

D17-03
Assessment for Failure to Produce Records

Date: January 19, 2017
Proposed by: DWD
Prepared by: Andy Rubsam

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.

About 40% of employers served with 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 enforce the subpoena in Circuit Court requesting that the employer be held in contempt. This is a time-consuming process that the Department has not historically used.

The Department proposes to change the law to assess an administrative penalty of \$500.00 for 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.

¹ Wis. Stat. § 108.21(1).

² Wis. Stat. § 108.14(2m).

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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) 5. of the statutes is created to read:

5. 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 \$500.00 to any person who fails to comply with a subpoena issued by the department 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 person fully complies 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.”

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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 will be required to make technology changes in order to implement this proposal.
- 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.

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Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

UI Trust Fund Impact:

This proposal would incentivize compliance, thus would have a negligible but positive impact on the Trust Fund. Any penalties recouped would go to 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 the Proposal:

The Division issues subpoenas when audit targets fail to respond to the Division's requests for initial requests for documentation. If a target fails to respond to the audit subpoena, the Division's only remedy is to file a request in Circuit Court to enforce the subpoena in order to have the target confined until they comply with the subpoena. This is a time-consuming process that the Division has not historically used. The Division proposes the creation of a new civil penalty of up to \$500 for failure to comply with a subpoena with a provision to waive the penalty for full compliance within a certain time period of issuing the penalty. The Benefits Operations Bureau may also issue subpoenas for the work and wage information that they request from employers if the employers is not responsive to a first request. Any penalty revenue would go to the UI Program Integrity Fund.

Trust Fund Methodology:

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

Per subject matter experts in the Bureau of Tax and Accounting, approximately 100 subpoenas would be issued annually, of which 40%, or about 40 subpoenas, would not be complied with and subject to the proposed penalty.

2015 data shows that the Division issued 427 prosecution-level work and wage determinations. Per subject matter experts in the Benefit Operation Bureau, approximately 20% of employers do not respond to work and wage audit requests. 20% of 427 would indicate that the Benefits Operations Bureau would issue approximately 85 subpoenas per year, of which approximately 40% or 34 subpoenas would not be complied with (based on BTA's percentage of subpoenas that are not complied) and subject to the proposed penalty.

A total of 74 subpoenas with a \$500 civil penalty would result in up to \$37,000 annually in recouped penalties that would flow to the UI Program Integrity Fund.

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.