

**D17-08 (updated with fiscal estimate)
Various Minor and Technical Changes**

Date: February 16, 2017
Proposed by: DWD
Prepared by: Andy Rubsam

**ANALYSIS OF PROPOSED UI LAW CHANGE
Various Minor and Technical Changes**

1. Description of Proposed Change

The department proposes several minor and technical changes to chapter 108, as follows.

- a. Congress repealed the federal Workforce Investment Act of 1998 (“WIA”) and replaced it with the federal Workforce Innovation and Opportunity Act (“WIOA”). The department proposes to update the references in chapter 108 from WIA to WIOA and to include language to obviate the need to update the statute if WIOA is repealed.
- b. Under s. 108.04(17)(e), a school year employee employed by a government unit, Indian tribe, or nonprofit organization is ineligible for benefits during the summer between two school years if there is a reasonable assurance that the employee will perform those services in the second school year. The statute omits a reference to “Indian tribe” in one instance. The department believes that the missing reference to “Indian tribe” is a drafting error and proposes to insert “Indian tribe” where it is missing.
- c. The previous UIAC agreed bill, 2015 Act 334, modified certain provisions in s. 108.04(8), related to suitable work. A cross-reference in s. 108.04(7)(e) was not revised to reflect the changes to s. 108.04(8). The department proposes to correct this error.
- d. Previously, the department paid all unemployment benefits by paper checks. Currently, the department pays about 80% of benefits by direct deposit, about 20% by deposit to debit cards and less than 1% by paper check. The department proposes updating the statutes to replace references to checks with issuance of payment.

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- e. The previous UIAC agreed bill, 2015 Act 334, provided for electronic delivery of decisions as an alternative to mailing decisions to parties. The department proposes to revise other statutes in chapter 108 to provide for optional electronic delivery of other department determinations and notices.
- f. The previous UIAC agreed bill, 2015 Act 334, created provisions to permit appeal tribunals to issue decisions regarding a party's failure to appear at hearings without holding a hearing on the party's failure to appear. The amended statutes do not clearly state that the appeal tribunal should dismiss the appeal if the appellant lacked good cause for failing to appear and that the appeal tribunal should issue a decision based on the original hearing record if the respondent lacked good cause for failing to appear. The Legislative Reference Bureau recommends amending these statutes to confirm the department's interpretation of these statutes: the appeal tribunal should issue a decision (1) addressing whether the party had good cause for failing to appear; and (2) dismissing the appeal (if the appellant failed to appear) or deciding the case based on the original hearing (if the respondent failed to appear).
- g. If a state has outstanding federal loans for two or more consecutive years as a result of borrowing in order to pay state unemployment benefits, employers' federal unemployment tax (FUTA) credit will be reduced.¹ This is known as the FUTA credit reduction and results in employers paying additional federal unemployment taxes. The federal government applies the additional federal unemployment taxes to the state's loan balance. After the state's federal loan is repaid, the federal government remits the excess amount of additional federal unemployment taxes, if any, to the state. The state must

¹ 26 USC § 3302(c)(2).

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deposit the funds into the state's unemployment trust fund.² The Legislative Fiscal Bureau recommends a law change so that state law aligns with federal law so that any excess FUTA credit reduction payments made to Wisconsin in the future will be deposited into the balancing account.

h. In lieu of layoffs, employers may reduce employees' hours under a work share plan that results in a pro rata payment of unemployment benefits.³ The department recommends the following changes to the work share statute:

1. Vacation, holiday, termination, and sick pay should be treated as hours for the purposes of calculating an employee's work share benefit. This is similar to current law for regular benefits.
2. The department shall disregard discrepancies of less than 15 minutes of work reported, which is similar to the disregard of \$2 of wages earned in a week for regular benefits.
3. The department shall treat missed work available for work share employees similarly as claimants applying for regular benefits so that work share employees are not paid greater benefits when missing work with a work share employer.

i. Section 20.445 contains various provisions related to the appropriations of funds for the department. The department's Office of Policy and Budget recommends that the appropriation language for the unemployment interest payment fund and the unemployment program integrity fund be amended. The amendments will convert these

² 42 USC § 1101(d)(1)(B): "The Secretary of the Treasury is directed to transfer from the employment security administration account--To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax."

³ See Wis. Stat. § 108.062. For more information, visit <http://dwd.wisconsin.gov/uitax/workshare.htm>.

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funds from “segregated-sum sufficient” to “segregated-continuing.” The purpose of these changes is to make the accounting for these funds more efficient. The department also proposes a fiscal provision to add 5.0 positions, to be compensated from the program integrity fund. These staff will conduct program integrity activities, investigate concealment, and investigate worker misclassification.

2. Proposed Statutory Changes

Section 20.445 (1) (u) of the statutes is amended to read:

(u) *Unemployment interest payments and transfers.* ~~From~~ All moneys paid into the unemployment interest payment fund under s. 108.19 (1q), ~~a sum sufficient~~ to make the payments and transfers authorized under s. 108.19 (1m).

Section 20.445 (1) (v) of the statutes is amended to read:

(v) *Unemployment program integrity.* ~~From~~ All moneys paid into the unemployment program integrity fund under s. 108.19 (1s), ~~a sum sufficient~~ to make the payments authorized under s. 108.19 (1s).

Section 108.02 (13) (i) of the statutes is amended to read:

An “employer” shall cease to be subject to this chapter only upon department action terminating coverage of such employer. The department may terminate an “employer’s” coverage, on its own motion or on application by the “employer”, by ~~mailing~~ issuing a notice of termination to the “employer’s” ~~last known address~~. An employer’s coverage may be terminated whenever the employer ceased to exist, transferred its entire business, or would not otherwise be subject under any one or more of pars. (b) to (g). If any employer of agricultural labor or domestic service work becomes subject to this chapter under par. (c) or (d), with respect to such employment, and such employer is otherwise subject to this chapter with respect to other employment, the

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employer shall continue to be covered with respect to agricultural labor or domestic service or both while the employer is otherwise subject to this chapter, without regard to the employment or wage requirements under par. (c) or (d). If a termination of coverage is based on an employer's application, it shall be effective as of the close of the quarter in which the application was filed. Otherwise, it shall be effective as of the date specified in the notice of termination.

Section 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 which the employee could have failed to accept under sub. (8) and terminated such work on the same grounds and within the first 30 calendar days after starting the work, or that the employee accepted work which the employee could have refused under sub. (9) and terminated such 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 subs. (8)(d) to (em) when it was offered, regardless of the reason articulated by the employee for the termination.

Section 108.04 (16) (a) 4. of the statutes is amended to read:

A plan for training approved under the federal ~~workforce investment act, 29 USC 2822~~ Workforce Innovation and Opportunity Act, 29 USC 3112, or another federal law that enhances job skills.

Section 108.04 (17) (e) of the statutes is amended to read:

A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of any educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2

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successive academic years or terms if the school year employee performed such services for any such government unit, Indian tribe, or nonprofit organization in the first such year or term and there is reasonable assurance that he or she will perform such services for any such government unit, Indian tribe, or nonprofit organization in the 2nd such year or term.

Section 108.062 (2) (m) of the statutes is amended to read:

Indicate whether the plan ~~will~~ includes employer-sponsored training to enhance job skills ~~sponsored by the employer~~ and acknowledge that, ~~pursuant to federal law~~, the employees in the work unit may participate in training funded under the federal ~~Workforce Investment Act of 1998~~ Workforce Innovation and Opportunity Act or another federal law that enhances job skills without affecting availability for work, subject to ~~the department~~ the department approval ~~of the department~~.

Section 108.062 (6) (a) of the statutes is amended to read:

Except as provided in par. (b), an employee who is included under a work-share program and who qualifies to receive regular benefits for any week during the effective period of the program shall receive a benefit payment for each week that the employee is included under the program in an amount equal to the employee's regular benefit amount under s. 108.05 (1) multiplied by the employee's proportionate reduction in hours worked for that week as a result of the work-share program. Such an employee shall receive benefits as calculated under this paragraph and not as provided under s. 108.05 (3). For the purposes of this paragraph, the department shall treat amounts paid for holiday pay, vacation pay, termination pay, and sick pay as hours worked. In applying this paragraph, the department shall disregard discrepancies of less than 15 minutes between hours reported by employees and employers.

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Section 108.062 (10) of the statutes is amended to read:

AVAILABILITY FOR WORK. An employee who ~~is receiving~~ receives benefits under sub. (6) (a) for any week need not be available for work in that week other than for the normal hours of work that the employee worked for the employer that creates the work-share program immediately before the week in which the work-share program began and any additional hours in which the employee is engaged in training to enhance job skills sponsored by the employer that creates the plan or department-approved training funded under the federal ~~Workforce Investment Act of 1998~~ Workforce Innovation and Opportunity Act or another federal law that enhances job skills that is approved by the department. Unless an employee receives holiday pay, vacation pay, termination pay, or sick pay for missed work available under a work-share program, the department shall treat the missed work that an employee would have worked in a given week as hours actually worked by the employee for the purpose of calculating benefits under sub. (6).

Section 108.09(4)(d)2. of the statutes is amended to read:

If the appellant submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received before a decision is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the appellant's explanation. The appeal tribunal shall electronically deliver or mail to the respondent a copy of the appellant's explanation. The respondent may, within 7 days after the appeal tribunal electronically delivers or mails the appellant's explanation to the respondent, submit to the appeal tribunal a written response to the appellant's explanation. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal. ~~and s~~ Such a decision may be issued without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal

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shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

Section 108.09(4)(e)2. of the statutes is amended to read:

If the respondent submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received before a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the respondent submits to the appeal tribunal a written explanation for failing to appear that is received before a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the respondent's explanation. The appeal tribunal shall electronically deliver or mail to the appellant a copy of the respondent's explanation. The appellant may, within 7 days after the appeal tribunal electronically delivers or mails the respondent's explanation to the appellant, submit to the appeal tribunal a written response to the respondent's explanation. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall also issue a decision based on the testimony and other evidence presented at the hearing at which the respondent failed to appear. If the appeal tribunal finds that the respondent's explanation establishes good cause for failing to appear, the appeal

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tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

Section 108.095 (8) of the statutes is amended to read:

The ~~mailing~~ issuance of determinations and decisions under this section shall be by electronic delivery or first class mail and may include the use of services performed by the postal service requiring the payment of extra fees.

Section 108.10 (5) of the statutes is amended to read:

The ~~mailing~~ issuance of determinations and decisions provided in subs. (1) to (4) shall be by electronic delivery or first class mail, and may include the use of services performed by the postal ~~department~~ service requiring the payment of extra fees.

Section 108.15 (3) (a) of the statutes is amended to read:

~~It~~ ~~The~~ government unit shall file a written notice of election ~~to that effect~~ with the department before the beginning of such year or within 30 days after the department issues a determination that the government unit is subject to this chapter, whichever is later. ~~except that if the government unit became newly subject to this chapter as of the beginning of such year, it shall file the notice within 30 days after the date of mailing to it a written notification by the department that it is subject to this chapter.~~ Such An election under this subsection shall remain in effect for not less than 3 calendar years.

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Section 108.15 (5) (b) of the statutes is amended to read:

The department shall monthly bill each government unit for any reimbursements required under this section. The reimbursements shall be due within 20 days after the department issues the bill.
~~, and any reimbursement thus billed shall be due and shall be paid by such government unit within 20 days after the date such bill is mailed to it by the department.~~

Section 108.155 (4) of the statutes is amended to read:

The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days after ~~the date such bill is mailed by the department~~ issues the assessment. Any assessment that remains unpaid after its ~~applicable~~ due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to pursuing action under the provisions of ss. 108.22 and 108.225, the department may do any of the following:

Section 108.16 (2) (e) of the statutes is amended to read:

Except as provided in par. (em), benefits ~~to~~ shall be charged against a given employer's account ~~shall be so charged as of the date shown by the check that the department issues the payment covering such benefits.~~ Each ~~such check~~ benefit payment shall be promptly ~~mailed~~ issued and shall, in determining the experience or status of such account for contribution purposes, be deemed paid on the date ~~shown on the check~~ issued.

Section 108.16 (2) (em) of the statutes is amended to read:

Benefits improperly charged or credited to an employer's account for any reason other than adjustment of payroll amounts between 2 or more employers' accounts shall, when so identified, be credited to or debited from that employer's account and, where appropriate, recharged to the

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correct employer's account as of the date of correction. Benefits improperly charged or credited to an employer's account as a result of adjustment of payroll amounts between 2 or more employers' accounts shall be so charged or credited and, where appropriate, recharged as of the date ~~shown by the check covering such benefits~~ on which the department issued the benefit payment. This paragraph shall be used solely in determining the experience or status of accounts for contribution purposes.

Section 108.16 (6) (p) of the statutes is created to read:

Any amount received from the federal employment security administration account under 42 USC 1101 (d) (1) (B).

Section 108.19 (1m) of the statutes is amended to read:

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 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. Each assessment made under this subsection is due ~~on the 30th day commencing~~ within 30 days after the department issues the assessment. ~~date on which notice of the assessment is mailed by the department~~. If the amounts collected from employers under this subsection ~~are in excess of~~ exceed the amounts needed to pay interest due, the

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department shall use any 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 balancing account of the fund, the unemployment program integrity fund, or both in amounts determined by the department.

Section 108.21 (2) of the statutes is amended to read:

The findings of ~~any such~~ an authorized representative of the department under sub. (1), based on examination of the records of any such employing unit and embodied in an audit report issued mailed to the employing unit, shall constitute are a determination under ~~within the meaning of s.~~ 108.10.

Fiscal Change:

In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (v) of the statutes, as affected by the acts of 2017, the dollar amount is increased by \$1,630,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect for the purpose of increasing the authorized FTE positions for the department of workforce development by 5.0 SEG positions annually and providing additional funding for the purpose of conducting program integrity activities, investigating concealment, and investigating worker misclassification. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (v) of the statutes, as affected by the acts of 2017, the dollar amount is increased by \$1,630,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect for the purpose of increasing the authorized FTE positions for the department of workforce development by 5.0 SEG positions annually and providing additional funding for the

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purpose of conducting program integrity activities, investigating concealment, and investigating worker misclassification.

3. Effects of Proposed Change

- a. Policy. This proposal will align Wisconsin law with current federal law, correct typos in Wisconsin's law, and update outdated references in the statutes.
- b. Administrative. Staff will need to be made aware of the changes.
- 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 all 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:

These minor or technical changes would not impact the Trust Fund.

IT and Administrative Impact:

The amendments to Section 20.445 would allow an administrative change in the funding source in the amount of \$1,630,000 to fund 5 program integrity related positions and other program integrity related activities. All changes are minor or technical in nature and would not result in an IT or administrative impact.

Summary of Proposal:

The department proposes several minor and technical changes to chapter 108, as follows:

- a. Update the references in chapter 108 from WIA to WIOA and to include language to obviate the need to update the statute if WIOA is repealed.
- b. Correct a drafting error regarding school-year employment. The relevant statute, s. 108.04(17)(e), appears to be missing the phrase “Indian tribe” in one instance.
- c. Correct a drafting error regarding suitable work language that was not updated in a cross reference.
- d. Update the statutes to remove the word “check.” Currently, Chapter 108 refers to the issuance of “checks” for payment of unemployment benefits. But, the Department primarily pays benefits by direct deposit or debit card deposit.
- e. Amend the statutes to refer to the option of “electronic delivery” for all types of determinations and notices.
- f. The Legislative Reference Bureau recommends amending the statutes to confirm the department’s interpretation: the appeal tribunal should issue a decision (1) addressing whether the party had good cause for failing to appear; and (2) dismissing the appeal (if the appellant failed to appear) or deciding the case based on the original hearing (if the respondent failed to appear).
- g. Authorize the deposit of FUTA credit reduction payments to the balancing account in accordance with the current practice and in compliance with federal law. FUTA credit reduction payments are made by the federal government to the states when the states borrow funds from the federal government in order to pay unemployment benefits.
- h. Modify three areas of the work share provisions. First, codify Department policy, which is that the amounts of dismissal, sick or vacation payments be treated as hours for work share calculation purposes. Second, disregard discrepancies of less than 15 minutes of work reported, which is similar to the \$2 disregard of wages earned in a week for regular benefits. Third, clarify that a claimant who misses work available with a work-share employer would be treated the same as if the claimant missed work while receiving regular UI benefits.

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- i. Amend appropriation language in Section 20.445 for the unemployment interest payment fund and the unemployment program integrity fund. The amendments will convert these funds from "segregated-sum sufficient" to "segregated-continuing" to make accounting for these fund more efficient. This would result in allowing an administrative change in the funding source in the amount of \$1,630,000 to fund five program integrity-related positions and other program integrity-related activities.

Trust Fund Methodology:

These minor or technical changes would not impact the Trust Fund.

IT and Administrative Impact Methodology:

The amendments to Section 20.445 would allow an administrative change in the funding source in the amount of \$1,630,000. It would allow utilization of funds from the Program Integrity Fund rather than UI Grant Monies and/or SBR funds. The amount will fund five program integrity-related staff positions and other program integrity-related activities. All changes are minor or technical in nature and would not result in an IT or administrative impact.