D21-15
Exclusion for Certain Camp Counselors

Date: April 15, 2021
Proposed by: DWD
Drafted by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Exclusion for Certain Camp Counselors

1. Description of Proposed Change

Federal unemployment law excludes the services of camp counselors from the definition of “employment” if the following criteria are met:

1. The worker is a full-time student. This means that the worker is currently enrolled in an educational institution or is between academic years/terms, was enrolled in the preceding year/term, and will be enrolled in the succeeding year/term.

2. The worker worked for the camp for less than 13 calendar weeks in a year.

3. The camp operates in less than seven months in a year or had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year.¹

This proposal would add a similar exclusion for the services of camp counselors to Wisconsin’s unemployment law. Employees whose services are excluded under this proposal would not qualify for unemployment benefits based on their wages from the camps but may qualify for benefits based on services performed for other employers. Employers would not be taxed on the wages paid to camp counselors whose services are excluded. The wages of camp employees whose services are not excluded under this proposal would continue to be taxable for state and federal unemployment tax purposes.

¹ 26 USC § 3306(c)(20).
2. Proposed Statutory Changes

Section 108.02 (15) (k) 21. of the statutes is created to read:

“Employment” as applied to work for a given employer other than a government unit or nonprofit organization, except as the employer elects otherwise with the department’s approval, does not include service:

Performed by a full-time student, as defined in 26 USC 3306(q), for less than 13 calendar weeks in a calendar year in the employ of an organized camp, if either of the following apply:

a. The organized camp did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year.

b. The organized camp had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year.

3. Effects of Proposed Change

a. Policy: The proposed change will align state law with federal law to exclude the services of certain camp counselors for unemployment tax and benefits purposes.

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

c. Fiscal: A fiscal estimate is attached.

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 for services performed on and after January 1, 2022.
Exclusion for Certain Camp Counselors

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

Summary of Proposal:

This proposal would amend Wisconsin law to include an exclusion that would mirror the federal exclusion for seasonal full-time student camp counselors.

UI Trust Fund Impact:

This proposal would reduce the Trust Fund by approximately $76,000 or less annually due to decreased tax revenue. It would have a negligible impact on reducing UI benefit payments.

IT and Administrative Impact:

This proposal would have an approximate $6408 one-time IT and $2115 administrative impact.

Trust Fund Methodology:

Seasonal full-time student camp counselors could fall into several employer NAICS code categories, which also include employment types that would not qualify under this exclusion. For the purposes of a high-level fiscal, NAICS code 721214 or recreational and vacation camps (except campgrounds) was the employer category identified as most impacted by this exclusion. Reimbursable non-profit employers were removed from this impact analysis as their wages are not taxable and have no fiscal impact on the Trust Fund. For this exclusion to be applied the employee must work less than 13 calendar weeks in a year, and in general the camp must operate in less than 7 months of the year. Based on these criteria, employees that had wages with the employer outside third quarter (summer months) were removed. Estimated wages that met these criteria were then multiplied by those employer’s tax rates. This resulted in approximately $76,000 in tax revenue in 2019 for 3034 employees (an additional 304 employees were employed by non-profit reimbursable employers). However, an additional requirement is that the employee must be a full-time student (currently enrolled or is between academic years). It is unknown how much of this tax revenue would be based on excluded wages due to being earned by full-time students only.

It is difficult to determine the reduction in UI benefit payments based on this exclusion. However, since a requirement of this exclusion is that the employee is a full-time student, these employees may already be ineligible for UI benefits based on their school enrollment status. In 2019, there were 82 claimants that met the wage criteria above that used those wages to qualify for an unemployment claim. Based on the number of potentially affected employees, school enrollment status, and the need for additional wages from other employers, it is estimated that this proposal would have a negligible impact on reducing benefit payments.

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**Relevant federal statutes:**

26 USC § 3306(c)(20):

(c) **Employment** For purposes of this chapter, the term “employment” means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp—

(A) if such camp—

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than $33\frac{1}{3}$ percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year; or

26 USC § 3306(q):

(q) **Full time student** For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period—

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if—

(A) the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).
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