ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EMERGENCY RULE

The Wisconsin Department of Workforce Development adopts the following emergency rule to amend DWD 102.01 and to create DWD 102.04, relating to employer contribution rates for 2022.

The Governor approved the scope statement for this rule, SS 046-21, on May 14, 2021. The scope statement was published in register No. 785A3, on May 17, 2021. The notice of public hearing and comment period on the scope statement was published on May 24, 2021 in register No. 785B. The public hearing on the scope statement was held on May 27, 2021. The scope statement was approved by the Department on May 28, 2021. This rule was approved by the Governor on June 10, 2021.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

By Executive Order 72, the Governor declared a public health emergency to protect the health and well-being of the state’s residents and directed state agencies to assist as appropriate in the State’s ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses temporarily or permanently closed, resulting in significant business income reduction and layoffs.

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, which created and then amended s. 108.07 (5) (bm), the Department of Workforce Development is directed to charge unemployment benefits for initial claims that are related to the public health emergency declared by Executive Order 72 to the balancing account of the Trust Fund for contribution employers. This treatment of claims charging applies to weeks of benefits payable beginning the week of March 15, 2020 through March 13, 2021.

The Department's antiquated computer systems are ill-equipped to handle the changes in charges from the employers’ accounts to the balancing account. Each weekly claim to be charged to the balancing account under s. 108.07 (5) (bm), Stats., requires the Department to change the benefit charges from the employer’s account to the balancing account of the Trust Fund after any federal funds have been appropriately applied. Given the high volume of claims filed during the pandemic, the work to complete the charging changes will not be completed by June 30, 2021.

Under sections 108.02(8), 108.02(22), and 108.18(4), Stats., “an employer’s contribution rate on the employer’s payroll for a given calendar year shall be based on the reserve percentage of the employer’s account as of the applicable computation date,” s. 108.18(4), Stats., which is June 30 of each year. Section 108.02(22), Stats., requires the Department to determine the status of an employer's account when setting the reserve percentage for contribution purposes as of the computation date.
Because the Department is not able to complete the benefit charging changes required by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 by June 30, employers’ contribution rates for 2022 may be based, in part, on benefit charges that should have been charged to the balancing account instead of the employers’ accounts. If contribution rates are set before recharging is completed, the result for most employers subject to contribution financing would be higher contribution rates for 2022 than they should be.

An emergency rule is needed to prevent employers from being subject to 2022 rates that are higher than they should be under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Without a rule, employers may not see the benefit of charging relief under Acts 185 and 4 until rates are set for 2023 after recharging is completed.

The Department does not contemplate promulgating a permanent rule because the recharging will be accomplished to set appropriate rates that only apply for a limited time. This emergency rule will meet the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 to address the public health emergency and protect the welfare of the economy through charging relief for contribution employers.

Statutes Interpreted

Sections 108.02 (8), 108.02 (22), 108.07 (5) (bm), and 108.18 (4), Stats., which are discussed in the above Finding of Emergency.

Statutory Authority

Section 108.14 (2), Stats.

Explanation of Statutory Authority

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats.

Related Statutes or Rules

Sections 108.02 (8), 108.02 (22), 108.07 (5) (bm), and 108.18 (4), Stats.

The Department previously promulgated emergency rule EmR2018, relating to employer contribution rates for 2021.

Plain Language Analysis

This rule provides that the Department, in calculating an employer’s net reserve as of the June 30, 2021 computation date, shall disregard all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021.
The Department will, in effect, assume that all benefit charges and adjustments were related to the public health emergency declared by Executive Order 72. This assumption applies only for the purposes of setting the contribution rates for 2022. This rule will ensure that employers’ contribution rates for 2022 are calculated based on reserve fund balances as of June 30, 2021 without taking charges related to the public health emergency into account so that the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 are met. This rule will only affect calculation of contribution rates for 2022. Contribution rates for 2023 will be calculated in 2022 after all recharging is complete.

**Summary of, and comparison with, existing or proposed federal statutes and regulations**

Federal law requires that state laws conform to and comply with federal requirements. 20 CFR 601.5.

Under the federal Families First Coronavirus Response Act, Public Law 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), a state may receive a share of $500 million of federal funding for administering the state’s unemployment insurance program if the “State has demonstrated steps it has taken or will take to … non-charg[e] employers directly impacted by COVID–19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.” 42 USC 1103(h)(3)(B). Wisconsin’s share of the $500 million is about $9.457 million.

**Comparison with rules in adjacent states**

Illinois does not charge employers for unemployment benefits “for a week of unemployment that begins on or after March 15, 2020, and before December 31, 2020, and is directly or indirectly attributable to COVID-19…” 820 ILCS 405/1502.4(A).

By Executive Order 2020-76, Michigan charges benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

Iowa did not charge unemployment benefits related to COVID-19 to employer accounts until June 12, 2021.

By Emergency Executive Order 20-05, Minnesota will “not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer.”

**Summary of factual data and analytical methodologies**

The Department reviewed Wisconsin statutes, administrative rules, and recent changes to federal law to determine the options available to ensure that employer contribution rates are appropriately determined for 2022.

**Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis**
An employer’s contribution rate on the employer’s payroll for a given calendar year is based on the reserve percentage of the employer’s account as of the applicable computation date, June 30 of each year. Ultimately, however, the employer’s reserve fund balance takes into account all charges and credits on a rolling basis so that the employer’s unemployment experience determines the contribution rate.

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, the unemployment insurance benefits related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through March 13, 2021. However, some charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government.

Because the Department will not be able to complete the charging changes required by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 by June 30, 2021, most employers’ contribution rates for 2022 will be based on benefit charges that should have been charged to the balancing account instead of the employers’ accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2022 that are higher than they should be.

This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021 relate to the public health emergency declared by Executive Order 72. This will have the effect of aligning employer contribution rates for 2022 with the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.

**Fiscal Estimate and Economic Impact Analysis**

The Fiscal Estimate and Economic Impact Analysis is attached.

**Effect on small business**

The proposed rule is expected to have a positive economic impact on employers subject to contribution financing, which may include small businesses, to provide those employers with contribution rates that align with the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.

**Agency contact person**

Questions related to this rule may be directed to:

Janell Knutson, Director, Bureau of Legal Affairs
Division of Unemployment Insurance
Department of Workforce Development
P.O. Box 8942
**SECTION 1.** DWD 102.01 is amended to read:

**DWD 102.01 Purpose.** This chapter specifies the initial contribution rates for certain categories of employers. This chapter also interprets ch. 108, Stats., for determining employer contribution rates for 2022.

**SECTION 2.** DWD 102.04 is created to read:

**DWD 102.04 Employer Contribution Rates for 2022.** When calculating an employer’s reserve percentage for the June 30, 2021, computation date for purposes of determining employer contribution rates under s. 108.18 (4), Stats., the department shall disregard all benefit charges for weeks of unemployment for the period of March 15, 2020 through March 13, 2021 and all benefit adjustments processed during the period of March 15, 2020 through March 13, 2021, unless the department has applied s. 108.07 (5) (bm) to the benefit charge or benefit adjustment. This section only applies to the June 30, 2021, computation date.
SECTION 3. EFFECTIVE DATE. This rule shall take effect on June 29, 2021.

Dated this 14th day of June, 2021.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: __________________________________________________________
Amy Pechacek, Secretary-designee
1. Type of Estimate and Analysis
   ☒ Original  ❑ Updated  ☐ Corrected

2. Date
   June 4, 2021

3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)
   Chapter DWD 102 - Contribution Rates

4. Subject
   Contribution rates for 2022

5. Fund Sources Affected
   ☐ GPR  ☒ FED  ☐ PRO  ☐ PRS  ☐ SEG  ☐ SEG-S

6. Chapter 20, Stats. Appropriations Affected
   None

7. Fiscal Effect of Implementing the Rule
   ☐ No Fiscal Effect  ☐ Increase Existing Revenues  ☒ Increase Costs  ☐ Decrease Costs
   ☐ Indeterminate  ☐ Decrease Existing Revenues  ☒ Could Absorb Within Agency’s Budget

8. The Rule Will Impact the Following (Check All That Apply)
   ☒ State’s Economy  ☐ Local Government Units  ☐ Specific Businesses/Sectors
   ☐ Public Utility Rate Payers  ☒ Small Businesses (if checked, complete Attachment A)

   $ none expected

10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be $10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?
    ☐ Yes  ☒ No

11. Policy Problem Addressed by the Rule
    Currently, an employer’s contribution rate on the employer’s payroll for a given calendar year is based on the reserve percentage of the employer’s account as of the applicable computation date, which is June 30 of each year. Ultimately, however, the employer’s reserve fund balance takes into account all charges and credits on a rolling basis so that the employer’s unemployment experience determines the contribution rate.

To correctly set contribution rates, recharging work must consider applicability of federal programs that reduce the benefit charges to employers in addition to the recharging relief provided by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Federal law changes provide federal funding (in whole or in part) that affects recharging in the following programs: waiver of waiting week; work share; and regular unemployment for reimbursable employers.

The new policy to be included in this rule will ensure that employers’ contribution rates for 2022 are calculated based on reserve fund balances as of June 30, 2021 without taking charges related to the public health emergency into account so that the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 are met. This rule will only affect calculation of contribution rates for 2022.

The policy alternative is to do nothing, which would negatively impact most employers subject to contribution financing because their contribution rates will be higher for 2022 than they should be. For most employers subject to contribution financing, this would result in higher contribution rates for 2022, which would not be in accordance with the legislative intent of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.
    Employers subject to the contribution financing provisions of Wisconsin unemployment insurance law may be impacted by the proposed rule. The Department held a preliminary public hearing and comment period on the scope statement but
no comments were submitted.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.
None.

14. Summary of Rule’s Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State’s Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if the small business is subject to contribution financing. Those businesses may receive a benefit under this rule if their employees filed claims for unemployment insurance benefits during the period of March 15, 2020 through March 13, 2021 because charges associated with those claims will not be included in the employers’ contribution rate calculations for 2022.

The effect on the State's economy as a whole is that employers subject to contribution financing may have lower tax rates for 2022, which may make funds that would be used to pay contributions available for other uses in the economy.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits of implementing this rule are that employers subject to contribution financing will have contribution rates for 2022 that will more accurately reflect the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, resulting in lower contribution rates.

The alternative to implementing the rule is to do nothing, which would result in contribution rates for 2022 that would be incorrectly high for most employers subject to contribution financing.

16. Long Range Implications of Implementing the Rule

There are no long range implications of implementing this emergency rule.

17. Compare With Approaches Being Used by Federal Government

Under the federal Families First Coronavirus Response Act, Public Law 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), a state may receive a share of $500 million of federal funding for administering the state’s unemployment insurance program if the “State has demonstrated steps it has taken or will take to...non-charg[e] employers directly impacted by COVID–19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.” 42 U.S.C. § 1103(h)(3)(B). Wisconsin’s share of the $500 million is about $9.457 million.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois does not charge employers for unemployment benefits “for a week of unemployment that begins on or after March 15, 2020, and before December 31, 2020, and is directly or indirectly attributable to COVID-19....” 820 ILCS 405/1502.4(A).

By Executive Order 2020-76, Michigan charges benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

Iowa did not charge unemployment benefits related to COVID-19 to employer accounts until June 12, 2021.

By Emergency Executive Order 20-05, Minnesota will “not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer.”

19. Contact Name
Janell Knutson

20. Contact Phone Number
608-266-1639

This document can be made available in alternate formats to individuals with disabilities upon request.
ATTACHMENT A

1. Summary of Rule’s Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if the small businesses are subject to contribution financing. Under this rule, most small businesses subject to contribution financing will have contribution rates for 2022 that more accurately reflect the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Contribution rates will be calculated for 2022 by disregarding the benefit charges and adjustments from March 15, 2020 through March 13, 2021.

2. Summary of the data sources used to measure the Rule’s impact on Small Businesses

An employer’s contribution rate on the employer’s payroll for a given calendar year is based on the reserve percentage of the employer’s account as of the applicable computation date, June 30 of each year. Ultimately, however, the employer’s reserve fund balance takes into account all charges and credits on a rolling basis so that the employer’s unemployment experience determines the contribution rate.

Under 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, the unemployment insurance benefits related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through March 13, 2021. However, some charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government.

Because the Department will not be able to complete the charging changes required by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 by June 30, 2021, most employers’ contribution rates for 2022 will be based on benefit charges that should have been charged to the balancing account instead of the employers’ accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2022 that are higher than they should be.

This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021 relate to the public health emergency declared by Executive Order 72. This will have the effect of aligning employer contribution rates for 2022 with the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.

Incorrectly high contribution rates for employers could impede Wisconsin’s economic recovery from the pandemic.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☐ Other, describe: None.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses
The rule is an emergency rule, so it is only effective for a limited time.

The Department administers the unemployment insurance program by, among other things, determining contribution rates for employers.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)
☐ Yes  ☒ No