

To: Unemployment Insurance Advisory Council

From: Andy Rubsam

CC: Janell Knutson

Date: January 14, 2016

Re: D15-08 Definition of Concealment – effect of proposed section 108.04(11)(g)3.

The Department proposed, and the Council agreed, to amend the statutory definition of “conceal” in the unemployment insurance law. The revised definition of “conceal” contains the following provision: “Nothing in this subsection requires the department, when making a finding of concealment, to determine or prove that a claimant had an intent or design to receive benefits to which the claimant knows he or she was not entitled.” The Council requested that the Department provide analysis of this provision, including examples of how the law will be applied.

The Department interprets the proposed section 108.04(11)(g)3. in concealment cases to mean that the Department must find that the claimant intended to deceive the Department but the Department need not determine whether the claimant knew that the claimant would in fact receive a greater amount of unemployment benefits as a result of the deception. The proposed statutory change requires the Department to determine whether the claimant intended to mislead the Department on the benefit claim “by withholding or hiding information or making a false statement or misrepresentation,” but does not require the Department to determine that the claimant knew the effect of that intentionally incorrect answer.

For example, if a claimant intentionally fails to report quitting a job, the claimant has concealed. This is true even if the quit would not have disqualified the claimant for benefits because the quit fell within one of the exceptions such as quit with good cause. Proposed section 108.04(11)(g)3. provides that the Department does not need to establish that the claimant knew

that the failure to report the quit would result in payment of benefits to which the claimant was not entitled. Rather, the claimant intentionally misled the department by not providing the information.

Another example could involve a claimant intentionally failing to report part-time work on their benefit claim. Because the claimant intentionally failed to report work, the claimant concealed. Proposed section 108.04(11)(g)3. provides that the Department is not required to determine the claimant's knowledge about the effect of the false answer on the claimant's benefit amount. Had they not concealed the information, the claimant may have been entitled to partial benefits.