All moneys received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) ~~and (13) (c)~~ and 108.22 except interest and penalties deposited under s. ~~108.19 (1q), and forfeitures under s. 103.05 (5), all moneys not appropriated under par. (gg) and~~ 108.195 (1), all moneys received as forfeitures under s. 103.05 (5), all moneys received under s. 108.09 (5) (c), all moneys received under s. 108.14 (16), all moneys received under s. 108.18 (1) (c), all moneys transferred to this appropriation account from the appropriation account under par. (gh), and all other nonfederal moneys received for the employment service or for the administration of ch. 108 that are not otherwise appropriated under this subsection, for the payment of benefits specified in s. 108.07 (5) ~~and 1987 Wisconsin Act 38, section 132 (1) (c)~~, for the payment of interest to employers under s. 108.17 (3m), for research relating to the condition of the unemployment reserve fund under s. 108.14 (6), for administration of the unemployment insurance program and federal or state unemployment insurance programs authorized by the governor under s. 16.54, for satisfaction of any federal audit exception concerning a payment from the unemployment reserve fund or any federal aid disallowance concerning the unemployment insurance program, for assistance to the department of justice in the enforcement of ch. 108, for the payment of interest due on advances from the federal unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324 to the unemployment reserve fund, and

for payments made to the unemployment reserve fund to obtain a lower interest rate or deferral of interest payments on these advances~~, except as otherwise provided in s. 108.20~~.

****NOTE: This is the so–called "I&P fund." However, it is not a separate segregated fund, but rather an appropriation account in the general fund. Except as described below, the changes in this SECTION constitute clarifications or correspond to other changes in the bill, including cross–reference changes.

****NOTE: Section 108.04 (13) (c) 2., 1985 stats., required $15 tardy filing fees to be paid in certain circumstances. 1987 Act 38 renumbered s. 108.04 (13) (c) to s. 108.04 (13) (b) and changed existing cross–references accordingly. However, due to the passage of 1987 Act 27 that same session that created a *new* reference to the (old) s. 108.04 (13) (c) in s. 20.445 (1) (gf) but that was not taken into account by Act 38 and the fact that Act 38 reused the numbering for (13) (c) for something else, references to "(13) (c)" appear to have perpetuated to this day. As such, the reference to (13) (c) is struck, as it has not referenced any amounts collected since the 1985 statutes.

****NOTE: 1987 Act 38, SECTION 132 (1), was a nonstatutory transitional provision that provided how certain benefits were to be charged for periods in 1989 and 1990. The reference to this provision is struck, as this transitional period has long since passed.

SECTION 4. 20.445 (1) (gg) of the statutes is repealed.

****NOTE: As currently written, this is a separate appropriation used to dedicate some I&P money to DWD for IT upgrades, etc. It is repealed due to the fact that it is no longer being used.

SECTION 5. 20.445 (1) (gh) of the statutes is amended to read:

20.445 **(1)** (gh) *Unemployment information technology systems; assessments.* All moneys received from assessments levied under s. 108.19 (1e) (a) ~~and 1997 Wisconsin Act 39, section 164 (2)~~, for the purpose specified in s. 108.19 (1e) (d). The treasurer of the unemployment reserve fund may transfer moneys from this appropriation account to the appropriation account under par. (gd).

****NOTE: This deletes a reference to a temporary provision from 1997 Act 39.

SECTION 6. 20.445 (1) (gm) of the statutes is repealed.

****NOTE: This repeals an appropriation that receives moneys paid for printed copies of a UI Handbook for employers. This money is instead directed to the appropriation under s. 20.445 (1) (gd) along with fees charged for other printed materials.

SECTION 7. 20.445 (1) (n) of the statutes is amended to read:

20.445 **(1)** (n) *Employment assistance and unemployment insurance administration; federal moneys.* All federal moneys received, as authorized by the governor under s. 16.54, for the administration of employment assistance and unemployment insurance programs of the department, for the performance of the department's other functions under subch. I of ch. 106 and ch. 108, and to pay the compensation and expenses of appeal tribunals and of employment councils appointed under s. 108.14, to be used for such purposes, except as provided in s. 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC 1103 (d) ~~of the federal Social Security Act, as amended~~, to transfer to the appropriation account under par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the appropriation account under par. (nd) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the appropriation account under par. (ne) an amount not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under par. (ne) and the amount determined by the treasurer of the unemployment reserve fund that is required to pay for the cost of banking services incurred by the unemployment reserve fund, and to transfer to the appropriation account under s. 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve fund.

SECTION 8. 20.445 (1) (nb) of the statutes is amended to read:

20.445 **(1)** (nb) *Unemployment administration; information technology systems.* From the moneys received from the federal government under ~~section 903~~

42 USC 1103 (d) ~~of the federal Social Security Act, as amended~~, as a continuing appropriation, the amounts in the schedule, as authorized by the governor under s. 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in s. 108.19 (1e) (d).

SECTION 9. 20.445 (1) (nd) of the statutes is amended to read:

20.445 **(1)** (nd) *Unemployment administration; apprenticeship and other employment services.* From the moneys received from the federal government under ~~section 903~~ 42 USC 1103 (d) ~~of the federal Social Security Act, as amended~~, the amounts in the schedule, as authorized by the governor under s. 16.54, to be used for administration by the department of apprenticeship programs under subch. I of ch. 106 and for administration and service delivery of employment and workforce information services, including the delivery of reemployment assistance services to unemployment insurance claimants. All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purposes specified in this paragraph.

SECTION 10. 20.445 (1) (ne) of the statutes is amended to read:

20.445 **(1)** (ne) *Unemployment insurance administration and bank service costs.* From the moneys received by this state under ~~section 903 of the federal Social Security Act, as amended~~ 42 USC 1103, all moneys transferred from the appropriation account under par. (n) to be used for the administration of

unemployment insurance and for the payment of the cost of banking services incurred by the unemployment reserve fund. No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in this paragraph.

SECTION 11. 20.445 (1) (u) of the statutes is amended to read:

20.445 **(1)** (u) *Unemployment interest payments and transfers.* From the unemployment interest payment fund, all moneys received from assessments under s. 108.19 (1m) (a) for the purpose of making the payments and transfers authorized under s. 108.19 (1m) (f).

SECTION 12. 20.445 (1) (v) of the statutes is amended to read:

20.445 **(1)** (v) *Unemployment program integrity.* From the unemployment program integrity fund, all moneys received from sources identified under s. ~~108.19 (1s)~~ 108.195 (2) (a) for the purpose of making the payments authorized under s. ~~108.19 (1s)~~ 108.195 (2) (b).

SECTION 13. 25.17 (1) (x) of the statutes is repealed.

****NOTE: See the note under SECTION 102 regarding the former unemployment administration fund. Section 25.17 (1), which gives the SWIB authority to manage the various segregated funds, was apparently erroneously not amended to remove the reference to the fund. This repeals that obsolete reference.

SECTION 14. 25.17 (1) (xe) of the statutes is amended to read:

25.17 **(1)** (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.195 (1));

SECTION 15. 25.17 (1) (xf) of the statutes is amended to read:

25.17 **(1)** (xf) Unemployment program integrity fund (s. ~~108.19 (1s)~~ 108.195 (2));

SECTION 16. 108.02 (1) of the statutes is repealed.

****NOTE: See the note under SECTION 102 regarding the former unemployment administration fund.

SECTION 17. 108.02 (2) (c) of the statutes is amended to read:

108.02 **(2)** (c) In connection with the production or harvesting of any commodity defined as an agricultural commodity ~~in s. 15 (g) of the federal agricultural marketing act, as amended (46 Stat. 1550, s. 3;~~ under 12 USC 1141j~~) or~~ (f), in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

****NOTE: This updates a cross–reference to federal law to reflect the correct provision. (Note that the U.S. Code still has it as "(g)" but notes that "Section 1141j(g) of title 12, referred to in subsec. (f)(3), was redesignated section 1141j(f) by Pub. L. 110–246.")

SECTION 18. 108.02 (13) (c) 2. a. of the statutes is amended to read:

108.02 **(13)** (c) 2. a. Such crew leader holds a valid certificate of registration under ~~the federal farm labor contractor registration act of 1963~~ 29 USC 1801 to 1872; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

****NOTE: The Farm Labor Contractor Registration Act of 1963 was repealed by P.L. 97–470, the Migrant and Seasonal Agricultural Worker Protection Act. This substitutes in the correct cross–references in current federal law.

SECTION 19. 108.02 (14) of the statutes is amended to read:

108.02 **(14)** EMPLOYER'S ACCOUNT. "Employer's account" means ~~a~~ an employer's separate account in the fund~~, reflecting the employer's experience with respect to contribution credits and benefit charges under this chapter~~ maintained as required under s. 108.16 (2) (a).

****NOTE: This adds a cross–reference to this definition, in place of the current generic description, for additional clarity.

SECTION 20. 108.02 (15) (j) 5. of the statutes is amended to read:

108.02 **(15)** (j) 5. In any quarter in the employ of any organization exempt from federal income tax under ~~section~~ 26 USC 501 (a) ~~of the internal revenue code~~, other than an organization described in ~~section~~ 26 USC 401 (a) or 501 (c) (3) ~~of such code~~, or under section 26 USC 521 ~~of the internal revenue code~~, if the remuneration for such service is less than $50;

SECTION 21. 108.02 (15) (k) 5. of the statutes is amended to read:

108.02 **(15)** (k) 5. With respect to which unemployment insurance is payable under ~~the federal railroad unemployment insurance act (52 Stat. 1094)~~ 45 USC 351 to 369;

SECTION 22. 108.02 (17m) of the statutes is amended to read:

108.02 **(17m)** INDIAN TRIBE. "Indian tribe" has the meaning given in 25 USC ~~450b~~ 5304 (e), and includes any subdivision, subsidiary, or business enterprise that is wholly owned by such an entity.

****NOTE: 25 USC 450b was editorially reclassified in the U.S. Code as 25 USC 5304.

SECTION 23. 108.02 (19) of the statutes is amended to read:

108.02 **(19)** NONPROFIT ORGANIZATIONS. "Nonprofit organization" means an organization described in ~~section~~ 26 USC 501 (c) (3) ~~of the Internal Revenue Code~~ that is exempt from federal income tax under ~~section~~ 26 USC 501 (a) ~~of the Internal Revenue Code~~.

SECTION 24. 108.02 (26) (c) 9. of the statutes is repealed.

****NOTE: This repeals a provision that referenced a federal law provision concerning qualified group legal services plans. The provision in federal law had been terminated for taxable years beginning after June 30, 1992, and has since been repealed outright by P.L. 113–295.

SECTION 25. 108.02 (26) (c) 14. of the statutes is repealed.

****NOTE: This repeals a reference to the federal Medicare Catastrophic Coverage Act of 1988, which was subsequently repealed by P.L. 101–234, the Medicare Catastrophic Coverage Repeal Act of 1989.

SECTION 26. 108.04 (7) (h) of the statutes is renumbered 108.04 (7) (u).

****NOTE: This provision, relating to charging benefits when a quit exception applies, is moved so that it appears after all of the quit exceptions, not in the middle of them.

SECTION 27. 108.04 (11) (f) of the statutes is amended to read:

108.04 **(11)** (f) All amounts forfeited under par. (c) and all collections from administrative assessments under par. (cm) shall be credited to the ~~administrative account~~ appropriation under s. 20.445 (1) (gd).

****NOTE: This is amended to simply reference s. 20.445 (1) (gd), which provides that this money goes into that account.

SECTION 28. 108.04 (12) (b) of the statutes is amended to read:

108.04 **(12)** (b) Any individual who receives, through the department, any other type of unemployment benefit or allowance for a given week is ineligible for benefits for that same week under this chapter, except as specifically required for conformity with ~~the federal trade act of 1974 (P.L. 93–618)~~ 19 USC 2101 to 2497b.

SECTION 29. 108.04 (16) (d) 1. of the statutes is amended to read:

108.04 **(16)** (d) 1. The department shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training, as a result of the individual's leaving work that the individual engaged in on a temporary basis during a break in the training or a delay in the commencement of the training, or because the individual left on–the–job training not later than 30 days after commencing that training because the individual did not meet the requirements ~~of the federal trade act~~ under 19 USC 2296 (c) (1) (B); and

SECTION 30. 108.04 (18) (a) of the statutes is amended to read:

108.04 **(18)** (a) The wages paid to an employee who performed services while the employee was an alien shall, if based on such services, be excluded from the employee's base period wages for purposes of sub. (4) (a) and ss. 108.05 (1) and 108.06

(1) unless the employee is an alien who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of ~~section 212 (d) (5) of the federal immigration and nationality act (~~8 USC 1182 (d) (5)~~)~~. All claimants shall be uniformly required to provide information as to whether they are citizens and, if they are not, any determination denying benefits under this subsection shall not be made except upon a preponderance of the evidence.

SECTION 31. 108.04 (18) (b) of the statutes is amended to read:

108.04 **(18)** (b) Any amendment of ~~s.~~ 26 USC 3304 (a) (14) ~~of the federal unemployment tax act~~ specifying conditions other than as stated in par. (a) for denial of benefits based on services performed by aliens, or changing the effective date for required implementation of par. (a) or such other conditions, ~~which~~ that is a condition of approval of this chapter for full tax credit against the tax imposed by the federal unemployment tax act, shall be applicable to this subsection.

SECTION 32. 108.07 (5) (intro.) of the statutes is amended to read:

108.07 **(5)** (intro.) Except as provided in sub. (7), whenever benefits ~~which~~ that would otherwise be chargeable to the fund's balancing account are paid based on wages paid by an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, and the benefits are so chargeable under sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g) or 108.14 (8n) (e), or under s. 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), the department shall charge the benefits as follows:

****NOTE: This subsection governs the charging of benefits that would otherwise be chargeable to the balancing account in certain situations where one employer is a reimbursable employer. This provision originated in 1987 Act 38, and the drafting file

indicates that it was intentionally written to omit certain cases where benefits are charged to the balancing account (i.e., s. 108.04 (7) and (8)). However, s. 108.04 (5g) did not exist at that time, and when it was created, it appears that it should have been added here.

SECTION 33. 108.07 (5) (a) of the statutes is amended to read:

108.07 **(5)** (a) If no employer from which the claimant has base period wages is subject to the contribution requirements of ss. 108.17 and 108.18, the benefits shall be ~~charged to the administrative account and~~ paid from the appropriation under s. 20.445 (1) (gd).

SECTION 34. 108.07 (5) (c) of the statutes is amended to read:

108.07 **(5)** (c) If 2 or more employers from which the claimant has base period wages are not subject to the contribution requirements of ss. 108.17 and 108.18, and one or more employers from which the claimant has base period wages are subject to the contribution requirements of ss. 108.17 and 108.18, that percentage of the employee's benefits which would otherwise be chargeable to the fund's balancing account under sub. (3) or s. 108.04 (1) (f) ~~or~~, (5), or (5g), or under s. 108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), shall be ~~charged to the administrative account and~~ paid from the appropriation under s. 20.445 (1) (gd).

****NOTE: See the note under SECTION 32.

SECTION 35. 108.07 (6) of the statutes is amended to read:

108.07 **(6)** The department may initially charge benefits otherwise ~~chargeable to the administrative account~~ payable from the appropriation under s. 20.445 (1) (gd) as provided under this section to the fund's balancing account, and periodically reimburse the charges to the balancing account from the ~~administrative account~~ appropriation under s. 20.445 (1) (gd).

SECTION 36. 108.09 (5) (b) of the statutes is amended to read:

108.09 **(5)** (b) All testimony at any hearing under this section shall be recorded by electronic means, but need not be transcribed unless either of the parties requests a transcript before expiration of that party's right to further appeal under this section and pays a fee to the commission in advance, the amount of which shall be established by rule of the commission. When the commission provides a transcript to one of the parties upon request, the commission shall also provide a copy of the transcript to all other parties free of charge. The transcript fee collected shall be ~~paid to the administrative account~~ credited to the appropriation account under s. 20.427 (1) (g).

****NOTE: See the note under SECTION 1.

SECTION 37. 108.10 (intro.) of the statutes is amended to read:

108.10 Settlement of issues other than benefit claims. (intro.) Except as provided in s. 108.245 (3), in connection with any issue arising under this chapter as to the status or liability of an employing unit ~~in this state~~, for which no review is provided under s. 108.09, 108.095, or 108.227 (5) and whether or not a penalty is provided in s. 108.24, the following procedure shall apply:

****NOTE: This adds a cross–reference to s. 108.095, which provides a separate procedure from s. 108.09 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

****NOTE: This deletes "in this state" to clarify that the procedures in this section apply to issues involving the status or liability of any employing unit, not only an employing unit located in this state.

SECTION 38. 108.13 (4) (a) 2. of the statutes is amended to read:

108.13 **(4)** (a) 2. "Legal process" has the meaning given under 42 USC ~~662 (e)~~ 659 (i) (5).

****NOTE: The definition referenced here was moved by P.L. 104–193 from 42 USC 662 to 42 USC 659.

SECTION 39. 108.14 (2m) of the statutes is amended to read:

108.14 **(2m)** In the discharge of their duties under this chapter an appeal tribunal, commissioner, or other authorized representative of the department or commission may administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas, served in the manner in which circuit court subpoenas are served, compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any investigation, hearing, or other proceeding under this chapter. A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. However, in any investigation, hearing, or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and travel expenses involved in proceedings under this chapter may be allowed by the appeal tribunal or representative of the department at rates specified by department rules, and shall be paid from the ~~administrative account~~ appropriation under s. 20.445 (1) (n).

****NOTE: This specifies for witness and travel fees to be paid from the federal appropriation.

SECTION 40. 108.14 (3m) of the statutes is amended to read:

108.14 **(3m)** In any court action to enforce this chapter the department, the commission, and the state may be represented by any licensed attorney who is an employee of the department or the commission and is designated by either of them for this purpose or at the request of either of them by the department of justice. If the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101 to 1110, the expenses and compensation of the special counsel and of any experts employed by the department in connection with that proceeding may be charged to the ~~administrative account~~ appropriation under s. 20.445 (1) (gd). If the compensation is being determined on a contingent fee basis, the contract is subject to s. 20.9305.

****NOTE: This provides for the charging of these costs to the I&P account.

SECTION 41. 108.14 (7) (c) of the statutes is repealed.

****NOTE: This provision about printing of various types of documents is repealed, with the language incorporated into s. 108.04 (16) instead.

SECTION 42. 108.14 (8n) (a) of the statutes is amended to read:

108.14 **(8n)** (a) The department shall enter into a reciprocal arrangement ~~which is~~ approved by the U.S. secretary of labor ~~pursuant to section~~ under 26 USC 3304 (a) (9) (B) ~~of the internal revenue code~~, to provide more equitable benefit coverage for individuals whose recent work has been covered by the unemployment insurance laws of 2 or more jurisdictions.

SECTION 43. 108.14 (8n) (e) of the statutes is amended to read:

108.14 **(8n)** (e) The department shall charge this state's share of any benefits paid under this subsection to the account of each employer by which the employee claiming benefits was employed in the applicable base period, in proportion to the total amount of wages he or she earned from each employer in the base period, except

that if s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) ~~or (b)~~ to (c), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to employment by such an employer who is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on employment with that employer to the fund's balancing account, or, if s. 108.04 (1) (f) ~~or,~~ (5), or (5g) or 108.07 (3) would have applied to an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the fund's balancing account with any other state's share of such benefits pending reimbursement by that state.

****NOTE: In the first string of cross-references, missing cross-references are added to provisions that provide for charging to the balancing account.

****NOTE: A reference to s. 108.04 (5g) is added in the second-to-last sentence to correspond to the changes in SECTIONS 32 and 34. See the note under SECTION 32.

SECTION 44. 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered 108.14 (12) (am) and amended to read:

108.14 **(12)** (am) ~~Consistently~~ Consistent with the provisions of ~~pars. (8) and (9) of section 303 (a) of Title III of the federal social security act,~~ 42 USC 503 (a) (8) and (9), the department shall expend all moneys received in the federal administrative financing account from any federal agency under ~~said Title III shall be expended~~ 42 USC ch. 7 subch. III solely for the purposes and in the amounts found necessary by ~~said~~ that agency for the ~~proper and efficient~~ administration of this chapter. ~~(b) Consistently with said provisions of said Title III, any~~ The department shall replace, within a reasonable time, any such moneys~~,~~ that were received ~~prior to~~ before July 1, 1941, and ~~remaining~~ remained unencumbered on ~~said~~ that date, or that were received on or after ~~said~~ that date, ~~which, because of any action or~~

~~contingency, have been~~ if the moneys are lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by ~~said~~ the federal agency for the ~~proper~~ administration of this chapter~~, shall be replaced within a reasonable time. This paragraph is the declared policy of this state, as enunciated by the 1941 legislature, and shall be implemented as further provided in this subsection. (c)~~. If ~~it is believed that~~ any amount of money thus received ~~has been thus~~ is lost or improperly expended, the department, on its own motion or on notice from ~~said~~ the federal agency, shall promptly investigate and determine the matter and shall, depending on the nature of its determination, take such steps as it ~~may deem~~ considers necessary to protect the interests of the state. ~~(d)~~ If it is finally determined that moneys ~~thus received~~ have been ~~thus~~ lost or improperly expended, ~~then~~ the department shall either make the necessary replacement from ~~those moneys in the administrative account specified in s. 108.20 (2m)~~ the appropriation under s. 20.445 (1) (gd) or shall submit, at the next budget hearings conducted by the governor and at the budget hearings conducted by the next legislature convened in regular session, a request that the necessary replacement be made by an appropriation from the general fund.

****NOTE: Modernizes and streamlines language that was written to fulfill the conformity requirement under 42 USC 503 (a) (8) and (9).

SECTION 45. 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and amended to read:

108.14 **(12)** (bm) This subsection shall not be construed to relieve this state of any obligation existing ~~prior to its enactment~~ before July 1, 1941, with respect to moneys received ~~prior to~~ before July 1, 1941~~, pursuant to said Title III~~ under 42 USC ch. 7 subch. III.

****NOTE: See the note under the previous SECTION.

SECTION 46. 108.14 (16) of the statutes is amended to read:

108.14 **(16)** The department shall have duplicated or printed~~, and shall distribute without charge, such employment security~~ any reports, studies ~~and~~, forms, records, decisions, regulations, rules, or other materials, including the text of this chapter ~~and~~, the handbook under sub. (23), and other instructional or explanatory pamphlets for employers or workers, ~~as~~ that it deems necessary for public information or for the proper administration of this chapter~~; but the~~. The department may collect a reasonable charge, which shall be credited to the ~~administrative~~ appropriation account under s. 20.445 (1) (gd), for any such item the cost of which is not fully covered by federal administrative grants.

****NOTE: This directs moneys received for printed materials to the I&P account.

****NOTE: See also the notes under SECTIONS 41 and 48.

SECTION 47. 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and amended to read:

108.19 **(1e)** (e) No later than the end of the month following each quarter in which the department expends moneys derived from assessments levied under ~~s. 108.19 (1e)~~ this subsection, the department shall submit a report to the council on unemployment insurance describing the use of the moneys expended and the status at the end of the quarter of any project for which moneys were expended.

****NOTE: Moves this requirement to the provision to which it closely relates.

SECTION 48. 108.14 (23) (d) of the statutes is repealed.

****NOTE: This repeals a provision specifically governing charges for printed copies of a UI Handbook for employers. This would instead be governed by s. 108.14 (16), and the handbook is referenced there instead. (This does not repeal the requirement that DWD create the handbook.) See the note under SECTION 46.

SECTION 49. 108.14 (26) of the statutes is amended to read:

108.14 **(26)** The department shall prescribe by rule a standard affidavit form that may be used by parties to appeals under ss. 108.09, 108.095, and 108.10 and shall make the form available to employers and claimants. The form shall be sufficient to qualify as admissible evidence in a hearing under this chapter if the authentication is sufficient and the information set forth by the affiant is admissible, but its use by a party does not eliminate the right of an opposing party to cross examine the affiant concerning the facts asserted in the affidavit.

****NOTE: This adds a cross–reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

SECTION 50. 108.141 (1) (h) of the statutes is amended to read:

108.141 **(1)** (h) "State law" means the unemployment insurance law of any state~~,~~ that has been approved by the U.S. secretary of labor under ~~section~~ 26 USC 3304 ~~of the internal revenue code~~.

SECTION 51. 108.141 (3g) (a) 3. b. of the statutes is amended to read:

108.141 **(3g)** (a) 3. b. The gross average weekly remuneration for the work exceeds the claimant's weekly benefit rate plus any supplemental unemployment benefits, as defined in ~~section~~ 26 USC 501 (c) (17) (D) ~~of the internal revenue code~~, then payable to the claimant;

SECTION 52. 108.141 (7) (a) of the statutes is amended to read:

108.141 **(7)** (a) The department shall charge the state's share of each week of extended benefits to each employer's account in proportion to the employer's share of the total wages of the employee receiving the benefits in the employee's base period, except that if the employer is subject to the contribution requirements of ss. 108.17 and 108.18 the department shall charge the share of extended benefits to which s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a)

~~or (b)~~ to (c), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing account.

****NOTE: As in SECTION 43, this adds a reference to substantial fault in the extended benefits provision.

SECTION 53. 108.141 (7) (b) of the statutes is amended to read:

108.141 **(7)** (b) The department shall charge the full amount of extended benefits based on employment for a government unit to the account of the government unit, except that if s. 108.04 (5), (5g), or (7) applies and the government unit has elected contribution financing the department shall charge one–half of the government unit's share of the benefits to the fund's balancing account.

****NOTE: This adds a reference to substantial fault in the extended benefits provision.

SECTION 54. 108.145 of the statutes is amended to read:

108.145 Disaster unemployment assistance. The department shall administer under s. 108.14 (9m) the distribution of disaster unemployment assistance to workers in this state who are not eligible for benefits whenever such assistance is made available by the president of the United States under ~~26~~ 42 USC 5177 (a). In determining eligibility for assistance and the amount of assistance payable to any worker who was totally self–employed during the first 4 of the last 5 most recently completed quarters preceding the date on which the worker claims assistance, the department shall not reduce the assistance otherwise payable to the worker because the worker receives one or more payments under the social security act ~~(~~,42 USC ~~301 et seq.)~~ ch. 7, for the same week that the worker qualifies for such assistance.

****NOTE: The cross–reference to "26 USC 5177 (a)" appears to have been an error from when this provision was enacted. It is corrected to the proper cross–reference, "42 USC 5177 (a)."

SECTION 55. 108.15 (3) (d) of the statutes is amended to read:

108.15 **(3)** (d) If a government unit elects contribution financing for any calendar year after the first calendar year it becomes newly subject to this chapter, it shall be liable to reimburse the fund for any benefits based on prior employment. If a government unit terminates its election of contribution financing, ss. 108.17 and 108.18 shall apply to employment in the prior calendar year, but after all benefits based on such prior employment have been charged to its contribution account any balance remaining in such account shall be transferred to the fund's balancing account.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 56. 108.151 (2) (d) of the statutes is amended to read:

108.151 **(2)** (d) Sections 108.17 and 108.18 shall apply to all prior employment, but after all benefits based on prior employment have been charged to any account it has had under s. 108.16 (2) any balance remaining therein shall be transferred to the fund's balancing account as if s. 108.16 (6) (c) or (6m) (d) applied.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 57. 108.152 (1) (d) of the statutes is amended to read:

108.152 **(1)** (d) If the Indian tribe or tribal unit is an employer ~~prior to~~ before the effective date of an election, ss. 108.17 and 108.18 shall apply to all employment ~~prior to~~ before the effective date of the election, but after all benefits based on prior employment have been charged to any account that it has had under s. 108.16 (2), the department shall transfer any positive balance or charge any negative balance remaining therein to the fund's balancing account as if s. 108.16 (6) (c) and (6m) (d) applied.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 58. 108.155 (2) (a) and (d) of the statutes are amended to read:

108.155 **(2)** (a) On October 2, 2016, the fund's treasurer shall set aside $2,000,000 in the fund's balancing account for accounting purposes. On an ongoing basis, the fund's treasurer shall tally the amounts allocated to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. and deduct those amounts from the amount set aside plus any interest calculated thereon.

(d) If the department assesses reimbursable employers under par. (c), the department shall determine the amount of assessments to be levied as provided in sub. (3), and the fund's treasurer shall notify reimbursable employers that the assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall be payable by each reimbursable employer that is subject to this chapter as of the date the assessment is imposed. Assessments imposed under this section shall be credited to the fund's balancing account.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 59. 108.16 (5) (c) of the statutes is amended to read:

108.16 **(5)** (c) While the state has an account in the "Unemployment Trust Fund",," public deposit insurance charges on the fund's balances held in banks, savings banks, savings and loan associations, and credit unions in this state, the premiums on surety bonds required of the fund's treasurer under this section, and any other expense of administration otherwise payable from the fund's interest earnings, shall be paid from the ~~administrative account~~ appropriation under s. 20.445 (1) (n) or (ne).

****NOTE: This adds cross–references to s. 20.445 (1) (n) and (ne), both of which could be used to pay banking costs.

SECTION 60. 108.16 (6) (k) of the statutes is amended to read:

108.16 **(6)** (k) All payments to the fund from the ~~administrative account as authorized under s. 108.20 (2m)~~ appropriation under s. 20.445 (1) (gd).

****NOTE: Sections 20.445 (1) (gd) and 108.20 (2m) allow for "payments to the fund if such action is necessary to obtain a lower interest rate or deferral of interest payments on advances from the federal unemployment account under title XII of the social security act." This therefore replaces this language with a reference to s. 20.445 (1) (gd), the I&P account.

SECTION 61. 108.16 (6) (m) of the statutes is amended to read:

108.16 **(6)** (m) Any amounts transferred to the balancing account from the unemployment interest payment fund under s. 108.19 (1m) (f).

****NOTE: This adds a cross–reference to the provision that provides for the transfers that are referenced.

SECTION 62. 108.16 (6m) (a) of the statutes is amended to read:

108.16 **(6m)** (a) The benefits thus chargeable under sub. (7) (a) or (b) or s. 108.04 (1) (f), (5), (5g), (7) ~~(h)~~ (u), (7m), (8) (a) ~~or (b)~~ to (c), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), 108.133 (3) (f), 108.14 (8n) (e), 108.141, 108.15, 108.151, or 108.152 ~~or sub. (6) (e) or (7) (a) and (b)~~.

****NOTE: See the note under SECTION 26 regarding the change of "(7) (h)" to "(7) (u)."

****NOTE: This adds a missing cross reference to s. 108.04 (7m).

****NOTE: This adds a cross–reference to s. 108.15. Sections 108.15, 108.151, and 108.152 all call for benefits to be paid from a reimbursement account for an employer that is a subaccount of the balancing account.

****NOTE: Material that was formerly in s. 108.16 (6) (e) was relocated to s. 108.16 (6m) (f) and (11). See 1999 Wisconsin Acts 15 and 83. The reference to (6) (e) here appears to be a vestige of the former law and it is therefore deleted.

****NOTE: This extends a cross–reference to s. 108.04 (8) (c), which also provides for charging to the balancing account.

SECTION 63. 108.16 (6x) of the statutes is amended to read:

108.16 **(6x)** The department shall charge to the uncollectible reimbursable benefits account the amount of any benefits paid from the fund's balancing account that are reimbursable under s. 108.151 but for which the department does not receive

reimbursement after the department exhausts all reasonable remedies for collection of the amount.

****NOTE: This adds the word "fund's" before "balancing account," consistent with the rest of ch. 108.

SECTION 64. 108.16 (8) (f) of the statutes is amended to read:

108.16 **(8)** (f) The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its experience under this chapter in proportion to the payroll assignable to the transferred business and the liability of the successor shall be proportioned to the extent of the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor ~~to the fund and to the administrative account~~ <u>under this chapter</u> at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.

SECTION 65. 108.16 (9) (a) of the statutes is amended to read:

108.16 **(9)** (a) Consistently with ~~section~~ <u>26 USC</u> 3305 ~~of the internal revenue code~~, relating to federal instrumentalities ~~which~~ <u>that</u> are neither wholly nor partially owned by the United States nor otherwise specifically exempt from the tax imposed ~~by section~~ <u>under 26 USC</u> 3301 ~~of the internal revenue code~~:

1. Any contributions required and paid under this chapter for ~~1939 or~~ any ~~subsequent~~ year by any such instrumentality, including any national bank, shall be refunded to ~~such~~ <u>that</u> instrumentality in case this chapter is not certified with respect to such year under ~~s.~~ <u>26 USC</u> 3304 ~~of said code~~.

2. No national banking association ~~which~~ is ~~subject to this chapter shall be~~ required to comply with any ~~of its~~ provisions or requirements under this chapter, to the extent that such compliance would be contrary to ~~s.~~ 26 USC 3305 ~~of said code~~.

SECTION 66. 108.161 (title) of the statutes is amended to read:

108.161 (title) **Federal administrative financing account; Reed Act distributions.**

****NOTE: This section was created by 1957 Act 235 following the enactment of the Federal Employment Security Administrative Financing Act of 1954, the relevant portion of which is known as the "Reed Act" and provides for periodic distributions of money to states, the last of which occurred in 2002. This amends the title here to make it more apparent what this section is about. The treatments below aim to eliminate antiquated language (i.e., "hereunder") and use U.S. Code cross-references instead of references to the Social Security Act.

SECTION 67. 108.161 (1) and (1m) of the statutes are consolidated, renumbered 108.161 (1) and amended to read:

108.161 **(1)** The fund's treasurer shall maintain within the fund an employment security "federal administrative financing account~~"~~," and shall credit ~~thereto~~ to that account all amounts credited to the fund ~~pursuant to the federal employment security administrative financing act (of 1954) and section 903 of the federal social security act, as amended.~~ ~~**(1m)** The treasurer of the fund shall also credit to said account~~ under 42 USC 1101 to 1103 and all federal moneys credited to the fund ~~pursuant to~~ under sub. (8).

SECTION 68. 108.161 (2) of the statutes is amended to read:

108.161 **(2)** The requirements of ~~said section 903~~ 42 USC 1103 shall control any appropriation, withdrawal, and use of any moneys in ~~said~~ the federal administrative financing account.

SECTION 69. 108.161 (3) of the statutes is amended to read:

108.161 **(3)** ~~Consistently~~ Consistent with this chapter and ~~said section 903, such~~ 42 USC 1103, moneys in the federal administrative financing account shall be used solely for benefits or employment security administration by the department, including unemployment insurance, employment service, apprenticeship programs, and related statistical operations.

SECTION 70. 108.161 (3e) of the statutes is amended to read:

108.161 **(3e)** Notwithstanding sub. (3), any moneys allocated under ~~section 903 of the federal Social Security Act, as amended,~~ 42 USC 1103 for federal fiscal years 2000 and 2001 and the first $2,389,107 of any distribution received by this state under ~~section 903 of that act~~ 42 USC 1103 in federal fiscal year 2002 shall be used solely for unemployment insurance administration.

SECTION 71. 108.161 (4) of the statutes is amended to read:

108.161 **(4)** ~~Such moneys~~ Moneys in the federal administrative financing account shall be encumbered and spent for employment security administrative purposes only pursuant to, and after the effective date of, a specific legislative appropriation enactment that does all of the following:

(a) ~~Stating~~ States for which such purposes and in what amounts the appropriation is being made ~~to the administrative account created by s. 108.20~~.

(b) ~~Directing~~ Directs the fund's treasurer to transfer the appropriated amounts to ~~the administrative account~~ the appropriation account under s. 20.445 (1) (n) only as and to the extent that they are currently needed for such expenditures, and ~~directing~~ directs that there shall be restored to the federal administrative financing account ~~created by sub. (1)~~ any amount thus transferred ~~which~~ that has ceased to be needed or available for such expenditures.

(c) ~~Specifying~~ Specifies that the appropriated amounts are available for obligation solely within the 2 years beginning on the appropriation law's date of enactment. This paragraph does not apply to the appropriations under s. 20.445 (1) (nd) and (ne) or to any amounts expended from the appropriation under s. 20.445 (1) (nb) from moneys transferred to this state on March 13, 2002, pursuant to ~~section 903 (d) of the federal Social Security Act~~ 42 USC 1103 (d).

(d) ~~Limiting~~ Limits the total amount ~~which~~ that may be obligated during any fiscal year to the aggregate of all amounts credited under sub. (1), including amounts credited ~~pursuant to~~ under sub. (8), reduced at the time of any obligation by the sum of the moneys obligated and charged against any of the amounts credited.

SECTION 72. 108.161 (5) and (6) of the statutes are consolidated, renumbered 108.161 (5m) and amended to read:

108.161 **(5m)** The total of the amounts ~~thus~~ appropriated under sub. (4) for use in any fiscal year shall in no event exceed the moneys available for such use ~~hereunder~~ under this section, considering the timing of credits ~~hereunder~~ under this section and the sums already spent or appropriated or transferred or otherwise encumbered ~~hereunder. **(6)**~~ under this section. The fund's treasurer shall keep a record of all such ~~times and amounts; shall charge~~ transactions and shall do all of the following:

(a) Charge each sum against the earliest credits ~~duly~~ available therefor~~; shall include~~.

(b) Include any sum ~~thus~~ that has been appropriated but not yet spent ~~hereunder~~ under this section in computing the fund's net balance as of the close of any month, in line with the federal requirement that any such sum shall, until spent, be considered part of the fund~~; and shall certify~~.

(c) Certify the relevant facts whenever necessary ~~hereunder~~.

SECTION 73. 108.161 (7) of the statutes is amended to read:

108.161 **(7)** If any moneys appropriated ~~hereunder~~ under this section are used to buy and hold suitable land~~, with a view to the future construction of an~~ and to build a suitable employment security building thereon, and if such land is later sold or transferred to other use, the proceeds of such sale ~~(~~, or the value of such land when transferred~~)~~, shall be credited to the federal administrative financing account ~~created by sub. (1)~~ except as otherwise provided in ss. 13.48 (14) and 16.848.

SECTION 74. 108.161 (8) of the statutes is amended to read:

108.161 **(8)** If any sums are appropriated and spent ~~hereunder~~ under this section to buy land and to build a suitable employment security building thereon, or to purchase information technology hardware and software, ~~then~~ any federal moneys thereafter credited to the fund or paid to the department by way of gradual reimbursement of such employment security capital expenditures, or in lieu of the estimated periodic amounts ~~which~~ that would otherwise ~~(~~, in the absence of such expenditures~~)~~, be federally granted for the rental of substantially equivalent quarters, shall be credited to the federal administrative financing account ~~created by sub. (1)~~, consistently with any federal requirements applicable to the handling and crediting of such moneys.

SECTION 75. 108.161 (9) of the statutes is amended to read:

108.161 **(9)** Any land and building or office quarters acquired under this section shall continue to be used for employment security purposes. Realty or quarters may not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am) or 16.848 (1) and may not be sold or transferred without the governor's approval. The proceeds from the sale, or the value of realty or quarters upon transfer, shall be

credited to the federal administrative financing account ~~established in sub. (1)~~ or credited to the ~~fund established in s. 108.20~~ appropriate appropriation account under s. 20.445, or both as determined by the department in accordance with federal requirements. Equivalent substitute rent–free quarters may be provided, as federally approved. Amounts credited under this subsection shall be used solely to finance employment security quarters according to federal requirements.

****NOTE: As described in the note under SECTION 102, there is no longer a fund established under s. 108.20.

SECTION 76. 108.162 (7) of the statutes is amended to read:

108.162 **(7)** Any amount appropriated under s. 20.445 (1) (na) ~~which~~ that has not been obligated shall be available for employment security local office building projects, consistent with this section and ~~ss.~~ s. 108.161 ~~and 108.20~~.

SECTION 77. 108.17 (2m) of the statutes is amended to read:

108.17 **(2m)** When a written statement of account is issued to an employer by the department~~, showing as duly credited~~ that shows a specified amount received from the employer under this chapter as having been credited, no other form of state receipt ~~therefor~~ is required.

SECTION 78. 108.17 (3) of the statutes is amended to read:

108.17 **(3)** If an employing unit ~~makes application~~ applies to the department to adjust an alleged overpayment by the employer of contributions or interest under this chapter, and files such an application within 3 years after the close of the calendar year in which such payment was made, the department shall ~~make a determination~~ determine under s. 108.10 ~~as to the existence and~~ whether and to what extent ~~of any such~~ an overpayment~~, and said section shall apply to such determination~~ exists. Except as provided in sub. (3m), the department shall allow

an employer a credit for any amount determined under s. 108.10 to have been erroneously paid by the employer, without interest, against its future contribution payments; or, if the department finds it impracticable to allow the employer such a credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from the fund or the ~~administrative account, as the case may be~~ appropriate appropriation under s. 20.445.

****NOTE: This substitutes a reference to "the appropriate appropriation account," though it would most likely be the s. 20.445 (1) (gd) account in the case of a refund of any interest or penalties.

SECTION 79. 108.17 (3m) of the statutes is amended to read:

108.17 **(3m)** If an appeal tribunal or the commission issues a decision under s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is determined that an amount has been erroneously paid by an employer, the department shall, from the ~~administrative account~~ appropriation under s. 20.445 (1) (gd), credit the employer with interest at the rate of 0.75 percent per month or fraction thereof on the amount of the erroneous payment. Interest shall accrue from the month which the erroneous payment was made until the month in which it is either used as a credit against future contributions or refunded to the employer.

****NOTE: This substitutes a reference to the I&P account for these payments.

SECTION 80. 108.18 (3) (c) of the statutes is amended to read:

108.18 **(3)** (c) Permitting the employer to pay such lower rate is consistent with the relevant conditions then applicable to additional credit allowance for such year under ~~section~~ 26 USC 3303 (a) ~~of the federal unemployment tax act~~, any other provision to the contrary notwithstanding.

SECTION 81. 108.18 (7) (a) 1. of the statutes is amended to read:

108.18 **(7)** (a) 1. Except as provided in pars. (b) to (i), any employer may make payments to the fund during the month of November in excess of those required by this section and s. 108.19 ~~(1), (1e), and (1f)~~. Each payment shall be credited to the employer's account for the purpose of computing the employer's reserve percentage as of the immediately preceding computation date.

****NOTE: This cross–reference range omitted s. 108.19 (1m), so this is amended to refer to s. 108.19 generally so as to include s. 108.19 (1m).

SECTION 82. 108.18 (7) (h) of the statutes is amended to read:

108.18 **(7)** (h) The department shall establish contributions, other than ~~those~~ contributions required by this section and assessments required under s. 108.19 ~~(1), (1e), and (1f)~~ and contributions other than those submitted during the month of November or authorized under par. (f) or (i) 2., as a credit, without interest, against future contributions payable by the employer or shall refund the contributions at the employer's option.

SECTION 83. 108.19 (title) of the statutes is repealed and recreated to read:

108.19 (title) **Special assessments.**

****NOTE: This section is reorganized so as to have it deal primarily with assessments.

SECTION 84. 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and amended to read:

108.19 **(1)** (a) Each employer subject to this chapter shall regularly ~~contribute to the administrative account at the rate of two–tenths of one~~ pay an assessment equal to 0.2 percent per year on its payroll, except that the department may prescribe at the close of any fiscal year such lower rates ~~of contribution~~ under this ~~section~~ subsection, to apply to classes of employers throughout the ensuing fiscal year, as will in the department's judgment adequately finance the administration of this chapter,

and as will in the department's judgment fairly represent the relative cost of the services rendered by the department to each such class.

SECTION 85. 108.19 (1) (d) of the statutes is created to read:

108.19 **(1)** (d) Assessments under this subsection shall be credited to the appropriation account under s. 20.445 (1) (gc).

****NOTE: If DWD ever were to assess employers under this subsection, the contributions would probably have to be deposited in the appropriation account under s. 20.445 (1) (gc) given how the relevant statutes are currently worded, so this change provides as such. (Because assessments under s. 108.19 (1e) and (1m) are directed elsewhere, assessments under this subsection appear to be the only moneys that would conceivably ever go to the appropriation under s. 20.445 (1) (gc).)

SECTION 86. 108.19 (1e) (a) of the statutes is amended to read:

108.19 **(1e)** (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable under s. 108.18 and this section, pay an assessment ~~to the administrative account~~ for each year ~~prior to~~ before the year 2010 equal to the lesser of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

SECTION 87. 108.19 (1e) (cm) of the statutes is created to read:

108.19 **(1e)** (cm) Assessments under this subsection shall be credited to the appropriation under s. 20.445 (1) (gh).

SECTION 88. 108.19 (1f) (a) of the statutes is amended to read:

108.19 **(1f)** (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable under s. 108.18 and this section, pay an assessment for each year equal to the lesser

of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

(d) Assessments under this ~~paragraph~~ subsection shall be deposited in the unemployment program integrity fund.

SECTION 89. 108.19 (1f) (c) of the statutes is amended to read:

108.19 **(1f)** (c) Notwithstanding par. (a), the department may, if it finds that the full amount of the levy is not required to effect the purposes specified in ~~sub. (1s)~~ s. 108.195 (2) (b) for any year, prescribe a reduced levy for that year and in such case shall publish in the notice under par. (b) the rate of the reduced levy.

SECTION 90. 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and amended to read:

108.19 **(1m)** (a) Each employer subject to this chapter as of the date a rate is established under this subsection shall pay an assessment ~~to the unemployment interest payment fund~~ at a rate established by the department sufficient to pay interest due on advances from the federal unemployment account under ~~Title XII of the federal social security act,~~ 42 USC 1321 to 1324. The rate established by the department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75 percent of the rate established for other employers. The amount of any employer's assessment shall be the product of the rate established for that employer multiplied by the employer's payroll of the previous calendar year as taken from quarterly employment and wage reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of such reports, estimates made by the department.

(d) Each assessment made under this subsection is due within 30 days after the date the department issues the assessment. ~~If the~~

(f) The department shall use amounts collected from employers under this subsection ~~exceed the amounts needed~~ to pay interest due on advances from the federal unemployment account under 42 USC 1321 to 1324. If the amounts collected exceed the amounts needed to pay that interest for a given year, the department shall use ~~any~~ the excess to pay interest owed in subsequent years on advances from the federal unemployment account. If the department determines that additional interest obligations are unlikely, the department shall transfer the excess to the fund's balancing account ~~of the fund~~, the unemployment program integrity fund, or both in amounts determined by the department.

SECTION 91. 108.19 (1m) (e) of the statutes is created to read:

108.19 **(1m)** (e) Assessments under this subsection shall be deposited in the unemployment interest payment fund.

SECTION 92. 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and amended to read:

108.19 **(1m)** (b) The department shall publish as a class 1 notice under ch. 985 any rate established under ~~sub. (1m)~~ par. (a) within 10 days ~~of~~ after the date that the rate is established.

SECTION 93. 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and amended to read:

108.19 **(1m)** (c) Notwithstanding ~~sub. (1m)~~ par. (a), an employer having a payroll of $25,000 or less for the preceding calendar year is exempt from any assessment under ~~sub. (1m)~~ this subsection.

SECTION 94. 108.19 (1q) of the statutes is renumbered 108.195 (1) and amended to read:

108.195 **(1)** UNEMPLOYMENT INTEREST PAYMENT FUND. There is created a separate, nonlapsible trust fund designated as the unemployment interest payment fund consisting of all amounts collected under ~~sub.~~ s. 108.19 (1m) (a) and all interest and penalties on those amounts collected under s. 108.22.

SECTION 95. 108.19 (1s) of the statutes is renumbered 108.195 (2), and 108.195 (2) (a) 3., as renumbered, is amended to read:

108.195 **(2)** (a) 3. Amounts transferred under ~~sub. (1m)~~ s. 108.19 (1m) (f).

SECTION 96. 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and amended to read:

108.19 **(1)** (b) If the department finds, at any time within a fiscal year for which it has prescribed lower ~~contribution~~ rates ~~to the administrative account~~ than the maximum rate permitted under ~~sub. (1)~~ par. (a), that such lower rates will not adequately finance the administration of this chapter or are excessive for that purpose, the department may by ~~general~~ rule prescribe a new schedule of rates in no case exceeding the specified maximum to apply under this ~~section~~ subsection for the balance of the fiscal year.

SECTION 97. 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and amended to read:

108.19 **(1)** (c) Within the limit specified ~~by sub. (1)~~ under par. (a), the department may by rule prescribe at any time as to any period any such rate or rates or schedule as it deems necessary and proper ~~hereunder~~ under this subsection. Unless thus prescribed, no such rate or rates or schedule shall apply under ~~sub. (1) or (2)~~ par. (a) or (b).

SECTION 98. 108.19 (3) of the statutes is repealed.

****NOTE: This provision is repealed as it appears to have been rendered out–of–date.

SECTION 99. 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and amended to read:

108.18 **(1)** (c) ~~If section 303~~ Notwithstanding par. (b), if 42 USC 503 (a) (5) ~~of title III of the social security act~~ and ~~section~~ 26 USC 3304 (a) (4) ~~of the internal revenue code~~ are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, ~~some~~ any part of ~~the moneys collected or to be collected under the state unemployment insurance law,~~ an employer's contributions in partial or complete substitution for grants under ~~title III~~ 42 USC 501 to 506, then ~~this chapter shall, by rule of the department, be modified in the manner and to the extent and within the limits necessary to permit such use by the department under this chapter; and the modifications shall become effective on the same date as such use becomes permissible under the federal amendments~~ the department may credit any portion of that part of an employer's contributions to the appropriation under s. 20.445 (1) (gd).

****NOTE: This provision dates to Chapter (Act) 181, Laws of 1943, and reads essentially the same today as it did then. The changes here move the provision to s. 108.18, where it is more relevant (s. 108.19 is designated exclusively for special assessments under this draft whereas s. 108.18 deals with contributions), and specifically provide that, in the event that federal law is changed so as to allow a portion of contributions to be used for administrative purposes, those moneys would be directed to the I&P account.

SECTION 100. 108.195 (title) of the statutes is created to read:

108.195 (title) **Segregated funds.**

****NOTE: This puts put the creation of the funds in a separate section for better organization.

SECTION 101. 108.195 (2) (title) of the statutes is created to read:

108.195 **(2)** (title) UNEMPLOYMENT PROGRAM INTEGRITY FUND.

SECTION 102. 108.20 of the statutes is repealed.

****NOTE: This section provides for the creation of an administrative account and is a relic from when moneys were formerly deposited in a segregated fund known as the "Unemployment Administration Fund." 1985 Act 29 amended this section to eliminate that fund and transferred its appropriations to the general fund. It also amended references to the fund to instead refer to the "administrative account." In reality, however, state moneys are received and spent pursuant to appropriations under s. 20.445, with, for example, federal moneys being received by the appropriation account under s. 20.445 (1) (n) and other moneys being credited to the so–called I&P account, s. 20.445 (1) (gd). This section is repealed in favor of references to specific appropriations where it is currently referenced. Most of the repealed language is already stated elsewhere.

SECTION 103. 108.22 (1) (am) of the statutes is amended to read:

108.22 **(1)** (am) The interest, penalties, and tardy filing fees levied under pars. (a), (ac), (ad), and (af) shall be paid to the department and credited to the ~~administrative account~~ appropriation under s. 20.445 (1) (gd).

****NOTE: This is amended to simply reference s. 20.445 (1) (gd), which provides that this money goes into that account.

SECTION 104. 108.22 (1m) of the statutes is amended to read:

108.22 **(1m)** If any person owes any contributions, reimbursements or assessments under s. 108.15, 108.151, 108.152, 108.155, or 108.19 ~~(1m)~~, benefit overpayments, interest, fees, payments for forfeitures, other penalties, or any other amount to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the right, title, and interest in all of the person's real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective upon the earlier of the date on which the amount is first due or the date on which the department issues a determination of the amount owed under this chapter and shall continue until the amount owed, plus costs and interest to the date of payment, is paid, except as provided in sub. (8) (d). If a lien is initially barred or stayed by bankruptcy or other

insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

****NOTE: This adds a missing cross–reference to s. 108.152, which provides for reimbursement financing by Indian tribes.

****NOTE: This broadens a reference to s. 108.19 to make it clear it applies to all assessments under s. 108.19, not just those under s. 108.19 (1m).

SECTION 105. 108.22 (8e) of the statutes is amended to read:

108.22 **(8e)** If the department determines a payment has been made to an unintended recipient erroneously without fault on the part of the intended payee or payee's authorized agent, the department may issue the correct payment to the intended payee if necessary, and may recover the amount of the erroneous payment from the recipient under this section or s. 108.225 or 108.245. Any amount so recovered shall be credited to the fund's balancing account.

****NOTE: This adds a reference to the balancing account, consistent with s. 108.16 (6) (o).

SECTION 106. 108.223 (2) (b) of the statutes is amended to read:

108.223 **(2)** (b) The department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under this section. An agreement shall require the financial institution to participate in the financial record matching program by electing either the financial institution matching option under sub. (3) or the state matching option under sub. (4). The financial institution and the department may by mutual agreement ~~make changes to~~ amend the agreement. A financial institution that wishes to choose a different matching option shall provide the department with at least 60 days' notice.

The department shall furnish the financial institution with a signed copy of the agreement.

SECTION 107. 108.23 of the statutes is amended to read:

108.23 Preference of required payments. In the event of an employer's dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in circuit courts, the payments required of the employer under this chapter shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages. If the employer is indebted to the federal government for taxes due under the federal unemployment tax act and a claim for the taxes has been duly filed, the amount of contributions which should be paid to allow the employer the maximum offset against the taxes shall have preference over preferred claims for wages and shall be on a par with debts due the United States, if by establishing the preference the offset against the federal tax can be secured under ~~s.~~ 26 USC 3302 (a) (3) ~~of the federal unemployment tax act~~.

SECTION 108. 108.24 (3) (a) 3. a. of the statutes is amended to read:

108.24 **(3)** (a) 3. a. Refrain from claiming or accepting benefits, participating in an audit or investigation by the department, or testifying in a hearing held under s. 108.09, 108.095, or 108.10.

****NOTE: This adds a cross–reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

SECTION 109. 108.24 (3) (a) 4. of the statutes is amended to read:

108.24 **(3)** (a) 4. Discriminates or retaliates against an individual because the individual claims benefits, participates in an audit or investigation by the

department under this chapter, testifies in a hearing under s. 108.09, 108.095, or 108.10, or exercises any other right under this chapter.

****NOTE: This adds a cross–reference to s. 108.095, which provides a separate procedure from ss. 108.09 and 108.10 for certain cases involving an alleged false statement or representation of a person to obtain UI benefits payable to another person.

SECTION 110. Fiscal changes.

(1) The unencumbered balance in the appropriation account under s. 20.445 (1) (gg), 2017 stats., immediately before the effective date of the repeal of s. 20.445 (1) (gg), 2017 stats., and the unencumbered balance in the appropriation account under s. 20.445 (1) (gm), 2017 stats., immediately before the effective date of the repeal of s. 20.445 (1) (gm), 2017 stats., are transferred to the appropriation account under s. 20.445 (1) (gd), as affected by this act.

****NOTE: This transfers whatever may be remaining in the two repealed appropriation accounts into the I&P account.

(END)

D19-09
Creation of Administrative Fund

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Creation of Administrative Fund

1. Description of Proposed Change

The Unemployment Administration Fund previously comprised funds that the Department used for administering the unemployment program. That fund was eliminated in 1985 Wis. Act 29, which created the Administrative Account.[1] The Administrative Account comprises both the federal administrative grant funds and the interest and penalties paid by employers. When employers fail to timely file unemployment quarterly tax and wage reports or fail to timely pay their unemployment contributions, the Department assesses penalties and interest. The penalties and interest incentivize timely reporting and payments by employers and provide an additional source of revenue for the Department to cover shortfalls in the federal administrative grant.

The Unemployment Program Integrity Fund comprises a variety of sources, including penalties assessed for claimant fraud as well as against employers for intentional worker misclassification.[2] The Unemployment Interest Payment Fund comprises funds collected from the special employer assessment to repay interest on federal loans if the trust fund balance is insufficient to pay benefits.[3] The amounts in these Funds are designated as "nonlapsible," which means that these amounts may not be transferred to the General Fund to balance the budget.

The Department proposes to eliminate the Administrative Account and recreate a fund for receiving the employer interest and penalties collected under section 108.22(1) and any other amounts the Department collects that are not designated for another fund. This new fund would,

[1] Wis. Stat. § 108.20.
[2] Wis. Stat. § 108.19(1s).
[3] Wis. Stat. §§ 108.19(1m) to (1q).

as the Unemployment Administration Fund was, be designated as "nonlapsible." The purpose of this proposal is to provide consistent treatment for the amounts collected by the Department and to better ensure that amounts paid by employers remain with the unemployment program.

2. Proposed Statutory Changes

If the Council approves this proposal, the Department would ask the Legislative Reference Bureau to draft proposed statutory language for the Council to review and approve.

3. Effects of Proposed Change

a. Policy. The proposed change will better ensure that employer interest and penalties remain with the unemployment insurance program.

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

c. Fiscal. A fiscal estimate will be provided at a later date.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

D19-10
Update Administrative Rules to Convert SIC to NAICS

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Update Administrative Rules to Convert SIC to NAICS

1. Description of Proposed Change

The federal government created Standard Industrial Classification ("SIC") codes to classify businesses into industry groups. SIC codes are not being modernized to reflect changes in the economy. In 1997, the United States, Canada, and Mexico created the North American Industry Classification System ("NAICS") codes. NAICS codes are updated every five years, most recently in 2017.

Chapter DWD 102 (Contribution Rates) specifies the initial contribution rates for certain categories of employers. The Department is required to determine whether an employer is "engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing or similar construction programs" which are specified in SIC Major Group 17 – Construction - Special Trade Contractors.

Chapter DWD 147 (Seasonal Agricultural Employers) specifies the employers that the Department considers to be primarily engaged in agricultural production, agricultural services, forestry or commercial fishing, hunting or trapping. The Department determines the employer's primary type of business activity from the SIC groups.

The department proposes to replace the references to SIC codes in the unemployment insurance administrative rules with NAICS codes to modernize the rules with current designation codes.

2. Proposed Rule Changes

If the attached scope statement is approved, the Department will draft revisions to chapters 102 and 147 to convert the references to SIC codes to NAICS codes. The Department included references to all Department unemployment insurance rules (chapters 100-150) in the scope statement so that the Department may make other minor and technical changes to those rule chapters if necessary. The Department will present that draft to the Council for review before the rule is finalized.

3. Effects of Proposed Change

a. Policy. The proposed change will amend Wisconsin's unemployment insurance law to repeal references to outdated SIC codes and create references to modern NAICS codes.

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

c. Fiscal. This proposal is not expected to have an administrative fiscal effect, trust fund fiscal effect, or a fiscal effect on employers or claimants.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective when the Legislature approves the modified rules.

STATEMENT OF SCOPE
Department of Workforce Development

Rule No: Chapters DWD 100 to 150

Relating to: Converting Standard Industrial Classification ("SIC") code references to the North American Industry Classification System ("NAICS") codes. Making minor and technical updates.

Rule Type: Permanent

Finding/nature of emergency

Not applicable.

Detailed description of the objective of the proposed rule.

The objective of the proposed rule is to replace references in chs. DWD 102 and 147 to SIC codes with NAICS codes. NAICS codes were first adopted in 1997 to replace the SIC code system. The department may make additional minor and technical changes to the rules in chs. DWD 100-150.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Currently, ch. DWD 102 (Contribution Rates) specifies the initial contribution rates for certain categories of employers. The department is required to determine whether an employer is "engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing or similar construction programs" which are specified in SIC Major Group 17 – Construction - Special Trade Contractors.

Chapter DWD 147 (Seasonal Agricultural Employers) specifies which employers the department considers to be primarily engaged in agricultural production, agricultural services, forestry or commercial fishing, hunting or trapping. The department determines the employer's primary type of business activity from the groups assigned in the SIC manual.

The department proposes to replace the references to SIC codes with NAICS codes in chs. DWD 102 and 147, bringing the rules up-to-date with federal terminology and modern designation codes. SIC codes have not been updated since 1987 and are not being modernized to reflect changes in the economy.

The department proposes to make additional minor and technical changes to the rules to ensure conformity with federal requirements, consistency with state statutes, correct typographical errors and correct cross-references.

The policy alternative is to do nothing. If the department does not promulgate the proposed rule, existing references to SIC in chapters DWD 102 and 147 will not align with modern industry designation codes. If the department does not make the minor and technical corrections that it may identify, the administrative rules may not align with state and federal law.

Detailed explanation of statutory authority for the rule, including the statutory citation and language.

Section 108.14 (2), Wis. Stats.

"The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter."

Estimate of amount of time that state employees will spend developing the rule and other resources necessary to develop the rule.

The estimated time is 160 hours.

List with description of all entities that may be affected by the proposed rule.

The proposed rule may affect construction employers and employers primarily engaged in agricultural production, agricultural services, forestry, or commercial fishing, hunting or trapping. There is not expected to be an adverse impact on business or local government because the department may already designate an employer in these categories regardless of SIC codes.

For the minor and technical rule revisions, the changes may affect employees and employers.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

Federal law requires that state law conform to and comply with federal regulations. *See* 20 C.F.R. § 601.5.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses).

The proposed rule is not expected to have an economic impact to any business or small business.

Contact Person: Janell Knutson, Director, UI Bureau of Legal Affairs, (608) 266-1639, janell.knutson@dwd.wisconsin.gov.

Approval of the agency head or authorized individual:

_____ _____

Pamela R. McGillivray, Chief Legal Counsel **Date Submitted**

D19-11
Repeal UI Drug Testing

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal UI Drug Testing

1. Description of Proposed Change

Pre-Employment Drug Testing and Drug Treatment

The 2015 Budget, 2015 Wis. Act 55,[1] created Wis. Stat. §§ 108.04(8)(b) and 108.133, requiring the Department, by administrative rule, to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to DWD. If a reported individual is receiving UI benefits, the individual is presumed to have failed, without good cause, to accept suitable work and is ineligible for benefits.[2] If the drug test was failed, the individual may maintain eligibility for UI benefits if the individual enrolls in and complies with a substance abuse treatment program, completes a job skills assessment and otherwise meets all program requirements. Under this law, DWD will pay the reasonable costs for drug treatment.

The emergency rule for the Pre-Employment Drug Testing Program became effective on May 6, 2016 and became effective as a permanent rule on May 1, 2017. As of March 4, 2019, the UI Division has received about 86 reports from employing units regarding individuals' failures of pre-employment drug tests. No claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules and denied benefits because of the employers' reports of a failed drug test as a condition of an offer of employment. Because no claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules, no claimants have maintained benefit eligibility by enrolling in and complying with a substance abuse treatment program and completing a job skills assessment. Insufficient data is currently

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

available with respect to the number of employers that reported individuals' refusal of a pre-employment drug test to give a public account, but some reports have been filed.

2017 Wis. Act 157 (UIAC agreed bill) amended the law effective April 1, 2018 to limit employers' civil liability under state law for submission of pre-employment drug testing information to the Department. Even with the amendment, there has been very limited use of the Pre-Employment Drug Testing Program by employers.

Occupational Drug Testing and Drug Treatment

The Middle Class Tax Relief and Job Creation Act of 2012 amended Section 303 of the Social Security Act[3] to permit states to test a UI applicant for unlawful use of controlled substances as an eligibility condition if the applicant is an individual for whom suitable work (as defined under state law) is only available in an occupation that regularly conducts drug testing (as determined under regulations issued by the Secretary of US-DOL). Under 2015 Wis. Act 55, the Department must, by administrative rule, create a program for drug testing certain UI applicants. The Department will determine whether an applicant's only suitable work is in an occupation that regularly conducts drug testing. If an applicant's only suitable work is in an occupation that regularly conducts drug testing, the Department will screen the applicant to determine whether there is a reasonable suspicion the applicant engaged in the unlawful use of controlled substances. An applicant with a positive screening result must submit to a drug test to remain eligible for UI benefits. An applicant who fails a drug test under Wis. Stat. § 108.133 without evidence of a valid prescription may remain eligible for UI benefits if the applicant enrolls in and complies with a drug treatment program, completes a job skills assessment, and otherwise meets all program requirements.

There are two parts to the state Occupational Drug Testing Program:

[3] Section 303(l)(l)(A)(ii), SSA.

D19-11
Repeal UI Drug Testing

1. Drug testing UI applicants whose only suitable work is in an "occupation that regularly conducts drug testing" as identified in the regulations issued by US-DOL.
2. Drug testing UI applicants whose only suitable work is in an occupation for which drug testing is regularly conducted in this state as identified in administrative rules promulgated by DWD.

US-DOL issued a Notice of Proposed Rule Making relating to occupational drug testing for UI applicants on November 5, 2018. To date, no final rule has been issued. Accordingly, DWD has not promulgated rules to implement occupational drug testing.

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

2. <u>Proposed Statutory Change</u>

Section 108.04(8)(b) of the statutes, as affected by 2017 Wisconsin Act 157, is repealed.

Section 108.133 of the statutes, as affected by 2017 Wisconsin Act 157, sections 26 to 37, is repealed.

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

(Additional cross-references may also need to be amended.)

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

D19-11
Repeal UI Drug Testing

3. **Effects of Proposed Change**

Fiscal. The proposed change will save GPR funding of $500,000 per biennium. The proposal would not have any impact on benefit payments or UI tax revenue. It would not impact reimbursable employers, nor the UI Trust Fund.

4. **State and Federal Issues**

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

5. **Proposed Effective/Applicability Date**

This proposal would be effective with other changes made as part of the agreed bill cycle.

D19-12
Repeal Substantial Fault

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Substantial Fault

1. Description of Proposed Change

Currently, an employee who is discharged is ineligible for unemployment insurance benefits if the discharge is for misconduct by the employee connected with their employment or if the discharge is for substantial fault by the employee connected with the employee's work. In either case, the employee is ineligible for unemployment benefits until seven weeks have elapsed since the end of the week in which the discharge occurs, and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate.

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

Previously, section 108.04(5g) was created as a provision of the 2005 agreed bill by the Unemployment Insurance Advisory Council. That statute provided a disqualification for certain violations of an attendance policy if certain requirements were met. The employee would be disqualified for unemployment insurance benefits until six weeks have elapsed since the end of the week in which the discharge occurs, and the employee earned wages after the week in which the discharge occurs equal to at least 6 times the employee's weekly benefit rate.

The 2013 Budget, 2013 Wis. Act 20, repealed section 108.04(5g) and replaced it with the disqualification for substantial fault. Act 20 also created several enumerated types of misconduct under section 108.04(5)(a)-(g), including section 108.04(5)(e), regarding attendance. The current

s. 108.04(5)(e) provides for a disqualification for misconduct if specific absenteeism and tardiness provisions are met, with the same benefit disqualification as other misconduct. Under current law, absenteeism and tardiness cases are analyzed first under s. 108.04(5)(e), then under general misconduct (s. 108.04(5)(intro)). If disqualification does not result under s. 108.04(5)(e) or general misconduct, the next step is to analyze the reasons for discharge under substantial fault.

The 2019 Budget Bill, 2019 AB 56 / 2019 SB 59, would repeal substantial fault and replace it with the prior s. 108.04(5g), as created in 2005.

Like the 2019 Budget Bill, this proposal would repeal substantial fault. Unlike the 2019 Budget Bill, this proposal would not recreate the prior s. 108.04(5g). The substantial fault statute has been the subject of litigation to the courts, including the Supreme Court. Repealing that provision would result in more predictability for claimants and employers.

2. Proposed Statutory Changes[1]

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

3. Effects of Proposed Change

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

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

c. Fiscal. A fiscal estimate is attached.

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

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with the other provisions of the agreed bill.

D19-12
Repeal Substantial Fault

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Date: 3/21/19
Prepared by: UI Technical Services Section

Repeal Substantial Fault Provision

Annual Impacts:

$ **Millions**	
Total UI Benefit Impact (reimbursable and taxable)	**$6.06**
UI Reimbursable Benefits	**$0.39**
UI State Government Reimbursable Benefits	*$0.04*
UI Local Government Reimbursable Benefits	*$0.12*
Other Reimbursable Benefits	*$0.23*
Taxable UI Benefits (Non-reimbursable amount charged to employer accounts)	**$5.67**
UI Tax Impact (revenue)	$1.89
UI Trust Fund Net Change	-$3.78

Methodology: This proposal is expected to increase UI benefits payments by approximately $6.06 million annually. Reimbursable employer benefit payments make up approximately 6.38% of total benefit payments. This will result in an increase to reimbursable employer funding by approximately $386,700 annually. Non-reimbursable benefits payments of approximately $5.7 million annually are charged to the UI Trust Fund. These charged benefits result in an increase in UI tax revenue by approximately $1.9 million annually (1/3 the charged benefit increase). The net result is a cost to the UI Trust Fund of approximately $3.8 million annually.

Impacts Over the Biennium:

Assumes an effective date of 1/5/2020

$ **Millions**	FY 2019-2020	FY 2020-2021
Total UI Benefit Impact (reimbursable and taxable)	**$3.78**	**$6.06**
UI Reimbursable Benefits	**$0.24**	**$0.39**
UI State Government Reimbursable Benefits	*$0.02*	*$0.04*
UI Local Government Reimbursable Benefits	*$0.07*	*$0.12*
Other Reimbursable Benefits	*$0.15*	*$0.23*
UI Taxable Benefits (Non-reimbursable amount charged to employer accounts)	**$3.54**	**$5.67**
UI Tax Impact (revenue)	$0.00	$0.77
UI Trust Fund Net Change	-$3.54	-$4.90

D19-13
Define Suitable Work by Administrative Rule

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Define Suitable Work by Administrative Rule

1. Description of Proposed Change

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

Before 2015, when a claimant refused an offer of work within the first six weeks of becoming unemployed, the Department compared the skill level and rate of pay of the job refused to one or more of the claimant's recent jobs. Benefits were allowed if the skill level of the work being refused was lower than that of one or more recently-held jobs or if the rate of pay offered was less than 80% of the pay of one or more recent jobs. The 80% threshold was set by Department policy.

The 2015 Budget, 2015 Wis. Act 55, created Wis. Stat. § 108.14(27), which directed the Department to define suitable work by administrative rule and to specify, by rule, different levels of suitable work based on the number of weeks that a claimant has received benefits during a benefit year. The Department did not promulgate the rule.

As part of the 2015 Unemployment Insurance Advisory Council agreed bill, 2015 Wis. Act 334, the Council agreed to the repeal of Wis. Stat. § 108.14(27), as created by 2015 Wis. Act 55, and further agreed to the current statutory definition of suitable work found in §§ 108.04(8)(d) and

[1] Wis. Admin. Code DWD § 100.02(61).

(dm). The Council approved these changes unanimously. The suitable work provisions of 2015 Wis. Act 334 effectively codified Department policy but reduced the pay threshold from 80% to 75%.

Under the 2015 Wis. Act 334 suitable work changes, a two-tiered approach is used to determine whether work refused is suitable based on when the job is refused. For claimants who refuse a job within the first six weeks of unemployment (known as the "canvassing period"), the Department will compare the skill level and rate of pay to the claimant's most recent jobs and determine whether the hourly wage is at least 75% of what the claimant earned in their highest paying most recent job.[2]

For jobs refused after the sixth week of becoming unemployed, suitable work is defined as "any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department."[3] The work must still meet labor standards.

The 2019 Budget Bill, 2019 AB 56 / 2019 SB 59, effectively repeals the changes to suitable work made by 2015 Wis. Act 334 and again directs the Department, to specify, by rule, different levels of suitable work based on the number of weeks that a claimant has received benefits during a benefit year.

This proposal would repeal changes made to the definition of suitable work in 2015 Wis. Act 334. Further, it would require the Department of Workforce Development to define, by administrative rule, "suitable work" by specifying different levels of suitable work based on the number of weeks that a claimant has received benefits in a benefit year.

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[2] Wis. Stat. § 108.04(8)(d).
[3] Wis. Stat. § 108.04(8)(dm).

Like the 2019 Budget Bill, this proposal would also affect an exception that permits the payment of benefits for claimants who quit a job within the first 30 days of starting the job. Under current Wis. Stat. § 108.04(7)(e), an employee is not disqualified for quitting a job within the first 30 days based on "the same grounds for voluntarily terminating work [within the first 30 days] if the employee could have failed to accept the work under [the statutory suitable work definition] when it was offered, regardless of the reason articulated by the employee for the termination."

2. Proposed Statutory Changes[4]

Section 108.02 (24g) of the statutes is created to read:

Suitable Work. "Suitable work" has the meaning specified by the department by rule, which shall specify different levels of suitable work based on the number of weeks that a claimant has received benefits in a given benefit year.

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

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

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

D19-13
Define Suitable Work by Administrative Rule

Section 108.04 (8) (d) of the statutes is repealed and recreated to read:

An employee shall have good cause under par. (a) or (c), regardless of the reason articulated by the employee for the failure, if the department determines that the failure involved work at a lower grade of skill or significantly lower rate of pay than applied to the employee on one or more recent jobs, and that the employee had not yet had a reasonable opportunity, in view of labor market conditions and the employee's degree of skill, but not to exceed 6 weeks after the employee became unemployed, to seek a new job substantially in line with the employee's prior job skill and rate of pay.

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

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

3. **Effects of Proposed Change**

a. Policy. The proposed change will potentially result in reducing the circumstances in which a claimant may refuse work and continue to receive unemployment benefits.

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

c. Fiscal. A fiscal estimate is attached.

4. **State and Federal Issues**

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

5. **Proposed Effective/Applicability Date**

This proposal would be effective with the other provisions of the agreed bill. The Department suggests a delayed effective date until the rule is promulgated.

D19-13
Define Suitable Work by Administrative Rule

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Date: 3/21/19
Prepared by: UI Technical Services Section

Repeal Changes Made in 2015 Wisconsin Act 334 related to Suitable Work

Issue: Repeal changes made in 2015 Act 334 related to the definition of suitable work, the standards for determining whether there is good cause for a claimant to refuse suitable work when offered. Further, it would require DWD to define by rule what constitutes suitable work by rule specifying different levels of suitable work based on the number of weeks that a claimant has received benefits in a given year.

Annual and Biennial Impacts:

Effective date is dependent on the promulgation of rules

The proposal, as written, would not have any impact on benefit payments or UI tax revenue. It would not impact reimbursable employers, nor the UI Trust Fund. Any impacts would be determined based on DWD administrative rule.

D19-14
Quit Exception for Relocating Spouse

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Quit Exception for Relocating Spouse

1. Description of Proposed Change

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

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

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

The 2019 Budget Bill, 2019 AB 56 / 2019 SB 59, effectively repeals the changes to this quit exception made by 2013 Wis. Act 20 and provides that the quit exception covers all spouses who move with a relocating spouse, not just those serving in the U.S. Armed Forces.

This proposal broadens this quit exception to apply to claimants whose spouses are required by any employer to relocate, not just the U.S. Armed Forces.

2. **Proposed Statutory Changes**[1]

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

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

3. **Effects of Proposed Change**

a. Policy. The proposed change may encourage workers to relocate to take better jobs. This proposal would ensure that spouses of workers who relocate to take better jobs are able to receive unemployment insurance benefits after relocating if it is impractical for the spouse to commute.

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

c. Fiscal. A fiscal estimate is attached.

4. **State and Federal Issues**

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

5. **Proposed Effective/Applicability Date**

This proposal would be effective with the other provisions of the agreed bill.

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

D19-14
Quit Exception for Relocating Spouse

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Date: 3/21/19
Prepared by: UI Technical Services Section

Amend Quit Exception s. 108.04(7)(t) – Quit to Relocate with Spouse

Issue: This proposal modifies the quit exception statute under s. 108.04(7)(t) – quit to relocate with spouse.

Annual Impacts:

$ **Millions**	
Total UI Benefit Impact (reimbursable and taxable)	**$0.587**
UI Reimbursable Benefits	**$0.037**
UI State Government Reimbursable Benefits	*$0.004*
UI Local Government Reimbursable Benefits	*$0.011*
Other Reimbursable Benefits	*$0.022*
Taxable UI Benefits (Non-reimbursable amount charged to employer accounts)	**$0.550**
UI Tax Impact (revenue)	$0.183
UI Trust Fund Net Change	-$0.366

Methodology: This proposal would affect approximately 200 claimants annually based on current claim levels. This proposal is expected to increase UI benefits payments by approximately $587,000 annually. Reimbursable employer benefit payments make up approximately 6.38% of total benefit payments. This will result in an increase to reimbursable employer funding by approximately $37,000 annually. Non-reimbursable benefits payments of approximately $550,000 annually are charged to the UI Trust Fund. These charged benefits result in an increase in UI tax revenue by approximately $183,000 annually (1/3 the charged benefit increase). The net result is a cost to the UI Trust Fund of approximately $366,000 annually.

D19-14
Quit Exception for Relocating Spouse

Impacts Over the Biennium:
Assumes an effective date of 7/1/2019 (date of publication)

$ Millions	FY 2019-2020	FY 2020-2021
Total UI Benefit Impact (reimbursable and taxable)	**$0.587**	**$0.587**
UI Reimbursable Benefits	**$0.037**	**$0.037**
UI State Government Reimbursable Benefits	$0.004	$0.004
UI Local Government Reimbursable Benefits	$0.011	$0.011
Other Reimbursable Benefits	$0.022	$0.022
UI Taxable Benefits (Non-reimbursable amount charged to employer accounts)	**$0.550**	**$0.550**
UI Tax Impact (revenue)	$0.000	$0.112
UI Trust Fund Net Change	-$0.550	-$0.437

D19-15
Increase and Index Maximum Wage Cap for the Partial Benefit Formula

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

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

1. Description of Proposed Change

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

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

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

The 2019 Budget Bill, 2019 AB 56 / 2019 SB 59, would index the $500 weekly maximum earned income disqualification to an amount based on the U.S. consumer price index for all urban consumers, U.S. city average. This proposal mirrors the Budget Bill provision.

2. Proposed Statutory Changes[1]

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

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

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

For purposes of subd. 1., the amount under this subdivision shall be $500, except that effective January 1 of each year, with the first adjustment being effective on January 1, 2020, the department shall adjust that amount by a percentage equal to the average annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal department of labor. The department shall annually have the revised amount published in the Wisconsin Administrative Register.

3. Effects of Proposed Change

a. Policy. The proposed change would result in slight increases to the $500 maximum wage cap for the partial benefits formula each year.

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

c. Fiscal. A fiscal estimate is attached.

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

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective for weeks of unemployment beginning January 5, 2020.

D19-15
Increase and Index Maximum Wage Cap for the Partial Benefit Formula

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Date: 3/21/19
Prepared by: UI Technical Services Section

Index the Weekly Maximum Disqualifying Earned Income Amount to Inflation

Issue: This proposal indexes the $500 weekly maximum earned income to an amount based on inflation.

Annual Impacts:

$ **Millions**	**Assumes $370 WBR**	**Assumes $406 WBR**
Total UI Benefit Impact (reimbursable and taxable)	**$0.033**	**$0.055**
UI Reimbursable Benefits	**$0.002**	**$0.004**
UI State Government Reimbursable Benefits	*$0.000*	*$0.000*
UI Local Government Reimbursable Benefits	*$0.001*	*$0.001*
Other reimbursable Benefits	*$0.001*	*$0.002*
Taxable UI Benefits (Non-reimbursable amount charged to employer accounts)	**$0.031**	**$0.052**
UI Tax Impact (revenue)	$0.010	$0.017
UI Trust Fund Net Change	-$0.020	-$0.034

Methodology: It is assumed the inflation rate is a 2% increase in the Consumer Price Index (CPI). The initial maximum disqualifying earned income would be $510. This proposal would affect approximately 630 claimants based on current claim levels. Additional claimants would potentially be affected; however; they would still be disqualified based on the weekly 32-hour cap despite any increases to the maximum earned income amount.

If the maximum weekly benefit rate were to **remain at $370**, this proposal is expected to increase UI benefits payments by approximately $32,700 annually. Reimbursable employer benefit payments make up approximately 6.38% of total benefit payments. This will result in an increase to reimbursable employer funding by approximately $2,100 annually. Non-reimbursable

benefits payments of approximately $30,600 annually are charged to the UI Trust Fund. These charged benefits result in an increase in UI tax revenue by approximately $10,200 annually (1/3 the charged benefit increase). The net result is a cost to the UI Trust Fund of approximately $20,400 annually. At a $370 maximum weekly benefit rate, the partial wage benefit rate limits the amount that can be earned to $575. At a 2% inflation rate, this amount would be reached in 7 years at which point the index would no longer have any impact.

If the maximum weekly benefit rate were to **increase to $406**, the above-referenced impacts would increase slightly. UI benefit payments would increase to approximately $55,150 and tax revenue would increase to $17,200, with a net cost to the UI Trust Fund of approximately $34,400 annually. At a $406 maximum weekly benefit rate, the partial wage benefit rate limits the amount that can be earned to $629. At a 2% inflation rate, this amount would be reached in 12 years at which point the index would no longer have any impact.

Impacts Over the Biennium:
Assumes effective date of 1/1/2020

	Assumes $370 WBR		**Assumes $406 WBR**	
$ **Millions**	FY 2019-2020	FY 2020-2021	FY 2019-2020	FY 2020-2021
Total UI Benefit Impact (reimbursable and taxable)	**$0.021**	**$0.033**	**$0.034**	**$0.055**
UI Reimbursable Benefits	**$0.001**	**$0.002**	**$0.002**	**$0.004**
UI State Government Reimbursable Benefits	$0.000	$0.000	$0.000	$0.000
UI Local Government Reimbursable Benefits	$0.000	$0.000	$0.000	$0.000
Other Reimbursable	$0.001	$0.001	$0.002	$0.003
UI Taxable Benefits (Non-reimbursable amount charged to employer accounts)	**$0.019**	**$0.031**	**$0.032**	**$0.051**
UI Tax Impact (revenue)	$0.000	$0.004	$0.000	$0.007
UI Trust Fund Net Change	-$0.019	-$0.027	-$0.032	-$0.045

D19-16
Repeal Waiting Week

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Waiting Week

1. Description of Proposed Change

The first Wisconsin unemployment benefit claimant had a three-week waiting period before receiving the first unemployment check in 1936. In 1941, the waiting period was reduced to two weeks. In 1951, the waiting period was further reduced to one week. In 1969, the waiting period was still one week, but a claimant could receive benefits for that week if they obtained employment within 10 weeks of the start of their benefit year. The waiting week was repealed in 1977.

The 2011 Budget, 2011 Wis. Act 32, recreated a waiting week for unemployment insurance benefits, effective January 2012. For every new benefit year, no benefits are payable for the first week a claimant would otherwise be eligible for benefits. The waiting week may be a week in which full or partial benefits are payable. The waiting week does not reduce a claimant's maximum benefit amount. About 42 states currently have a waiting week.

The one-week delay in benefit payments does not reduce a claimant's total amount of benefits that they are eligible for.

The 2019 Budget Bill, 2019 AB 56 / 2019 SB 59, would repeal the waiting week.

Like the 2019 Budget Bill, this proposal would repeal the one-week waiting week for unemployment insurance benefits.

2. **Proposed Statutory Changes**[1]

108.02 (26m) of the statutes is repealed.

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

Section 108.04 (3) of the statutes is repealed.

~~Waiting Period. The first week of a claimant's benefit year for which the claimant has timely applied and is otherwise eligible for regular benefits under this chapter is the claimant's waiting period for that benefit year.~~

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

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

3. **Effects of Proposed Change**

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

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

c. Fiscal. A fiscal estimate is attached.

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

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective with the other provisions of the agreed bill.

D19-16
Repeal Waiting Week

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Date: 3/21/19
Prepared by: UI Technical Services Section

Repeal the UI One-Week Waiting Period

Issue: This proposal repeals the one-week waiting week for UI benefits.

Annual Impacts:

$ **Millions**	
Total UI Benefit Impact (reimbursable and taxable)	**$27.20**
UI Reimbursable Benefits	**$1.74**
UI State Government Reimbursable Benefits	*$0.18*
UI Local Government Reimbursable Benefits	*$0.52*
Other Reimbursable Benefits	*$1.04*
Taxable UI Benefits (non-reimbursable amount charged to employer accounts)	**$25.46**
UI Tax Impact (revenue)	$8.49
UI Trust Fund Net Change	-$16.98

Methodology: This proposal is expected to increase UI benefits payments by approximately $27.20 million annually. Reimbursable employer benefit payments make up approximately 6.38% of total benefit payments. This will result in an increase to reimbursable employer funding by approximately $1.74 million annually. Non-reimbursable benefits payments of $25.46 million annually are charged to the UI Trust Fund. These charged benefits result in an increase in UI tax revenue by approximately $8.49 million annually (1/3 the charged benefit increase). The net result is a cost to the UI Trust Fund of approximately $16.98 million annually.

Note: This estimate is based on current claim levels. If claim levels rise, UI benefits payments will increase, having a greater impact on UI tax revenue and the UI Trust Fund.

D19-16
Repeal Waiting Week

Impacts Over the Biennium:
Assumes an effective date of 7/1/2019 (date of publication)

$ **Millions**	FY 2019-2020	FY 2020-2021
Total UI Benefit Impact (reimbursable and taxable)	**$20.77**	**$23.17**
UI Reimbursable Benefits	**$1.33**	**$1.48**
UI State Government Reimbursable Benefits	*$0.14*	*$0.15*
UI Local Government Reimbursable Benefits	*$0.40*	*$0.44*
Other Reimbursable Benefits	*$0.79*	*$0.89*
UI Taxable Benefits (non-reimbursable amount charged to employer accounts)	**$19.45**	**$21.69**
UI Tax Impact (revenue)	$0.00	$4.22
UI Trust Fund Net Change	-$19.45	-$17.47

D19-17
Repeal Work Search and Work Registration Waivers from Statute

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

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

1. Description of Proposed Change

Unemployment benefit claimants must conduct at least four work searches each week and register for work, unless a waiver relieves them of these requirements. Federal law also requires claimants to be actively seeking work and to register for work. Before 2017 Wis. Act 370 (enacted during the 2018 extraordinary session), the unemployment work search waivers were set forth in Wis. Admin. Code DWD § 127.02. The unemployment work registration waivers were in Wis. Admin. Code DWD § 126.03.

Act 370 codified in statute the work search and work registration waivers that existed in Administrative Code chapters DWD 126 and 127. Act 370 also created statutory language to permit the Department to promulgate administrative rules that modify the statutory work search and work registration waivers or create additional work search or work registration waivers "to comply with a requirement under federal law or is specifically allowed under federal law." The Department has not yet repealed the prior Administrative Code waivers and has not promulgated rules to modify the statutory waivers or create additional work search or work registration waivers.

The 2019 Budget Bill, 2019 AB 56 / 2019 SB 59, would repeal the work search waiver provisions in statute as created by Act 370, restore the applicable statutes to their pre-Act 370 language, and direct the Department to establish work search waivers by administrative rule. This proposal mirrors the 2019 Budget Bill proposal.

2. Proposed Statutory Changes[1]

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

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

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

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

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

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

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

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

D19-17
Repeal Work Search and Work Registration Waivers from Statute

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

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

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

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

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

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

3. <u>Effects of Proposed Change</u>

a. <u>Policy.</u> The proposed change would restore the law on work search and work registration waivers to the status quo before Act 370.

b. <u>Administrative.</u> This proposal will require training of Department staff.

c. <u>Fiscal</u>. A fiscal estimate is attached.

4. <u>State and Federal Issues</u>

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

5. <u>Proposed Effective/Applicability Date</u>

This proposal would be effective with the other provisions of the agreed bill. However, a delayed effective date for this proposal may be needed if the Department's administrative rules for work search waivers and work registration waivers, which are technically unnecessary under the statutory changes by Act 370, are repealed before this proposal is effective. That would avoid leaving a gap without any waivers.

D19-17
Repeal Work Search and Work Registration Waivers from Statute

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Date: 3/21/19
Prepared by: UI Technical Services Section

Work Search Waiver Provisions by Rule in Lieu of Statute

Issue: This proposal deletes work search waiver provisions in current law and instead allow DWD to establish such waivers by rule.

Annual and Biennial Impacts:

Effective date is dependent on the promulgation of rules

The proposal, as written, would not have any impact on benefit payments or UI tax revenue. It would not impact reimbursable employers, nor the UI Trust Fund. Any impacts would be determined based on DWD administrative rule.

D19-18
Increase Maximum Weekly Benefit Rate to $406

Date: March 21, 2019
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Increase Maximum Weekly Benefit Rate to $406

1. Description of Proposed Change

2013 Wis. Act 36 increased the maximum weekly benefit rate for unemployment insurance benefits from $363 to $370 starting January 2014, which was the last time Wisconsin increased the maximum weekly benefit rate. Charts showing historical data and data from other states are attached.

The 2019 Budget Bill, 2019 AB 56 / 2019 SB 59, would increase the maximum weekly benefit rate from $370 to $406 per week to reflect increases in the average weekly wage since 2014. This change would be effective for payments made for weeks of unemployment beginning January 5, 2020. Like the Budget Bill, this proposal would increase the maximum weekly benefit rate from $370 to $406 per week.

2. Proposed Statutory Changes[1]

Section 108.05 (1) (r) of the statutes is amended to read:

Except as provided in s. 108.062 (6) (a), each eligible employee shall be paid benefits for each week of total unemployment that commences on or after January 5, 2014, and before January 5, 2020, at the weekly benefit rate specified in this paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base period wages that were paid during that quarter of the employee's base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar, except that, if that amount is less than $54, no benefits are payable to the employee and, if that amount is more than $370, the employee's weekly benefit

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

rate shall be $370 and except that, if the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the remaining amount of benefits payable to the employee under s. 108.06 (1). The department shall publish on its Internet site a weekly benefit rate schedule of quarterly wages and the corresponding weekly benefit rates as calculated in accordance with this paragraph.

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

Except as provided in s. 108.062 (6) (a), each eligible employee shall be paid benefits for each week of total unemployment that commences on or after January 5, 2020, at the weekly benefit rate specified in this paragraph. Unless sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base period wages that were paid during that quarter of the employee's base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar, except that, if that amount is less than $54, no benefits are payable to the employee and, if that amount is more than $406, the employee's weekly benefit rate shall be $406 and except that, if the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the remaining amount of benefits payable to the employee under s. 108.06 (1). The department shall publish on its Internet site a weekly benefit rate schedule of quarterly wages and the corresponding weekly benefit rates as calculated in accordance with this paragraph.

3. <u>Effects of Proposed Change</u>

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

b. <u>Administrative.</u> This proposal will require training of Department staff.

c. <u>Fiscal</u>. A fiscal estimate is attached.

4. State and Federal Issues

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

5. Proposed Effective/Applicability Date

This proposal would be effective for weeks of unemployment beginning January 5, 2020.

D19-18
Increase Maximum Weekly Benefit Rate to $406

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Date: 3/21/19
Prepared by: UI Technical Services Section

Increase UI Maximum Benefit Rate to $406

Issue: This proposal increases the UI maximum weekly benefit rate to $406 per week.

Annual Impacts:

$ **Millions**	
Total UI Benefit Impact (reimbursable and taxable)	**$31.06**
UI Reimbursable Benefits	**$1.98**
UI State Government Reimbursable Benefits	*$0.20*
UI Local Government Reimbursable Benefits	*$0.60*
Other Reimbursable Benefits	*$1.18*
Taxable UI Benefits (non-reimbursable amount charged to employer accounts)	**$29.08**
UI Tax Impact (revenue)	$9.69
UI Trust Fund Net Change	-$19.39

Methodology: In 2018, 55% of claimants (approx. 75,000 individuals) received the maximum weekly benefit rate of $370. If the rate was $406 in 2018, 54% of claimants would have received a higher weekly benefit rate with 48% receiving the new maximum weekly benefit rate of $406. This proposal is expected to increase UI benefits payments by approximately $31.06 million annually. Reimbursable employer benefit payments make up approximately 6.38% of total benefit payments. This will result in an increase to reimbursable employer funding by approximately $1.98 million annually. Non-reimbursable benefits payments of $29.08 million annually are charged to the UI Trust Fund. These charged benefits result in an increase in UI tax revenue by approximately $9.69 million annually (1/3 the charged benefit increase). The net result is a cost to the UI Trust Fund of approximately $19.39 million annually.

D19-18
Increase Maximum Weekly Benefit Rate to $406

Note: This estimate is based on current claim levels. If claim levels rise, UI benefits payments will increase, having a greater impact on UI tax revenue and the UI Trust Fund.

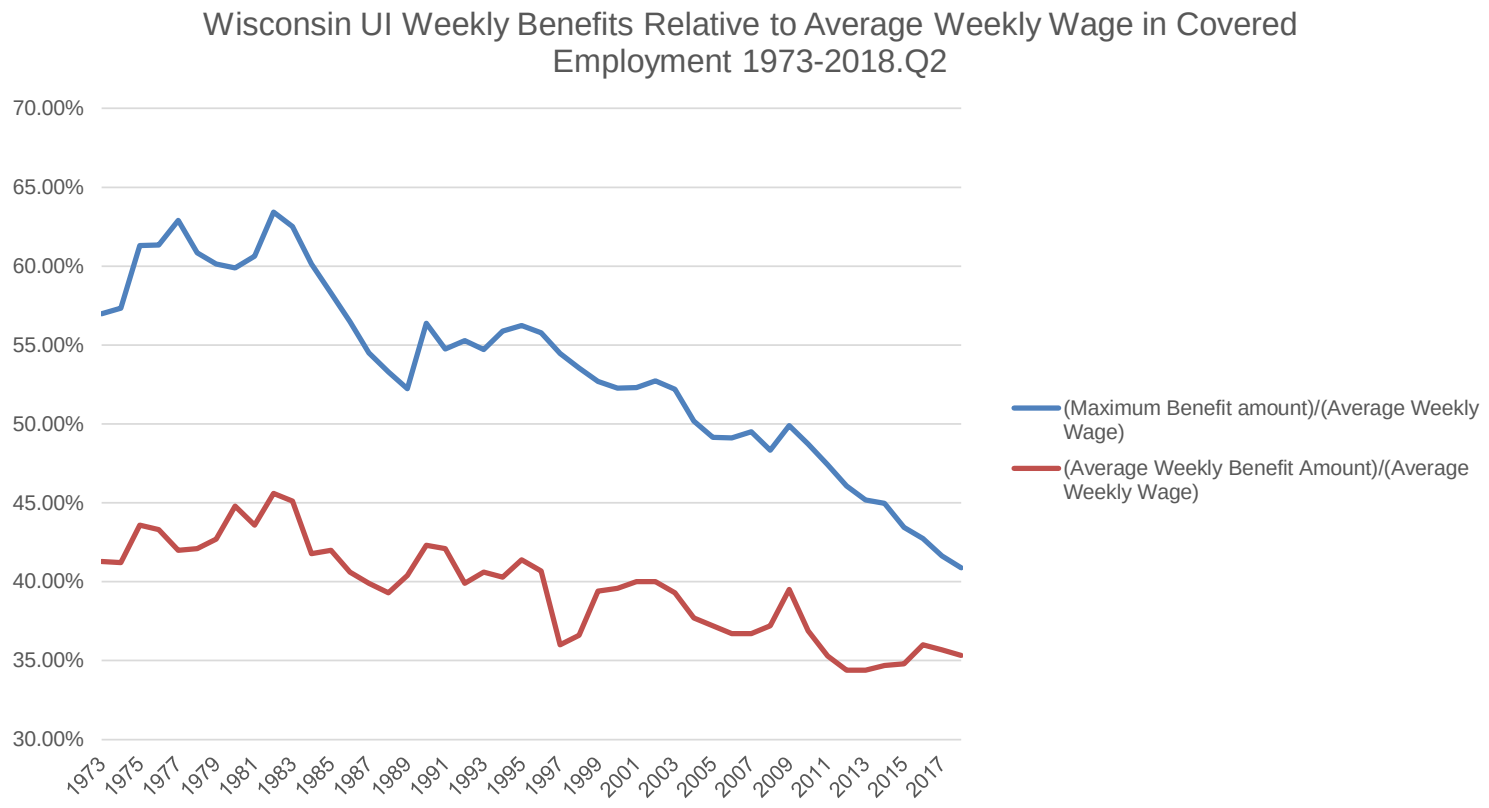
Impacts Over the Biennium:
Assumes effective date for benefit years beginning 1/1/2020

$ **Millions**	FY 2019-2020	FY 2020-2021
Total UI Benefit Impact (reimbursable and taxable)	**$19.34**	**$31.06**
UI Reimbursable Benefits	$1.23	$1.98
UI State Government Reimbursable Benefits	*$0.12*	*$0.20*
UI Local Government Reimbursable Benefits	*$0.37*	*$0.60*
Other Reimbursable Benefits	*$0.74*	*$1.18*
UI Taxable Benefits (non-reimbursable amount charged to employer accounts)	**$18.11**	**$29.08**
UI Tax Impact (revenue)	$0.00	$3.93
UI Trust Fund Net Change	-$18.11	-$25.15

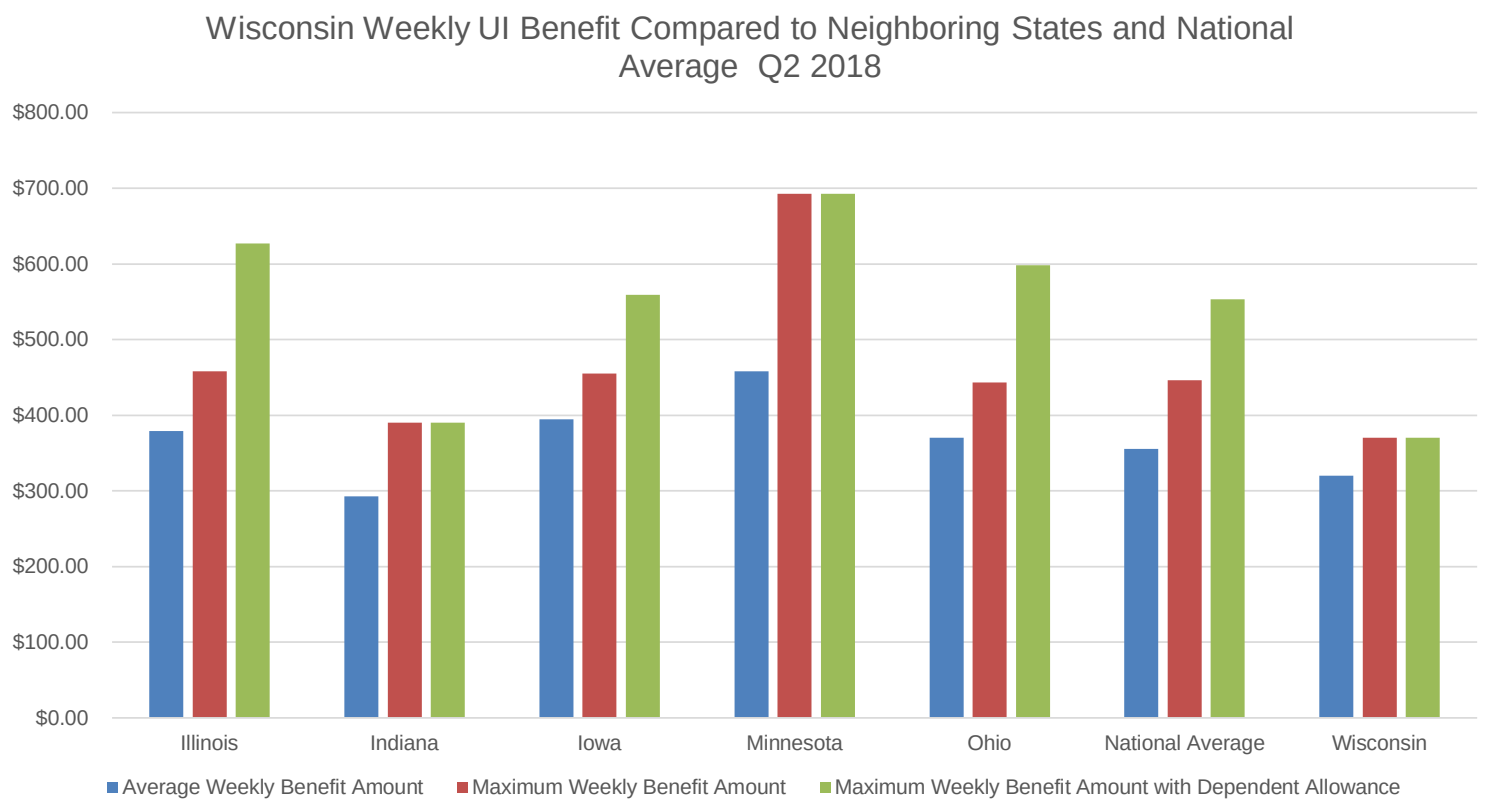
D19-18
Increase Maximum Weekly Benefit Rate to $406

Effective Week/Year	Minimum	Maximum
02/14	$54	$370
02/09	$54	$363
02/07	$53	$355
01/06	$51	$341
01/03	$49	$329
01/02	$48	$324
41/00	$46	$313
15/00	$45	$305
02/99	$44	$297
02/98	$43	$290
02/97	$53	$282
02/96	$52	$274
01/95	$50	$266
20/94	$48	$256
02/93	$46	$243
28/92	$45	$240
02/92	$43	$230
01/90	$42	$225
02/88	$38	$200
02/83	$37	$196
28/82	$36	$191
02/82	$34	$179
28/81	$33	$175
02/81	$31	$166
28/80	$30	$160
02/80	$29	$155
27/79	$28	$149
02/79	$27	$145
27/78	$36	$139
01/78	$25	$135
28/77	$25	$133
02/77	$24	$128
28/76	$23	$122
02/76	$22	$117
28/75	$21	$113
02/75	$20	$108

UI Benefits Have Fallen Relative to Covered Wages



WI UI Weekly Benefits Compared to Other Midwest States



Wisconsin UI Weekly Benefits Compared to Neighboring States

State	Average Weekly Benefit Amount	Maximum Weekly Benefit Amount	Maximum Weekly Benefit Amount with Dependent Allowance
Illinois	$379.30	$458.00	$627.00
Indiana	$292.77	$390.00	$390.00
Iowa	$394.26	$455.00	$559.00
Minnesota	$458.15	$693.00	$693.00
Ohio	$370.15	$443.00	$598.00
National Average	**$355.42**	**$445.96**	**$553.02**
Wisconsin	**$319.91**	**$370.00**	**$370.00**

Comparison of Average Weekly Benefit Amount (AWBA) and Min./Max. Weekly Benefit Amounts (WBA) by State

STATE	AWBA**	Minimum WBA*	Maximum WBA*
AL	$ 221.81	$45	$265
AK	$ 261.24	$56-$128	$370-$442
AZ	$ 230.48	$164	$240
AR	$ 255.57	$81	$451
CA	$ 330.01	$40	$450
CO	$ 431.85	$25	$542 or $597***
CT	$ 371.29	$15-$30	$613-$688
DE	$ 256.02	$20	$330
DC	$ 355.43	$50	$432
FL	$ 245.07	$32	$275
GA	$ 290.41	$44	$330
HI	$ 502.63	$5	$619
ID	$ 307.13	$72	$405
IL	$ 361.90	$51-$77	$458-$627
IN	$ 290.59	$37	$390
IA	$ 382.50	$68-$82	$455-$559
KS	$ 367.05	$118	$474
KY	$ 340.66	$39	$502
LA	$ 210.12	$10	$247
ME	$ 337.40	$75-$112	$431-$646
MD	$ 343.72	$50-$90	$430
MA	$ 514.78	$42-$63	$769-$1,153
MI	$ 304.74	$147-$177	$362
MN	$ 453.25	$26	$447-$693***
MS	$ 206.14	$30	$235
MO	$ 256.70	$35	$320
MT	$ 338.00	$150	$527
NE	$ 320.48	$70	$414
NV	$ 347.57	$16	$439
NH	$ 332.72	$32	$427
NJ	$ 433.27	$100-$115	$681
NM	$ 336.84	$81-$121	$433-$483
NY	$ 338.91	$100	$435
NC	$ 256.35	$15	$350
ND	$ 435.28	$43	$595
OH	$ 361.00	$128	$443-$598
OK	$ 361.61	$16	$506

STATE	AWBA**	Minimum WBA*	Maximum WBA*
OR	$ 400.30	$141	$604
PA	$ 354.51	$68-$76	$561-$569
RI	$ 337.28	$51-$101	$576-$720
SC	$ 255.99	$42	$326
SD	$ 317.86	$28	$402
TN	$ 144.19	$30	$275
TX	$ 396.79	$67	$494
UT	$ 412.82	$30	$543
VT	$ 347.27	$77	$466
VA	$ 307.39	$60	$378
WA	$ 467.17	$169	$713
WV	$ 287.23	$24	$424
WI	$ 300.98	$54	$370
WY	$ 370.41	$35	$489
U.S. Average	$ 333.15	$56	$426

(*Source: USDOL Comparison of State Unemployment Insurance Laws Effective July 2018, https://oui.doleta.gov/unemploy/content/sigpros/2010-2019/July2018.pdf)
(**Source: USDOL Unemployment Insurance Data Summary 3rd Quarter 2018, https://oui.doleta.gov/unemploy/content/data_stats/datasum18/DataSum_2018_3.pdf)

*When two amounts given, higher includes dependents' allowance; the higher figure for both the minimum and maximum WBAs includes the dependents' allowance for the maximum number of dependents. If state has a dependents' allowance and only one amount is given, the maximum is the same with or without the allowance. The total amount of dependents' allowance payable in any week is limited by a cap (amounts shown reflect WBA in effect July 2018).
**AWBA = Benefits Paid for Total Unemployment divided by Weeks Compensated for Total Unemployment (amounts for Q3 2018)
***Lower amount based on HQW; higher amount is based on total BPW

Comparison of Average Weekly Benefit Amount (AWBA) and Min./Max. Weekly Benefit Amounts (WBA) by State – USDOL Region V

STATE	AWBA**	Min*	Max*
IL	$ 361.90	$51-$77	$458-$627
IN	$ 290.59	$37	$390
IA	$ 382.50	$68-$82	$455-$559
KS	$ 367.05	$118	$474
MI	$ 304.74	$147-$177	$362
MN	$ 453.25	$26	$447-$693***
MO	$ 256.70	$35	$320
NE	$ 320.48	$70	$414
OH	$ 361.00	$128	$443-$598
WI	$ 300.98	$54	$370
USDOL Region V Ave.	$ 339.92	$67	$388

(*Source: USDOL Comparison of State Unemployment Insurance Laws Effective July 2018, https://oui.doleta.gov/unemploy/content/sigpros/2010-2019/July2018.pdf)
(**Source: USDOL Unemployment Insurance Data Summary 3rd Quarter 2018, https://oui.doleta.gov/unemploy/content/data_stats/datasum18/DataSum_2018_3.pdf)

*When two amounts given, higher includes dependents' allowance; the higher figure for both the minimum and maximum WBAs includes the dependents' allowance for the maximum number of dependents. If state has a dependents' allowance and only one amount is given, the maximum is the same with or without the allowance. The total amount of dependents' allowance payable in any week is limited by a cap (amounts shown reflect WBA in effect July 2018).
**AWBA = Benefits Paid for Total Unemployment divided by Weeks Compensated for Total Unemployment (amounts for Q3 2018)
***Lower amount based on HQW; higher amount is based on total BPW

Department of Workforce Development
Unemployment Insurance Division
Unemployment Insurance Advisory Council
201 E. Washington Ave., Rm. E300
P.O. Box 8942
Madison, WI 53708
Telephone: (608) 266-1639
Fax: (608) 266-8221

STATE OF WISCONSIN
DWD
Department of Workforce Development

Tony Evers, Governor
Caleb Frostman, Secretary

February 13, 2019

Mr. Patrick Hyden
210 Bering Street West
Milltown, WI 54858

Dear Mr. Hyden:

Thank you for contacting the Department of Workforce Development and submitting your comments regarding Wisconsin's UI program. We received your letter dated January 31, 2019 and appreciate you sharing your input.

The letter you submitted to Mr. Crivello in January 2017 was included with the other comments that were received from the public via letter, email and from individuals who appeared at the November 2016 public hearing. Following the public hearing, the Council met regularly and discussed at length the topics addressed in those comments – including the concerns offered in your letter.

Your comments will again be presented to the Council along with the other public comments received at the November 2018 public hearing and taken into consideration as the Council develops potential reform ideas to the state's UI law.

I hope this information has been helpful. Thank you again for sharing your comments and for your interest in the UI program.

Sincerely,

Janell Knutson, Chair
Unemployment Insurance Advisory Council

Unemployment Ins. Council

I sent this letter to Michael V Crivello 01/16/2017, today is 01/31/2019 and still nothing has changed. You are causing a great waste of time, gasoline, and money for something so simple to fix. Please change the work search requirements for those of us who work seasonal and return year after year to the same employer. This is your chance to simplify government and stop creating hardship on the people of Wi. If you act now you can make a difference .

Sincerely, Patrick Hyden

210 Bering st. w. Milltown Wi. 54858

01/31/2019

2019 FEB -5 PM 1:45
DEPT. OF
LABOR, WORKFORCE

Unemployment Ins. Advisory Council, 01/16/2017

I feel the changes in unemployment benefits re: job search is unfair to those of us who work seasonal jobs such as construction like myself. I am a 19 year veteran of seasonal construction work. Myself along with my coworkers feel these changes forcing us to job search results in time, money (which we don't have) wasted. It also is unfair to our employer who has time in training, education, and much more in us. Also if we are forced to accept lower paying positions we are preventing others who would benefit from these jobs. We are also wasting new employers time and money filling out applications and conducting interviews to us who will leave in 3-4 months and return to our employers. This is simply a total waste of resources to satisfy government bureaucracy. I know there is always a portion of people who cheat the system, but punishing the rest of us is not right. I believe it would very simple to flag those of us who return to our same employers each year and stop wasting money and time job searching for something that will not last. Please get this right. Change the job search requirement for those of us who return to our employer on a regular basis. WE cannot make Wisconsin great unless we work together.

Thank you for your time,

Sincerely, Patrick Hyden

Unemployment Insurance Advisory Council
Tentative Schedule
2019

January 17, 2019	Scheduled Meeting of UIAC Discuss Public Hearing (Nov. 15, 2018) Comments
February 21, 2019	Scheduled Meeting of UIAC (Cancelled)
March 21, 2019	Scheduled Meeting of UIAC Introduce Department Law Change Proposals
April 18, 2019	Scheduled Meeting of UIAC Discuss Department Proposals
May 16, 2019	Scheduled Meeting of UIAC Discuss Department Proposals Exchange of Labor & Management Law Change Proposals
May/June 2019	Tentative Meeting of UIAC Discuss Department Proposals Discuss Labor & Management Proposals
June 20, 2019	Scheduled Meeting of UIAC Discuss Department Proposals Discuss Labor & Management Proposals
July 18, 2019	Scheduled Meeting of UIAC Discuss Department Proposals Discuss Labor & Management Proposals
August 15, 2019	Scheduled Meeting of UIAC Discussion and Agreement on Law Changes for Agreed Upon Bill
September 19, 2019	Scheduled Meeting of UIAC Continue Discussion on Law Change Proposals for Agreed Upon Bill
October 17, 2019	**Scheduled Meeting of UIAC** **Review and Approval of Department Draft of Agreed Upon Bill**
November 21, 2019	Scheduled Meeting of UIAC Review and Approval of LRB Draft of Agreed Upon Bill
December 2019	**Tentative Meeting of UIAC** **Final Review and Approval of LRB Draft of Agreed Upon Bill**
January 2020	**Agreed Upon Bill Sent to the Legislature for Introduction in the Spring 2020 Legislative Session**