

D17-01 (Revised)
Assessment for Employers that Fail to Comply with Adjudication Requests

Date: February 16, 2017
Proposed by: DWD
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ANALYSIS OF PROPOSED UI LAW CHANGE
Assessment for Employers that Fail to Comply with Adjudication Requests

1. Description of Proposed Change

The department experiences difficulty in investigating concealment cases when employers fail to cooperate in providing necessary information. For example, an employer may fail to report the claimant's weekly wages for weeks that the department believes the claimant is concealing work. If the employer does not provide the requested information, the department must make a determination based on the best evidence available. There is often little incentive for an employer to return the weekly wage verification form because the claimant's benefits are usually not charged to their account. And, there is no civil penalty for failing to return the wage verification form.¹

Currently, if the department erroneously pays benefits from one employer's account because a claimant has concealed work for another employer, the department credits the benefits paid to the first employer's account and charges the benefits paid to the balancing account.² The claimant is "at fault" for the overpayment because the claimant committed an act of concealment.³

The department proposes a law change to assess a penalty of \$100.00 for an employer or employer agent that fails to comply with the department's request for information during an adjudication. The penalty would be deposited into the program integrity fund. The department

¹ A criminal statute provides a fine of \$100 to \$500 and imprisonment up to 90 days for anyone who "knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department...."

² Wis. Stat. § 108.16(3).

³ Wis. Stat. § 108.04(13)(f).

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may waive the penalty if the department, in its sole discretion, finds that the report was late for a reason beyond the control of the employer or employer agent.

The department also proposes to add the weekly earnings audit report as a type of required report in Wis. Admin. Code § DWD 123.03. The department would make this rule change along with the other proposed rule changes in D17-09.

2. Proposed Statutory Changes

108.22 (1) (g) of the statutes is created to read:

The department may assess a person or employer agent that fails to file a timely weekly earnings audit report or an urgent request for wages report a penalty in the amount of \$100. Assessments under this paragraph shall be deposited in the unemployment program integrity fund. The department may waive the penalty under this paragraph if the person or employer agent later files the report and the department, in its sole discretion, finds that the report was tardy due to circumstances beyond the employer's control.

108.19 (1s) (a) 5. of the statutes is created to read:

Assessments under s. 108.22 (1) (g).

3. Effects of Proposed Change

- a. Policy. The proposed change will incentivize employers to provide the department with complete and accurate information regarding their employees, leading to more accurate adjudication and payment of benefits.
- b. Administrative. This proposal will require training of benefits staff.
- c. Fiscal. A fiscal estimate is attached.

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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.

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FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This proposal is expected incentivize compliance, thus would have a negligible but positive impact on the UI Trust Fund. Any penalties recouped would go the Program Integrity Fund.

IT and Administrative Impact:

This law change proposal will require approximately 750 hours of IT changes at a one-time cost of \$65,250. The administrative cost is estimated at approximately 30% the IT cost or \$19,575. The total one-time cost is estimated at \$84,825.

Summary of Proposal:

The department experiences difficulty in investigating concealment cases when employers fail to cooperate in providing necessary information. If the employer does not provide the requested information, the department must make a determination based on the best evidence available. There is often little incentive for an employer to return the weekly wage verification form because the claimant's benefits are usually not charged to their account. And, there is no civil penalty for failing to return the wage verification form.⁴ The department proposes a law change to assess a penalty of \$100.00 for an employer or employer agent that fails to comply with the department's request for information during adjudication. The penalty would be deposited into the UI Program Integrity Fund. The department may waive the penalty if the department, in its sole discretion, finds that the report was late for a reason beyond the control of the employer or employer agent.

Trust Fund Methodology:

Based on 2016 data, there were 5,038 work and wage determinations with an overpayment due to concealment that were detected from a cross match or by the agency⁵. These were chosen as these investigations rely heavily on employer information for the determination to be accurate. According to subject matter experts within the Benefit Operations Bureau, approximately 20% of work and wage information verification forms are not received or are incomplete. That results in approximately 1,007 work and wage concealment determinations made annually when employers fail to respond or fail to provide complete information. A total of 1,007 determinations with a \$100 civil penalty would result in up to \$100,700 annually in recouped penalties that would flow to the UI Program Integrity Fund.

The recouped penalties are expected to decrease over time, as this proposal should incentivize employers to comply with future work and wage verification form requests. The department will also remove or waive the penalty to those employers who respond late with good cause.

⁴ A criminal statute provides a fine of \$100 to \$500 and imprisonment up to 90 days for anyone who "knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department...."

⁵ Wage Record Cross Match, State New Hire Cross Match, National New Hire Cross Match, Interstate Cross Match, State Payroll Cross Match, Federal Wage Cross Match and Agency Detection

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IT and Administrative Impact Methodology:

The IT hours and cost assumes is based on high level business requirements. It assumes 600 SUITES hours and 150 CEDARS hours to make the necessary changes. The administrative cost is 30% of the IT cost based on prior project estimates.