UIAC Research Requests

Labor Proposal
Gradually Transition UI Trust Fund Tax Schedules from being based on UI-TF Balance in Dollars ($) to being based on Average High Cost Multiple (AHCM)

Research Request: What are the dollar amounts for the AHCM triggers and what would the proposal do to Trust Fund revenue in the future.

Average High Cost Multiple (AHCM) is the measure used by US-DOL to determine the adequacy of a state’s UI Trust Fund. Maintaining the minimum recommended AHCM of 1.0, estimates that a state’s UI Trust Fund will have reserves to pay UI Benefits for 1 year (12 months) at its historic high payout rate (based on that state’s experience over the previous 20 years or a period covering 3 recessions, whichever is longer).

The Average High Cost Multiple (AHCM) is constructed to grow over time. The estimated dollar value is based on the current value of the AHCM. The dollar value will change but is not expected to be very different over the near term.

Schedule A = When UI Trust Fund is below .5 AHCM (Under $1.03 Billion)
Schedule B = When UI Trust Fund is between .5 – 1.0 AHCM (Between $1.03 Billion and $2.06 Billion)
Schedule C = When UI Trust Fund is between 1.0 – 1.25 AHCM (Between $2.06 Billion and $2.57 Billion)
Schedule D = When UI Trust Fund is above 1.25 AHCM (Greater than $2.57 Billion)

<table>
<thead>
<tr>
<th>Year</th>
<th>Current Law</th>
<th>Trigger Change Proposal</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>UI Tax Schedule</td>
<td>UI Tax Revenue</td>
<td>UI Trust Fund Balance</td>
</tr>
<tr>
<td>2022</td>
<td>D</td>
<td>$524</td>
<td>$1,174</td>
</tr>
<tr>
<td>2023</td>
<td>D</td>
<td>$538</td>
<td>$1,364</td>
</tr>
<tr>
<td>2024</td>
<td>D</td>
<td>$549</td>
<td>$1,491</td>
</tr>
<tr>
<td>2025</td>
<td>D</td>
<td>$560</td>
<td>$1,594</td>
</tr>
</tbody>
</table>

Estimates in millions of dollars.
Note, any schedule can only increase by one step in 2024 and 2025, per the proposal.

Note: Estimates above are based on IHS projected unemployment rate for 2022-2025.
Note: the $60m in general revenue payments were included in the UI Trust Fund Balance in 2022 and 2023, as per 2021 Wis. Act 58.
UIAC Research Requests

Management Proposal
Link Benefit Eligibility Weeks to Unemployment Rate

Research Request: Estimate changes in UI Benefits and UI Trust Fund under this proposal.

The proposal would set the maximum number of UI weeks of benefits twice per year, in January and July based upon the state unemployment rate in the previous October and April using the following chart:

<table>
<thead>
<tr>
<th>State Unemployment Rate</th>
<th>Weeks of Benefit Eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal to 5.4%</td>
<td>14</td>
</tr>
<tr>
<td>5.5% to 5.9%</td>
<td>15</td>
</tr>
<tr>
<td>6.0% to 6.4%</td>
<td>16</td>
</tr>
<tr>
<td>6.5% to 6.9%</td>
<td>17</td>
</tr>
<tr>
<td>7.0% to 7.4%</td>
<td>18</td>
</tr>
<tr>
<td>7.5% to 7.9%</td>
<td>19</td>
</tr>
<tr>
<td>8.0% to 10%</td>
<td>20</td>
</tr>
<tr>
<td>Greater than 10%</td>
<td>22</td>
</tr>
</tbody>
</table>

This proposal would be a significant change in the operation of UI; therefore, a full accounting of the impacts of the proposal are not available in this time frame. Provided below is what the impact of this proposal would have been on benefit years established in 2018 and 2019. Note these are not estimates of the impact of benefits during those calendar years since benefit years cross into the following calendar years, i.e., benefit years starting in 2018 contain benefits paid in 2018 and 2019.

<table>
<thead>
<tr>
<th>Proposal Impact on 2018 and 2019 Benefit Years ($ Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit Year  Number of Claimants Affected</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>2018 36,513</td>
</tr>
<tr>
<td>2019 43,610</td>
</tr>
</tbody>
</table>

Note this is not a projection of benefits going forward. Projecting the impact of the proposal going forward would need to account for complicating factors and would take significant additional time.
It is also important to note that the unemployment rate is volatile and rises very quickly. During a recession it can easily increase multiple percentage points month to month. The March 2020 unemployment rate was 3.2% and the April 2020 unemployment rate was 14.8%. While the spring of 2020 is somewhat unique, it is important to note that those individuals claiming in April would have benefits based upon the October 2019 unemployment rate of 3.3%. Even during the peak of the great recession, the highest applicable unemployment rate was 9.2% in October of 2009, relating to 20 weeks of unemployment benefits under this proposal. The great recession never had a monthly unemployment rate above 10%.

The available weeks of Federal extended programs is often based upon a default UI benefit period of 26 weeks. The standing Extended Benefit (EB) program is constructed this way. The number of weeks an individual receives will often be reduced by the proportion of weeks the UI benefit is less than 26 weeks.
UIAC Research Requests

**Labor Proposal**
Gradually Increase the Maximum Weekly UI Benefit Rate to $450/week

*Research Request:* Provide projections for 2023-2026 and beyond for cost of the proposal with a range for each benefit year 2023-2026: low unemployment, moderate unemployment, high unemployment.

The proposed maximum weekly benefit increase schedule is as follows:
Current weekly maximum UI Benefit in WI $370/week
2023 Benefit Year $20 increase $390/week
2024 Benefit Year $20 increase $410/week
2025 Benefit Year $20 increase $430/week
2026 Benefit Year $20 increase $450/week

The increase in benefits were estimated by looking at benefit years established in 2016, 2017, 2018 and 2019. Wages used to create the benefit years were projected forward to account for wage growth.

The table below compares the proposed increase for each year to the current $370 weekly benefit rate.

<table>
<thead>
<tr>
<th></th>
<th>Changes in UI Benefits, UI Taxes, and the UI Trust Fund ($ Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low Unemployment</td>
</tr>
<tr>
<td></td>
<td>UI Benefits Increase</td>
</tr>
<tr>
<td>2023</td>
<td>$17.1</td>
</tr>
<tr>
<td>2024</td>
<td>$34.5</td>
</tr>
<tr>
<td>2025</td>
<td>$50.5</td>
</tr>
<tr>
<td>2026</td>
<td>$65.5</td>
</tr>
</tbody>
</table>

The years after 2026 would look similar. These estimates use three different levels of UI benefit duration. The Low estimate uses 10 weeks, the Medium uses 12.8 weeks and the High uses 15 weeks. The Medium estimate is what we would expect for the immediate future.
UIAC Research Requests

Labor Proposal
Eliminate 1-Week Waiting Period

Research Request: cost under low, moderate, or high unemployment

<table>
<thead>
<tr>
<th>Impact of the Elimination of the UI Waiting Week ($ Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>UI Benefits Increase</td>
</tr>
<tr>
<td>UI Tax Increase</td>
</tr>
<tr>
<td>UI Trust Fund Decrease</td>
</tr>
</tbody>
</table>

The table above uses current benefit rates to provide a baseline estimate of what the impact is expected to be as well as projections under low unemployment benefits, high unemployment benefits and under a severe recession.

*The severe recession would be a one-year occurrence whereas the other estimates would reflect the average over multiple years.
UIAC Research Requests

Management Proposal
Quit Good Cause Revision – Repeal the quit good cause exception under s. 108.04(7)(e).

Research request: The number of claimants affected and Trust Fund savings if this exception is repealed.

In a typical year approximately 2,167 individuals would be expected to receive this quit exception. In 2019 and 2020 the number of people receiving this quit exception was substantially higher (3,425 and 4,046) which is likely due to a combination of the increase in the number of claimants during those years as well as situations unique to the pandemic.

The proposal is expected to reduce UI benefits in the range of $4.3 to $7.0 million annually, given that a claimant likely will already have claimed several weeks prior to taking and then leaving the job this quit exception applies to. This would result in a UI trust fund savings of approximately $2.8 to $4.5 million. There are two large caveats to note with these estimates:

1) These estimates assume that the weeks currently allowed will not be payable. That might not be the case because claimants may qualify for another quit exception. Since the quit with good cause is straight forward relative to other quit exceptions, it is often the first applied.

2) The second caveat is that claimants may not take a non-suitable job if they realize they may lose out on future benefits. In this case, claimants may not take the job in the first place and instead remain claiming UI benefits. This could increase the amount of UI benefits paid to those claimants.
COMPARISON OF WI INDEPENDENT CONTRACTOR TESTS

Unemployment Insurance

For-profit businesses

A worker is an independent contractor, not an employee, if they are 1. free from direction and control, and 2. have an independently established business.

Part 1: Free from Direction and Control: (Five Factors to Assess)
1. Comply with instructions concerning how to perform the services
2. Receives training from the employing unit with respect to the services performed
3. Personally performs the services
4. Services are required to be performed at times or in a particular order or sequence established the employing unit
5. Required to make oral or written reports to the employing unit on a regular basis

Part 2: Independently Established Business (6 of 9 Conditions Must Be Met)
1. Advertises or otherwise affirmatively holds out as being in business
2. Maintains own office or performs most of the services in a facility or location chosen by the individual or uses own equipment or materials in performing the services
3. Operates under multiple contracts with one or more employing unit to perform specific services
4. Incurs the main expenses related to the services performed under contract
5. Obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work
6. Services performed do not directly relate to the employing unit retaining the services
7. May realize a profit or suffer a loss under contracts to perform such services
8. Recurring business liabilities or obligations
9. Not economically dependent upon a particular unit with respect to the services being performed

Non-profit business, government unit, loggers and truckers

Workers are independent contractors if they meet both of these criteria:

1. That such individual has been and will continue to be free from the employing unit's control or direction over the performance of his or her services both under his or her contract and in fact; and
2. That such services have been performed in an independently established trade, business or profession in which the individual is customarily engaged.

(Additional criteria for truckers and loggers are in the Administrative Code DWD chs. 105 and 107.)

1 Summary of information provided at September 25, 2019 Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification meeting. Task Force Meeting Information (wisconsin.gov)
Worker’s Compensation

Every independent contractor is, for purpose of ch. 102, an employee of any employer for whom he or she is performing services in the course of the trade, business, profession or occupation of such employer at the time of injury unless the independent contractor meets all nine conditions in s. 102.07 (8) (b). The nine-element test in s. 102.07 (8) (b) has been in effect since January 1, 1990. The test was developed by a Study Commission created by the Worker’s Compensation Advisory Council. The nine elements are:

1. Maintains a separate business with his or her own office, equipment, materials and other facilities. 
2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment tax returns with the federal internal revenue service based on the work or service in the previous year. 
3. Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work. 
4. Incurs the main expenses related to the service or work that he or she performs under contract. 
5. Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for the failure to complete the work or service. 
6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis. 
7. May realize a profit or suffer a loss under contracts to perform work or services. 
8. Has continuing or recurring business liabilities or obligations. 
9. The success or failure of the independent contractor’s business depends on the relationship of business receipts to expenditures. 

s. 102.17 (8) (c), Wis. Stats: “The division may not admit into evidence any state or federal law, regulation, or document granting operating authority, or license when determining whether an independent contractor meets the conditions specified in par. (b) 1. or 3.” Government requirements mandating certain elements of control such as safety and recordkeeping are not fair determinants of whether an employer actually has the right of direction and control over an independent contractor.
Independent contractor, though mentioned in the wage payment law, is not defined. ERD looks to the common law “Economic Realities” test. This is a six-part test using many factors like those examined under other laws. A determination must be based on all the relevant circumstances.

1. The degree of control exercised by the purported employer
2. The worker’s opportunity for profit or loss based upon his/ her managerial skill
3. The worker’s investment in equipment or employment of helpers
4. The degree of special skill required
5. The degree of permanence of the relationship
6. Whether the services constitute an integral part of the business

ERD also looks to the US Department of Labor, Wage & Hour Division (WHD) for guidance in this area since minimum wage and overtime requirements under Wisconsin law and the Fair Labor Standards Act (FLSA) are similar. WHD Fact Sheet 13 spells out the federal test, which is a form of the “Economic Realities” test. Among the factors courts have considered significant:

1. “Integral Part”
2. Permanency of the relationship
3. Investment in facilities & equipment
4. Nature & degree of control
5. Opportunity for profit or loss
6. Amount of initiative, judgment, or foresight in open market competition required
7. Degree of independent business organization & operation

**Department of Revenue**

Wisconsin follows federal law

- 3 areas of consideration:
  - Behavioral Control
  - Financial Control
  - Relationship of the Parties


Current Misconduct Statute, s. 108.04(5)

(5) Discharge for misconduct. An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee’s work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee’s weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee’s weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee’s employment shall be excluded from the employee’s base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund’s balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, “misconduct” means one or more actions or conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer’s interests, or of an employee’s duties and obligations to his or her employer. In addition, “misconduct” includes:

(a) A violation by an employee of an employer’s reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee:

1. Had knowledge of the alcohol beverage or controlled substance policy; and

2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.

(b) Theft of an employer’s property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an employee’s employment with his or her employer, or intentional or negligent conduct by an employee that causes substantial damage to his or her employer’s property.

(c) Conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for his or her employer.

(d) One or more threats or acts of harassment, assault, or other physical violence instigated by an employee at the workplace of his or her employer.

(e) Absenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee’s termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

(f) Unless directed by an employee’s employer, falsifying business records of the employer.

(g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.
Proposed revisions to the misconduct statute

(b) Conduct by an employee involving any of the following:

1. Theft or unauthorized possession of an employer’s property or services.
2. Theft of currency of any value.
3. Unauthorized use of an employer’s credit card or other financial instrument.
4. Unauthorized distribution of an employer’s confidential or proprietary information.
5. Intentional or negligent conduct by an employee that causes substantial damage to his or her employer’s property or records.
6. Felonious conduct connected with an employee’s employment.

(e) Except as provided in par. (em), absenteeism or tardiness meeting any one of the following criteria, unless the employee gives the employer both advance notice and a valid reason for the absenteeism or tardiness:

1. Three or more absences within the 180-day period before the date of the employee’s termination.
2. Four or more instances of tardiness within the 120-day period before the date of the employee’s termination.
3. Two or more absences and three or more instances of tardiness within the 120-day period before the date of the employee’s termination.

(em) Violation of an employer’s written attendance policy that resulted in termination of the employee if the employee previously acknowledged receipt of the policy with his or her signature. If the employee gives the employer both advance notice and a valid reason for one or more instances of absence or tardiness, the instance of absence or tardiness shall be disregarded for the purposes of applying this paragraph.

1 Management's proposal did not include a 120-day period for tardiness or the “combination” of the two.
(g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or Indian tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended or revoked by the agency.

(h) A violation by an employee of an employer’s reasonable written policy concerning the use of social media, if the employee had knowledge of the social media policy.
Management's Proposal:

UI Computer Upgrade—As part of the planned IT upgrade for the state UI system, require the new computer system/software to include a functionality that notifies employers of a benefit applicant who claims the applicant searched for work with that employer, and that allows the employer to provide online verification of the accuracy of that work search information. In addition, include a functionality that allows employers to simply and easily report online to the Department a job applicant’s refusal of work, a refusal of an offer to attend a job interview, or a no-show for a scheduled job interview with an applicant.

Labor's Research Request:
Cost for including requested upgrades in modernization project

UI Response:

*We are unable to provide a cost estimate as a part of the modernization project at this time.*

UI is planning a modular approach to modernization and the RFP for the 1st phase, which has already been posted and responded to by vendors, does not include this specific functionality as it is focused on the core benefit system; whereas this request would focus on both the claimant and employer portals and communications. This could be part of a future phase; however, future phases have not yet been identified or defined.

With regard to the 2nd part of the proposal concerning reporting interview no-shows and job refusals, this proposal could potentially be part of a future e-communications phase of modernization. Sending and receiving such notifications is similar to other information requests from employers, which we envision as being electronic in the future.

Challenges:

- Due to confidentiality requirements, UI cannot notify employers of claimants claiming UI, unless it is part of a work search audit. For this proposal, UI may need to require a response from employers (not voluntary) and treat it as a work search audit.
- If it is required, and an employer does not respond, UI would need to define consequences.
- Whether is required or voluntary, we are unsure of employers’ response rate.
- We are not aware of any other states doing this.
- The claimant may apply to an anonymous job posting and not know the business they are applying to if the specific employer is not listed.
- Third party administrators (TPAs) (i.e., representatives on record for the employer with UI) also present a challenge in that they may not be aware of job applicants (or refusals of work) for the employers they represent. We estimate that 50% of employers are represented by TPAs.
- Similar challenges exist for employers with multiple locations.
- For employers reporting no shows for job interviews, refusal of work or an interview, the candidate may or may not be a claimant.
- If a claimant did not list the specific job on their weekly work search report and they otherwise completed four other valid work search actions, there would be no consequence to not attending a job interview or refusal of an offer of a job interview.