D21-23
Flexibility for Finding Suitable Work

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ANALYSIS OF PROPOSED UI LAW CHANGE
Flexibility for Finding Suitable Work

1. Description of Proposed Change

The definition of “suitable work” in the Unemployment Insurance law provides a standard for determining whether an unemployment benefit claimant has good cause for refusing work when offered. The Unemployment Insurance administrative rules currently define “suitable work” as “work that is reasonable considering the claimant’s training, experience, and duration of unemployment as well as the availability of jobs in the labor market.”

Before 2015, when a claimant refused an offer of work within the first six weeks of becoming unemployed, the Department compared the skill level and rate of pay of the job refused to one or more of the claimant’s recent jobs. Benefits were allowed if the skill level of the work being refused was lower than that of one or more recently-held jobs or if the rate of pay offered was less than 80% of the pay of one or more recent jobs. The 80% threshold was set by Department policy.

As part of the 2015 Unemployment Insurance Advisory Council agreed bill, 2015 Wis. Act 334, the Council agreed to the current statutory definition of suitable work found in sections 108.04(8)(d) and (dm). The suitable work provisions of 2015 Wis. Act 334 effectively codified Department policy but reduced the pay threshold from 80% to 75%.

Under the 2015 Wis. Act 334 suitable work changes, a two-tiered approach is used to determine whether work refused is suitable based on when the job is refused. For claimants who refuse a job within the first six weeks of unemployment (known as the “canvassing period”), the

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1 Wis. Admin. Code DWD § 100.02(61).
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Department will compare the skill level and rate of pay to the claimant’s most recent jobs and determine whether the hourly wage is at least 75% of what the claimant earned in their highest paying most recent job.  

For jobs refused after the sixth week of becoming unemployed, suitable work is defined as “any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.” The work must still meet labor standards.

The Governor’s Budget Bill (AB 68 / SB 111) amends the suitable work statutes so that claimants are not required to accept less favorable work until the 11th week of unemployment.

Under current Wis. Stat. § 108.04(7)(e), an employee is eligible for UI if they quit a job within the first 30 days based on “the same grounds for voluntarily terminating work [within the first 30 days] if the employee could have failed to accept the work under [the statutory suitable work definition] when it was offered, regardless of the reason articulated by the employee for the termination.”

The Governor’s Budget Bill (AB 68 / SB 111) amends the quit exception so that claimants may quit a job within 10 weeks of starting it if they could have refused the job as unsuitable. This change to the quit exception may make unemployment claimants more likely to try jobs that they might otherwise refuse; it may also encourage them to try the jobs for more time before quitting.

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2 Wis. Stat. § 108.04(8)(d).
2. Proposed Statutory Changes

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

Section 108.04 (8) (d) (intro.) of the statutes is amended to read:

With respect to the first 6 weeks after the employee became unemployed, “suitable work," for purposes of par. (a), means work to which all of the following apply:

Section 108.04 (8) (dm) of the statutes is amended to read:

With respect to the 7th week after the employee became unemployed and any week thereafter, “suitable work," for purposes of par. (a), means any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.

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4 Subject to revision to ensure cross-references are corrected.
3. **Effects of Proposed Change**

   a. **Policy:** The proposed change will give claimants more time to find suitable work after becoming unemployed. This proposal may incentivize claimants to take less favorable jobs, which may result in fewer benefits paid to claimants.

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

   c. **Fiscal:** A fiscal estimate is not yet available.

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 apply to determinations issued after the effective date of the bill.
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:

This proposal changes how UI adjudicates suitable work issues in two ways. The first is to extend the period of time a claimant may refuse less than suitable work. The second is to extend the amount of time a claimant may quit a job that would have been deemed unsuitable work when the claimant accepted employment.

Under current law, if a claimant for UI benefits fails, without good cause, to accept suitable work when offered, the claimant is ineligible to receive benefits until he or she earns wages after the week in which the failure occurs equal to at least six times the claimant's weekly UI benefit rate in covered employment. Current law specifies what is considered “suitable work” for purposes of these provisions, with different standards applying depending on whether six weeks have elapsed since the claimant became unemployed. Once six weeks have elapsed since the claimant became unemployed, the claimant is required to accept work that pays lower and involves a lower grade of skill.

The proposal modifies these provisions, described above, so that the claimant is not required to accept less favorable work until 10 weeks have elapsed since the claimant became unemployed.

This proposal also would amend the quit exception so that claimants may quit a job within 10 weeks of starting the job if they could have refused the job as unsuitable. This change to the quit exception may make unemployment claimants more likely to try jobs that they might otherwise refuse; it may also encourage them to try the jobs for more time before quitting.

UI Trust Fund Impact:
This proposal is estimated to cost the UI Trust Fund approximately $2.78 million annually based on increased benefit payments.

IT and Administrative Impact:
There are no expected measurable ongoing IT or administrative costs.

Trust Fund Methodology:
Using past data analysis under prior law, when Wisconsin allowed quits for up to 10 weeks, it is estimated that approximately 31% of allowed decisions were past the 30-day threshold. Applying that increase to benefits allowed for this reason in 2019, there is an estimated 948 additional individuals who would have received benefits in 2019. This would lead to an increase in UI benefits of approximately $3.8 million. After accounting for reimbursable employers and an increase of UI taxes of approximately $1.2 million, the net decrease to the UI Trust Fund would be $2.6 million annually.

Using data from 2019, 40 cases that had UI benefits denied due to refusal of suitable work were reviewed. Looking at the case data, it was investigated if making a change from 6 weeks to 10 weeks would have impacted the decision. It was only definite for one decision to be reversed but an additional 6 decisions may have been affected. The implies up to 17.5% of the 398 cases denied for suitable work in 2019 may have been allowed under this proposal. Using the 2019 average weekly benefit amount of $320 and the average duration for the period 2016 to 2019 the expected amount of additional benefits is up to $285,000 annually. Accounting for an estimated $17,000 of reimbursable benefits and $88,000 in additional tax revenue leads to a reduction in the UI Trust Fund by $180,000 annually.

The total expected decrease in the UI Trust Fund is $2.78 million annually.