ANALYSIS OF PROPOSED UI LAW CHANGE
Amend Administrative Rules Regarding UI Hearings

1. Description of Proposed Change

Current law provides that unemployment insurance hearings may be held in-person, by telephone, or by videoconference. Under current DWD § 140.11, an appeal tribunal may conduct a telephone or videoconference hearing “when it is impractical for the appeal tribunal to conduct an in-person hearing, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location.” That section also provides that a party may appear in person at the appeal tribunal’s location if the hearing is scheduled by telephone or videoconference. However, the Department has limited hearing office space.

Between November 2019-March 2020, about 99.6% of Wisconsin unemployment insurance benefit appeal hearings were held by telephone. During the pandemic, nearly all UI benefit hearings were held by telephone with limited use of videoconference. Other states hold nearly all their unemployment hearings by telephone:

<table>
<thead>
<tr>
<th>State</th>
<th>Percent of UI hearings by phone (2019)</th>
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</thead>
<tbody>
<tr>
<td>Illinois</td>
<td>99.9%</td>
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<tr>
<td>Minnesota</td>
<td>99.9%</td>
</tr>
<tr>
<td>Michigan</td>
<td>94%</td>
</tr>
<tr>
<td>Iowa</td>
<td>98%</td>
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<tr>
<td>Indiana</td>
<td>96%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>99% (2 in-person/year)</td>
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<tr>
<td>Ohio</td>
<td>98%</td>
</tr>
<tr>
<td>Kansas</td>
<td>99%</td>
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</table>
The Department proposes to amend chapter DWD 140 to provide that, while parties may continue to request in-person hearings, it is the hearing office’s discretion whether to grant that request. The Department also proposes to clarify language in DWD chapter 140 regarding hearing records, Department assistance for people with disabilities at hearings, and to correct minor and technical language in DWD chapter 140.

2. Proposed Rule Changes

If the attached draft scope statement is approved, the Department will draft amendments to DWD chapter 140 to provide the guidelines under which parties may request in-person unemployment insurance hearings, as well as other changes to DWD chapter 140. 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 administrative rules to ensure that the hearing office has discretion to grant or deny a request for an in-person hearing.

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

c. Fiscal: This proposal is expected to reduce travel costs for parties and witnesses attending unemployment insurance hearings.

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 amended rule.
STATEMENT OF SCOPE
Department of Workforce Development

Rule No:  DWD Chapter 140

Relating to:  Unemployment insurance hearings.

Rule Type:  Permanent

Detailed description of the objective of the proposed rule.

The proposed rule will amend sections of DWD chapter 140 related to hearing notices, in-person, telephone, and videoconference unemployment insurance hearings procedures, hearing records, and accessibility for attending hearings. The rule will specify the conditions by which a party or witness may request to attend a hearing in-person.

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

Currently, DWD chapter 140 (Unemployment Insurance Appeals) specifies the requirements for unemployment insurance hearing notices, the procedures for conducting telephone or videoconference hearings, the treatment of hearing records, and Department assistance for people with disabilities at hearings.

The department proposes to amend DWD chapter 140 to confirm that the hearing notice shall provide the method of the hearing (in person, telephone, or videoconference). Also, the Department proposes to amend DWD chapter 140 to provide that it is within the discretion of the hearing office whether to hold an in-person hearing or to require the parties to appear by telephone or videoconference and to provide the guidelines under which parties may request an in-person hearing. In Ohio, Nebraska, Minnesota, Michigan, Kansas, Iowa, Indiana, and Illinois, 94-99.9% of pre-pandemic unemployment benefit hearings are held by telephone. The Department also proposes to clarify language in DWD chapter 140 regarding hearing records, Department assistance for people with disabilities at hearings, and to correct minor and technical language in DWD chapter 140.

The policy alternative is to do nothing. If the department does not promulgate the proposed rule, the unemployment insurance appeals process may not be as clear and efficient as it could be.

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

The Department of Workforce Development has statutory authority for the proposed rule.

“The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.” Wis. Stat. § 108.14(2).
“Except as provided in s. 901.05, the manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general department rules, whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure, for determining the rights of the parties.” Wis. Stat. § 108.09(5)(a).

**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 80 hours.

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

Currently, all employees and employers who appear at unemployment insurance appeal hearings appear by telephone due to the COVID-19 pandemic. Before the pandemic, nearly all unemployment insurance appeal hearings were held by telephone. The proposed rule will affect employees and employers who attend unemployment insurance appeal hearings. Employees and employers who previously appeared at unemployment insurance appeal hearings in person will save travel time and costs by appearing by telephone or videoconference.

**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 adverse economic impact on any business or small business.

**Contact Person:** Janell Knutson, Director, Bureau of Legal Affairs, Unemployment Insurance Division, at (608) 266-1639 or janell.knutson@dwd.wisconsin.gov.

**Approval of the agency head or authorized individual:**

Pamela R. McGillivray, Chief Legal Counsel

Date Submitted