

**WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT,**

Plaintiff,

v.

Case No. 2015 CV 358

**WISCONSIN LABOR AND
INDUSTRY REVIEW COMMISSION,
VALARIE BERES and
MEQUON JEWISH CAMPUS, INC.,**

Case Code: 30607
Administrative Agency Review

**Authenticated/Filed
Ozaukee County Circuit**

Defendants.

MAR - 8 2016

AFFIDAVIT OF JANELL KNUTSON

**Mary Lou Mueller
Clerk of Circuit Court/
Register in Probate**

I, Janell M. Knutson, on oath, state that:

1. I am a licensed attorney employed by the Wisconsin Department of Workforce Development ("department") as the Director of the Bureau of Legal Affairs ("BOLA").
2. As part of my job responsibilities, I serve as the Chair of the Unemployment Insurance Advisory Council ("UIAC") and oversee and maintain the records of BOLA and the UIAC. I have held my positions as Director of BOLA and Chair of the UIAC since February 2012.
3. The UIAC is composed of five representatives of employees, five representatives of employers and the Chair.
4. Since 1932, the UIAC has advised the department in administering the unemployment insurance law, reported its views on pending unemployment insurance legislation to committees of the Legislature, and submitted its proposed changes to unemployment

2016 MAR - 8 AM 10:15

CLERK OF CIRCUIT COURT

- insurance law to each session of the Legislature, pursuant to Wis. Stat. §108.14(5). The vote of seven (of ten) members is required for UIAC approval of a proposed law change.
5. In support of the UIAC's historic role to create and submit to the Legislature proposed changes to unemployment insurance law, the UIAC has relied upon the department, and in particular the UIAC Chair, serving also as Director of BOLA, and BOLA staff attorneys, to provide technical and legal assistance in the legislative process.
 6. The records of the UIAC, including among others the minutes of UIAC meetings, drafts of proposed law changes and related analyses, draft legislative bills, and correspondence with the Legislature and its various agencies, are maintained in the office of the department and are kept in the ordinary course of business of BOLA and the UIAC under my direction.
 7. Action by the UIAC requires a vote of at least 7 members of the UIAC. Wis. Stat. § 108.14(5)(ag). The UIAC expresses its intent and recommendations to the Legislature regarding the unemployment law by its discussion of law change proposals at its public meetings and its vote, the record of which is in minutes of meetings posted and fully available to the public on the UIAC website: <http://dwd.wisconsin.gov/uibola/uiac/>
 8. In October, 2012, the department drafted a proposed change to unemployment law disqualification for absence from work or tardiness in arriving to work, Wisconsin Stat. §108.04 (5g). The department's proposal was numbered and labeled "D12-01." Attached as Exhibit 1 is a copy D12-01 dated October 24, 2012, drafted under my direction by BOLA Staff Attorney Scott Sussman. Department proposal D12-01 was presented to the UIAC but was not approved by the UIAC as drafted. A copy of the six-page Proposal

D12-01 is attached to this affidavit and identified as Exhibit 1 and is the same document that is attached to and identified as Exhibit 7 to the affidavit of Michael Duchek.

9. At the November 29, 2012 meeting of the UIAC, Department staff presented to the UIAC a brief description of Proposal D12-01, which was documented in the official Minutes of the November 29, 2012 UIAC meeting, at page 3 of the Minutes. A copy of the ten-page "DRAFT" Minutes of the November 29, 2012 meeting of the UIAC is attached to this affidavit and identified as Exhibit 2. The attached DRAFT minutes were formally approved by unanimous vote of the UIAC members at the January 17, 2013 UIAC meeting.
10. At the April 1, 2013 meeting of the UIAC, I received a letter dated April 1, 2013, addressed to me in my capacity as Chair of the UIAC, from 27 Wisconsin legislators. The letter stated that the legislators were seeking the UIAC's "input on strengthening unemployment insurance laws in the State of Wisconsin." Letter made specific reference to various proposals for changing the Wisconsin unemployment law and enclosed a list of 33 Items for specific legislative changes. A copy of the eleven-page letter and eight-page enclosure are attached to this affidavit and identified as Exhibit 3. The enclosure appears to be the same document that is attached to and identified as Exhibit 7 to the affidavit of Michael Duchek.
11. At the April 1, 2013 meeting, the UIAC considered the proposal D12-01 (Exhibit 1) and the April 1, 2013 letter from the 27 legislators (Exhibit 3). Following the UIAC's deliberations at the meeting, the UIAC voted to recommend to the Legislature amendments to Wis. Stat. §§ 108.04 (5) and (5g). The UIAC's recommendation departed from the statutory language that the Department had proposed in its D12-01 proposal.

The nine (9) members of the UIAC present at that meeting voted unanimously to recommend to the Legislature a change to the disqualification for absence and tardiness. In accordance with the UIAC customary practice, the UIAC's recommendation to the Legislature is reflected in the official Minutes of the April 1, 2013 UIAC meeting, at page 3 of the Minutes. The Minutes show that the Council's resolution stated: "The Council also agreed to amend the language of section 108.04(5g) of the Wisconsin statutes with respect to absenteeism and tardiness to make it easier for either reason to disqualify a claimant for benefits." Section 108.04(5g) of the Wisconsin Statutes at that time contained provisions for disqualification for absence and tardiness. That section was ultimately repealed by 2013 Act 20 and replaced by the enactment of Wis. Stat. § 108.04(5)(e).

12. The April 1, 2013 resolution recommending legislative change to the absence and tardiness statute was the only action by the UIAC on a proposal to change the disqualification for absence or tardiness during my tenure as UIAC Chair. I do not find in the Minutes of the April 1, 2013 UIAC meeting or in the Minutes of subsequent meetings in 2013 any other or additional recommendations or other action of the UIAC regarding disqualification for absence and tardiness. A copy of the five-page Minutes of the April 1, 2013 meeting of the UIAC is attached to this affidavit and identified as Exhibit 4. The attached minutes were formally approved by unanimous vote of the UIAC members at the April 18, 2013 UIAC meeting.
13. On April 18, 2013, at a meeting of the UIAC, members of the UIAC received a memorandum from Scott Sussman and me dated April 17, 2013, reviewing and discussing the 33 legislative Items identified in the enclosure to the April 1, 2013 letter

from the legislators (Exhibit 3, discussed above). The memorandum discussed in general terms Item #1, the legislators' proposal regarding absence and tardiness. A copy of the 20-page April 17, 2013 memorandum is attached to this affidavit and identified as Exhibit 5.

14. Also at the April 18, 2013 meeting of the UIAC, the members of the UIAC were provided a chart displaying general information concerning various Department proposals and the proposed Items of the 27 legislators for changes to the unemployment law. A copy of the 11-page chart is attached to this affidavit and identified as Exhibit 6.
15. My staff has reviewed the files of the UIAC meetings for the purpose of identifying the existence of all written materials in those files relating to the action that the UIAC took to recommend changes to the unemployment law regarding disqualification for absenteeism and tardiness. I believe that I have identified in this Affidavit all such materials in the UIAC files.
16. As the UIAC files show, there is no evidence in the UIAC files regarding the development of the language that became Wis. Stat. § 108.04(5)(e) and no evidence of involvement of the UIAC in the choice of words by the Legislature in its enactment of Wis. Stat. § 108.04(5)(e), except as generally reflected in the UIAC resolution of April 1, 2013, that stated "The Council also agreed to amend the language of section 108.04(5g) of the Wisconsin statutes with respect to absenteeism and tardiness to make it easier for either reason to disqualify a claimant for benefits."
17. I make this affidavit based on my personal knowledge of the facts I have stated.

I understand that this affidavit will be submitted by the department's attorney to a court for the purpose of the court's review and determination of the proper reading and application of Wis. Stat. § 108.04(5)(e) in one or more cases before the court.

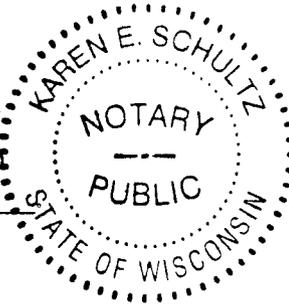


Janell Knutson
Director, Bureau of Legal Affairs
Wisconsin Department of Workforce Development
Chair,
Unemployment Insurance Advisory Council

Subscribed and sworn to before me this
7th day of March, 2016.



Notary Public, Dane County, Wisconsin
My commission: Expires 3-6-18



D12-01

Date: October 24, 2012
Proposed by: DWD
Prepared by: Scott Sussman

ANALYSIS OF PROPOSED UI LAW CHANGE

DISCHARGE FOR EMPLOYEE'S SUBSTANTIAL FAULT

1. Description of Proposed Change

Proposed change would create a two-tier standard for disqualifying claimants from receiving unemployment insurance benefits. The change would narrow the current misconduct standard by enumerating eight employee general actions that would rise to the level of satisfying the misconduct standard. If the employee's conduct did not rise to this threshold, the employee's conduct may still make the employee ineligible for benefits. The employee's conduct would still disqualify the employee if it is found that he or she was discharged as a result of his or her substantial fault. However, the proposed amendment then further restricts what actions may disqualify a claimant by defining substantial fault to not include:

1. Minor violations of rules unless employee repeats the violation after receiving a warning,
2. Unintentional mistakes made by the employee, nor
3. Not performing work because employee lacks skill, ability, or was not supplied equipment.

The amendment additionally:

- a. Removes the current statutory language regarding disqualification for absenteeism or tardiness; and,
- b. Makes both the discharge for misconduct and discharge for substantial fault have the same seven by fourteen frame work for requalification for benefits.

2. Proposed Statutory Language

Section 108.04(1)(i) is amended to read:

(i) A claimant who does not provide information sufficient for the department to determine whether the claimant has been discharged for misconduct connected with his or her employment, discharged for a substantial fault connected with his or her employment, has voluntarily terminated his or her work, has failed without good cause to accept suitable work when offered, or has failed to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer is not eligible to receive benefits for the

week in which the discharge, termination or failure occurs or any subsequent week. If a claimant later provides the information and has good cause for the initial failure to provide the information, he or she is eligible to receive benefits as of the week in which the discharge, termination or failure occurred, if otherwise qualified. If a claimant later provides the information but does not have good cause for the initial failure to provide the information, he or she is eligible to receive benefits as of the week in which the information is provided, if otherwise qualified.

Section 108.04(5) is amended to read:

108.04 (5) DISCHARGE FOR MISCONDUCT. ~~Unless sub. (5g) results in disqualification, an~~ An employee whose work is terminated by an employing unit for misconduct 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 that rate which 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. If an employee is not disqualified under this subsection, the employee may nevertheless be subject to the disqualification under sub. (5g). Misconduct is defined to mean actions or conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his or her employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer. Actions or conduct that constitutes misconduct shall solely include:

(a) A violation of the employer's written policy about the use of drugs or alcohol and the employee must have:

1. Had knowledge of the employer's drug policy; and
2. Admitted to the use of drugs or alcohol or tested positive for the use of drugs or alcohol and the drug testing method used by the employer must be one accepted as valid by the Department;
- (b) Larceny of property or services or theft of currency of any value, or felonious conduct connected with the employee's employment with the employer or intentional or negligent substantial damage to an employer's property;
- (c) Except if covered by s. 108.04 (1) (f), the conviction of a crime or other action subject to civil forfeiture, whether while on or off duty, if the conviction makes it impossible for the employee to perform the duties for which the employee works for the employer;
- (d) Threats or acts of harassment, assault, or physical violence at the workplace committed by the employee;
- (e) Excessive absenteeism or tardiness in violation of a known company policy and the individual does not provide to the employer both notice and a valid reason or reasons for the absences or tardiness;
- (f) Unless directed by the employer, falsifying business records;
- (g) Unless directed by the employer, a willful and deliberate violation of a standard or regulation of a tribal, state or federal government by an employee of an employer licensed or certified by a government agency, which violation would cause the employer to be sanctioned or have its license or certification suspended by the government agency; or,
- (h) Insubordination.

Section 108.04(5g) is repealed and recreated to read:

(5g) DISCHARGE FOR FAILURE TO NOTIFY EMPLOYER OF ABSENTEEISM OR TARDINESS. ~~(a) If an employee is discharged for failing to notify his or her employer of absenteeism or tardiness that becomes excessive, and the employer has complied with the requirements of par. (d) with respect to that employee, the employee is ineligible to receive benefits until 6 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 6 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.~~

~~(b) For purposes of this subsection, tardiness becomes excessive if an employee is late for 6 or more scheduled workdays in the 12-month period preceding the date of the discharge without providing adequate notice to his or her employer.~~

~~(c) For purposes of this subsection, absenteeism becomes excessive if an employee is absent for 5 or more scheduled workdays in the 12-month period preceding the date of the discharge without providing adequate notice to his or her employer.~~

~~(d) 1. The requalifying requirements under par. (a) apply only if the employer has a written policy on notification of tardiness or absences that:~~

- ~~a. Defines what constitutes a single occurrence of tardiness or absenteeism;~~
~~b. Describes the process for providing adequate notice of tardiness or absence;~~
~~and~~
~~c. Notifies the employee that failure to provide adequate notice of an absence or tardiness may lead to discharge.~~
- ~~2. The employer shall provide a copy of the written policy under subd. 1. to each employee and shall have written evidence that the employee received a copy of that policy.~~
- ~~3. The employer must have given the employee at least one warning concerning the employee's violation of the employer's written policy under subd. 1. within the 12-month period preceding the date of the discharge.~~
- ~~4. The employer must apply the written policy under subd. 1. uniformly to all employees of the employer. (e) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by that employer and par. (a) applies. (em) If an employee is not disqualified under this subsection, the employee may nevertheless be subject to the disqualification under sub. (5).~~

108.04 (5g) DISCHARGE FOR SUBSTANTIAL FAULT. (a) An employee whose work is terminated by an employing unit for substantial fault on the employee's part connected with the employee's work not rising to the level of misconduct 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 that rate which would have been paid had the discharge not occurred. Substantial fault is defined to include those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the job but shall not include:

1. Minor infractions of rules unless such infractions are repeated after a warning was received by the employee,
2. Inadvertent mistakes made by the employee, nor
3. Failures to perform work because of insufficient skill, ability, or equipment.

(b) If an employee is not disqualified under this subsection, the employee may nevertheless be subject to the disqualification under sub. (5).

(c) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by that employer if paragraph (a) applies.

3. Proposer's Reason for the Change

Concerns are consistently being raised by the employer community that the current misconduct standard within Wisconsin law is too generous in providing benefits to employees who should not qualify for benefits. This proposal creates a lower standard for disqualifying a claimant but then places some restrictions on the applicability of the lower standard. The proposal also provides further clarification regarding what constitutes misconduct. It is hoped that this strikes the right balance over the concerns of the employer community and claimants who seek benefits. It also eliminates the provisions of s. 108.04(5g) of the statutes that has proven unworkable.

4. Brief History and Background of Current Provision

Proposals to create a lower threshold than the misconduct standard have consistently been brought forward by the employer community. Moreover, a constant complaint is raised over the lack of clarity with respect to the misconduct standard.

5. Effects of Proposed Change

- a. Policy. Creates a lower threshold, with protections for employees, in which a claimant is disqualified from benefits.
- b. Administrative Impact. Likely to be significant administrative impact.
- c. Equitable. Law addresses concern of employer community that current system is not equitable in that it overly favors the giving of benefits to former employees.
- d. Fiscal. The Department expects the change in the law surrounding misconduct to reduce benefit payments by approximately \$19.2 million per year on average and increase the UI Trust Fund by a similar amount. This estimate is based off a review of current cases that were found to not be misconduct that would likely be found to be substantial fault.

6. State and Federal Issues

- a. Chapter 108. Applicable provisions that need to be amended are covered above.
- b. Rules. DWD § 132.05 provides further clarification with respect to what misconduct is by an employee who is discharged by a health care facility for abuse of a patient. There may be some consideration given to whether or not this section of the administrative code should be revised if this proposal were adopted by the Legislature.

- c. Conformity. There should be no conformity issues with this proposal. Other states have disqualifications for a claimant based on the claimant's actions that do not rise to the level of Wisconsin's misconduct standard.

7. Proposed Effective/Applicability Date

Due to substantial administrative changes that will likely be necessary, the law change should be effective for the calendar year following enactment.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Department of Workforce Development
GEF-1 Building Room F305
201 East Washington Avenue
Madison, Wisconsin

DRAFT

November 29, 2012

Members Present: Mr. Buchen, Mr. Gotzler, Mr. Gustafson, Mr. Lump, Ms. Knutson (Chair), Ms. Feistel, Mr. Rainey, Mr. McGowan, and Mr. Reihl

Department Staff: Mr. Rodriguez (UI Administrator), Mr. Peirce (UI Deputy Administrator), Mr. Sussman, Ms. Maxwell (Executive Assistant to the Secretary), Ms. Schulze (Legislative Advisor for the Office of the Secretary), Mr. McHugh, Ms. James, Mr. Partha, Ms. Sausen, Mr. Usarek, Mr. Shahrani, Ms. Banicki, Mr. Schunk, Mr. Brueggeman, Mr. Alt, and Ms. Gallagher.

1. **Call to Order and Introductions:** Ms. Knutson convened the Unemployment Insurance Advisory Council (UIAC) meeting at approximately 10:00 a.m. in accordance with Wisconsin's open meetings law. UIAC members, Department staff, and members of the audience introduced themselves. Ms. Knutson welcomed Representative Mark Honadel.
2. **Approval of Minutes:**
 - a. Mr. Gustafson moved to approve the minutes of the February 2, 2012 meeting; second by Ms. Feistel. The minutes were unanimously approved.
 - b. Ms. Feistel moved to approve the minutes of the March 8, 2012 meeting; second by Mr. Buchen. The minutes were unanimously approved.
3. **Report on Unemployment Insurance Reserve Fund:** Mr. McHugh provided an update on the financial state of the Unemployment Insurance Reserve Fund (the Fund). Council Members were provided an eight-page report entitled "The Department of Workforce Development, Division of Unemployment Insurance Financial Statements for the Month Ended October 2012." Mr. McHugh discussed the loan balance that the Fund has taken from the federal government. He noted that as of October 31st of this year, the loan balance was \$846 million and on October 31, 2011 it was \$1.2 billion. Mr. McHugh estimated that by the end of the year the loan balance would be roughly \$900 million. He also noted that as of October 31st the Department had received \$785 million in federal loans, but had repaid \$1.1 billion on previous federal loans.
4. **Report on Public Hearing:** Ms. Knutson reported that the Department provided two methods to obtain public input on suggested law changes and ways to improve the system. The first was through a public hearing held on October 30, 2012. Locations that participated through videoconferencing were Eau Claire, Green Bay, La Crosse,

Madison, Milwaukee, Superior and Wausau. The Department also created an email system to solicit feedback from individuals. She highlighted that twenty-one individuals spoke at the public hearing and seventy-seven individuals provided written comments. Ms. Knutson communicated that each Council member was provided a summary of the oral and written comments received by the Department. Ms. Knutson noted that each summary included a chart. If a particular topic received greater than two remarks, the chart lists the number of times that individuals commented on that particular topic. Ms. Knutson then reviewed each topic that received multiple comments and highlighted that the area that received the greatest number of suggestions for change was the misconduct standard.

5. Department Law Change Proposals: Eighteen new Department proposals were presented to the Council. Ms. Knutson stated the Department was looking for guidance and a vote on the proposals at the next meeting. Ms. Knutson highlighted some proposals were simply designed for administrative efficiency and clean-up proposals while others impact benefits and that the latter category will likely spark more discussion among the UIAC members. She also noted that the Department was presenting these proposals earlier than usual in the agreed bill cycle. While this may be a bit unusual, Ms. Knutson commented that people would agree these are not normal economic and political times.

The Department had the opportunity recently to research the legislative history of the UIAC and Ms. Knutson noted that the early 1980's were also unusual times. People probably recall the country was in the middle of a recession. The Council was struggling to deal with tough issues including the solvency of the Fund. Due to difficulties with the Council process, legislation was enacted in 1983 to overhaul the entire Council process including membership, terms, voting and other provisions. Howard Bellman was the Secretary of DILHR at that time; some of Secretary Bellman's comments still have relevance today. He emphasized that what made the Council work well in the past was the ability to reach consensus on major issues by negotiation, open-mindedness and compromise. He referenced deadlocking in the past which is not productive and probably led to the reorganizing of the Council. Mr. Bellman stated "Wisconsin has an important history with regard to U.C. policy, people on the Council itself can be proud of this history...for it is a history which reflects the best of Wisconsin government in action. Everyone with the Council is involved in this history." Certainly, those comments still apply today.

Ms. Knutson stated there are some legislators who offered bills last legislative session, but no action was taken on them by the Legislature. There are currently legislators who have ideas about UI reform and who seek to amend the statutes in response to specific concerns of constituents. The message here is that the Legislature wants to see the UIAC tackle the tough issues and try to reach consensus when possible.

Mr. Buchen indicated that in 1983 the agreed bill required unanimous approval of the Council and there was a Management member who was unwilling to support whatever package they came up with and the Council deadlocked. What the Council was facing at that time was something similar to what we face here, which was massive borrowing from the federal government. They were struggling with the steps they were going to take to resolve it. The Legislature respected the concept of what the Council does and it established a committee that was composed of equal numbers of Democrats and Republicans and it was, basically, two leaders from each house. The committee

reached a consensus and even though it was a failure on the part of the Council, the basic concept was carried through in the way the Legislature dealt with it at that time.

Mr. Buchen highlighted that the tax schedule that was put into place at the time was roughly what we now have as tax schedule A. He also referenced the fact that the multiple tax schedules established by the Council were intended to respond to the fluctuation in benefit payments that results from an economic downturn. Yet, due to the severe recession just experienced by the economy, these multiple schedules were inadequate to keep the Fund solvent. Nonetheless, Mr. Buchen noted that the adoption of the multiple schedules was well-intentioned.

Department staff provided a brief description and answered any questions about the following eighteen Department proposals.

(A) Increase Claimant's Weekly Work Search Requirements From Two to Four and Increase Flexibility of Administrative Code Provisions so that the Department may Require Future Actions by Claimants

The proposal would make changes to the work registration and work search requirements that must be done by an unemployment insurance claimant. Ms. Knutson began discussion of the first proposal by noting that it had been reviewed at past Council meetings, but that the Department had reworked the language from what had been previously presented to the Council. The proposal includes a statutory change; however, most of proposal amended the administrative code. Mr. Sussman explained the statutory change increases the required number of work searches from two to at least four actions per week. He also mentioned that the changes to the administrative code provisions represented a modernization of the provisions and provides the Department with more flexibility. He further observed that the proposal addresses concerns raised during the public hearing and in the written comments received by the Department.

(B) Creation of Two-Tier Standard to Determine if a Claimant's Actions that Resulted in Discharge from Employment Disqualify Him or Her from Unemployment Insurance Benefits

The proposal amends the statute relating to misconduct and creates a two-tier standard to disqualify an individual from benefits based on his or her actions that resulted in unemployment. Mr. Schunk noted that under the new lower disqualification standard an employee would be disqualified from receiving unemployment benefits if his or her discharge resulted from substantial fault. The proposal provides protection for employees as to what constitutes substantial fault. A safeguard is provided to the employee by enumerating three types of actions that if the particular action caused the employee's discharge it would not be categorized as substantial fault that would disqualify the employee from benefits. The proposal defines misconduct as eight general acts that would disqualify a claimant for benefits. Mr. Schunk explained that this would level the field for both employers and employees by creating clear standards as to what constitutes misconduct. In addition, the proposal keeps the seven by fourteen requalification framework for the misconduct standard and incorporates it for the substantial fault threshold. Yet unlike the misconduct threshold, for the substantial fault threshold the wages earned as a result of work with the employer would be included in the wage base of the employee that is used to determine the employee's requalification benefit amount.

**(C) Reduce Number of Quit Exceptions from Eighteen to Seven and
Change Requalification Framework from Four by Four to Ten Times
the Weekly Benefit Rate**

The proposal reduces the number of quit exceptions contained in the statutes from eighteen to seven. A quit exception makes an individual eligible for unemployment benefits even though he or she voluntarily left his or her job. Ms. Banicki observed that most midwestern states only have five to seven quit exceptions.

She also noted that the proposal makes modifications to two of the seven remaining quit exceptions. The first modification is with respect to the quit exception for an employee who accepts work with an employer which the employee could have refused with good cause and then the employee quits that work. The proposal changes the time-frame that the employee can terminate his or her work with the new employer and fall under the exception from ten weeks to thirty calendar days. It was noted that this time-frame is more consistent with other surrounding midwestern states that have the same quit exception within their statutes. The second modification changes the quit to follow a spouse exception. The quit exception would only be applicable when the quit is to follow a military spouse.

Moreover, Ms. Banicki highlighted that the proposal changes the requalification framework. Currently, if a claimant's reason for quitting is "not within the exceptions" specified in the law, the claimant is not eligible to receive benefits until the claimant satisfies two criteria. First, the length of time that must elapse since the quit must be at least four weeks. Second, the claimant must have earned wages in covered employment equal to at least four times the weekly benefit rate that would have been paid had the quit not occurred. The proposal changes the requalification framework to provide only one criterion that a claimant must satisfy to qualify again for benefits. The claimant would have to earn ten times his or her weekly benefit rate that would have been paid had the quit not occurred. The requalification framework would no longer factor in the length of time that it has been since the claimant quit his or her job. This was patterned after the requalification framework used by Iowa.

**(D) Codification of Responsibility of Claimants to Not Divulge Their
PIN, Username and Password**

The proposal ensures that claimants are held responsible for giving out personal information that enables another person to improperly file a claim on their behalf. Ms. Banicki noted that the proposal is patterned after Minnesota law and is simply a codification of already existing Department policy. Finally, she noted that this most commonly occurs when a claimant is in prison and the incarcerated person gives information to his or her spouse.

(E) Enable Department to Recover Benefits Paid in Error Through Redefining Department Error for Purposes of Waiver of Recovery of Improperly Collected Benefits

The proposal clarifies and narrows the situations where actions by the Department would be classified as departmental error. The change will limit the circumstances under which a claimant can keep erroneous overpayments. Ms. Banicki noted that in 1993 the term "departmental error" was added to the statute, but that far too many situations are currently being classified as departmental error. She then highlighted three hypothetical situations contained in the written analysis that were provided to UIAC members that currently may be classified as departmental error. The proposal would make the erroneous payment of benefits cited in the examples not classified as departmental error and thereby enable the Department to recover the overpayment.

(F) Prevent Claimants from Simultaneously Collecting UI & SSDI

With one exception, the proposal would prevent claimants from simultaneously collecting unemployment insurance benefits and Social Security Disability Insurance benefits (SSDI). Mr. Sussman explained that under the unemployment insurance program a claimant must state each week that he or she is able and available for work; whereas, under the SSDI program a claimant must state that he or she is not able to work due to a disability. Yet, a recent report by the United States Government Accountability Office found that nationwide roughly 117,000 Americans double-dipped by cashing unemployment and SSDI checks, costing taxpayers a combined \$856 million in fiscal year 2010.

Under this proposal a claimant can only receive his or her full unemployment benefit while collecting or applying for SSDI if the claimant:

- (1) Provides a statement from an appropriate licensed health care professional that the claimant can work; and,
- (2) Earned based period wages while receiving or having filed for primary SSDI benefits.

(G) With Good Cause Exception, Disqualify a Claimant who fails to Supply the Department with Demographic and/or Eligibility Information

Under the proposal benefits will be suspended if claimants do not provide requested information. Mr. Schunk advised that the proposal broadens the Department's ability to require claimants to provide necessary information. As a result, the Department will have more information to correctly determine eligibility and ensure proper payment of benefits. As an example, Mr. Schunk highlighted that sometimes claimants do not provide information regarding the reason for their discharge from work. Consequently improper decisions are made by the Department in either paying or denying benefits. It was also noted that the proposal would not apply during hearings, but during the investigation and adjudication stage of the benefit determination process. Mr. Schunk observed that the Department of Labor has set as a goal that state agencies should reduce the number of improper payments. Finally, it was highlighted that the proposal incorporates a good cause standard. If there is good cause for a claimant not providing the information, they would receive benefits back to their original claim date. The good

cause standard is used for other portions of the unemployment insurance process such as late filing or appeals by claimants.

(H) Use of Financial Record Match Process to Identify Debts of Delinquent Debtors

The proposal authorizes the Department to match unemployment insurance tax and non-tax delinquent debtor files against accounts held at Wisconsin financial institutions. The matching would be used for debt collection purposes. Mr. McHugh noted that this proposal would enable the Department to send banks a file containing names of individuals who owe money to the Department. The banks would then cross-match the names on the file with names of individuals who have an account with the banks. If there is a match, this information could then be used for debt collection purposes. Mr. McHugh emphasized that the Department has shifted its collection resources toward collecting fraud debt on overpayments and on these overpayments the Department often does not become aware of the fraud until it becomes difficult to find the individual. The proposal gives the Department another tool to not only find an individual, but also a potential means to actually seize money to pay off the debt. Mr. McHugh noted that the Wisconsin Department of Revenue (DOR) already uses this collection tool. Officials from DOR speak highly of this method for locating individuals who are delinquent in making tax payments.

(I) Authorize the Department to Require License Holders to be Current on Their UI Taxes or Face Non-renewal, Discontinuation, Suspension or Revocation

The proposal authorizes the Department to send delinquent debtors a letter to inform them that as a result of their unpaid debt their various types of work licenses may be suspended. Mr. McHugh explained that this proposal would create a tool of last resort to collect unpaid debts owed to the Department. The Department only would use the tool if other collection methods failed to work. DOR already uses this tool. DOR reports that most debtors upon receiving the letter either pay off the debt or set up a payment plan. Sometimes the individual still does not respond and the individual's license has been suspended. If an individual's license is actually suspended, DOR reports the individual either pays off the debt or sets up a payment plan.

(J) Allows for a Faster Way to Search for a Newer Address for Claimants and Taxpayers Using Information from DOT/DMV Database of Driver's License Information

The proposal enables the Department to look up debtors by their Social Security numbers within the DOT/DMV database. The proposal makes available a faster and more efficient means to obtain information from the DOT/DMV database. Mr. McHugh explained that the Department of Transportation recently changed its system to make it more complicated to obtain driver's license information. The Department of Revenue and Department of Children and Families already may look up debtors by their Social Security numbers within the DOT/DMV database to collect unpaid debts.

(K) Discontinue Treating Limited Liability Companies with the Same Members as a Single Employer

For reporting purposes, the proposal discontinues the ability to treat separate limited liability companies with the same members as a single employer. Ms. James highlighted that under current state law, limited liability companies with the same members may report as one employer or entity. Yet federal law treats limited liability companies as separate entities for federal employment tax purposes. As a result, each limited liability company must file and pay its FUTA tax as a separate employing entity. Ms. James explained that the proposal brings Wisconsin's law into conformity with the federal law. It also corresponds with the current practice of the Department and would simply codify already existing Department policy.

(L) Increase Maximum Weekly Benefit Rate paid to Claimants to \$370

The proposal increases both the maximum and minimum rates of benefits paid to claimants. Ms. Knutson explained it would raise the maximum benefit rate to \$370 per week or an increase of \$7 per week. Pursuant to the requirements of s. 108.05 (2) (c), Wis. Stats., the proposal then increases the minimum benefit rate from \$54 to \$55 per week. The proposal would not impact claimants who are not receiving either the minimum or maximum rates. Benefit rates have not been increased since 2009 and Ms. Knutson highlighted that even in tough fiscal times the Legislature has raised the rate and generally this has been done every two years. The fiscal impact on the Fund would be \$12 million annually. Ms. Knutson reviewed the maximum rates paid by surrounding midwestern states. Except for Michigan, Wisconsin's maximum rates are the lowest of midwestern states and Michigan's rate is only one dollar lower than Wisconsin's rate.

(M) Provide Department Flexibility with Respect to the Granting of Successorship Applications when an Employer is late in Filing its Application

The proposal provides a good cause exception for a late successorship application. Ms. Knutson explained that a transfer of a business's unemployment insurance account from one business to another may be optional or mandatory. If the transfer is optional, in seeking the transfer of a unemployment insurance account a business must satisfy four requirements. One requirement is that the transferee business must timely file a successorship application. The proposal enables the Department some limited flexibility to not penalize a business when there is good cause for its failure to timely file a successorship application. Ms. Knutson clarified that for other provisions within the statute if there is a timeliness standard for filing an application, there is a good cause exception for failing to timely submit the application. Ms. Knutson highlighted an example of how recently the lack of a good cause exception for a business that filed a late successorship application almost caused an unjust outcome for it.

**(N) Eliminate Consideration of Time and Increase Amount of Wages
(From Four by Four to a Ten times the Weekly Benefit Rate) that
Must be Earned for Claimants to Requalify for Benefits When They
Fail to Accept Suitable Work**

The proposal changes the requalification framework a claimant must satisfy when he or she fails to accept suitable work. Ms. Banicki explained that generally a claimant who does not accept suitable work is ineligible to receive benefits. There are two requirements for a claimant to again be eligible for benefits. First, four weeks needs to elapse from when the claimant did not accept the suitable work. Second, after not accepting the suitable work, the claimant must earn wages equal to at least four times his or her weekly benefit rate. This proposal would change the current four by four requalification frame work to solely require that the claimant earn wages equal to at least ten times his or her weekly benefit rate.

**(O) Enable Department to Write-Off Interest when an Employer's Report
or Payment was Late Due to Circumstances Beyond the Employer's
Control**

The proposal allows the Department to write-off interest charged to employers in limited circumstances. In some cases, Ms. James noted that employers are not aware they were required to pay unemployment insurance taxes, but are found subject by the Department and are assessed interest from the due date of the late reports. This can result in the employer owing interest for up to four years. In these circumstances, the proposal would allow the Department to waive interest if the employer satisfies two circumstances. First the employer must file the required report or make the required payment. Second, the employer must satisfy the Department that the report or payment was tardy due to circumstances beyond the employer's control. Ms. James highlighted that many times employers impacted by the interest charging from years earlier is an agricultural or non-profit corporation. The companies would still owe the tax; however, the Department would possess the flexibility to waive the resulting unpaid interest.

**(P) Restrict Payments to Cafeteria Plans from Being Included in Base
Period Wages for Determination of Amount of Benefits Paid to a
Claimant**

The proposal excludes cafeteria plan benefits paid by an employer from the calculation of the amount of a claimant's base period wages. Ms. James explained that when an employer contributes to cafeteria plan benefits the amount of the contribution is not included to determine the employer's taxable wage base. Thus, Wisconsin does not tax these amounts. The proposal results in the consistent treatment of cafeteria benefit plans by not paying benefits on wages that are not taxed.

(Q) Eliminate Administrative Code Provision that Enables an Individual to Not File a Notice of a Claim Based on the Phone System Being Overloaded With Calls

The proposal amends the administrative code to no longer backdate claims due to the telephone system being inoperable or unavailable. Ms. Banicki explained that the administrative code requires that the Department backdate claims if the telephone initial claim system was inoperable or was unavailable for more than 40% of the time the system was scheduled to be staffed during the week. She highlighted that even if the phone system is overloaded claimants may file online. Moreover, a recent update to the initial claims telephone system and how it calculates available lines does not correlate with the language of this administrative rule.

(R) Increase the Tardy Filing Fee for Employers Late in Filing Quarterly Wage Reports

The proposal increases the tardy filing fee for an employer who is late in filing his or her quarterly wage report. Ms. James explained that the new tardy filing penalty would be \$20 per employee as reported on the employer's most recent filed tax report or \$100, whichever is greater. The penalty can be reduced to \$50 for each delinquent report if within 30 days after the date the Department assesses the tardy filing penalty the employer files the wage report.

Ms. James highlighted that under current law if an employer is late or does not file a quarterly wage report there is no distinction in the penalty assessed against the employer. As a result, once an employer is late in filing a wage report there is no incentive to actually submit the wage report. The proposal creates an incentive for an employer to timely file its quarterly wage report.

(S) Clean-up Provisions from Last Legislative Sessions

Ms. Knutson explained that in the last legislative session the unemployment provisions were contained in two agreed bills, but there were inconsistent provisions in the two bills. As a result, there needed to be a blending of the two bills and there were some drafting oversights. Mr. Sussman highlighted that the Department is looking to get corrections to fix the oversights that impacted two provisions from last legislative session. Last legislative session the Legislature:

- (1) Created a 15% penalty for acts of concealment by a claimant that result in improper benefit payments. The proposal corrects two drafting oversights with respect to the 15% penalty provision.
- (2) Provided that a claimant who earns more than \$500 in any given week is disqualified from receiving unemployment insurance benefits. The proposal will make whether or not a claimant reaches the \$500 threshold consistent with other wage type decisions made by the Department.

Ms. Knutson indicated that the Department had received communication that Representative Joan Ballweg may be introducing legislation to correct these drafting oversights and Ms. Knutson was simply making the UIAC aware of the corrections to last year's unemployment insurance legislation.

6. **Correspondence:** Ms. Knutson explained that the public hearing comments included a summary of all correspondence received by the UIAC and, thus, there was no additional discussion of any correspondence received by the UIAC.
7. **Future Meetings:** The Department proposed holding a meeting in December. Ms. Knutson will email all UIAC members to determine whether December 14th or 20th works best on their calendars. The UIAC normally meets the third Thursday of the month and the Department will plan for monthly meetings accordingly.
8. **Other Business:** At the March 8, 2012 UIAC meeting Mr. Shahrani presented the highlights of the 2011 Fraud Report. UIAC Members were provided a copy of the final 2011 Fraud Report. The 2011 Fraud Report enumerates what the Department intended to pursue in 2012 with respect to fraud collection efforts. Mr. Shahrani provided a preview of how the Department has done with these fraud collection efforts. Mr. Shahrani stated that the Department has accomplished each and every collection effort that it had set out to do for 2012.
9. **Adjournment:** Motion by Mr. Buchen, second by Ms. Feistel to adjourn with the option for the Members to go into closed caucus session pursuant to section 19.85(1)(ee) of the Wisconsin statutes. The motion carried unanimously and the meeting was adjourned at approximately 12:45 p.m.



WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

April 1, 2013

Ms. Janell Knutson, Chairwoman
Unemployment Insurance Advisory Council
Department of Workforce Development
201 E. Washington Ave, Room E300
Madison, WI 53708-8942

Dear Chairwoman Knutson,

As you know, all economic indicators show Wisconsin is creating jobs. We were very encouraged by the recent announcement by the Department of Workforce Development confirming that initial estimates of job losses were inaccurate, and that Wisconsin actually posted year-over-year job gains during every month of 2012. This confirms what we are hearing from constituents and job creators all over Wisconsin: Optimism is improving and businesses are slowly hiring again.

However, in spite of that optimism, important challenges remain. The recent recession showed that the solvency of the Wisconsin Unemployment Insurance Trust Fund was not up to the challenge. Because of this, as of today, the fund is still in deficit to the federal government by more than \$900 million. This deficit is the 7th highest in the nation. This is an improvement as the fund at one point was nearly \$1.5 billion in debt.

This deficit has real-world consequences for Wisconsin employers. At the end of 2012, the state was paying \$60,000 per day in related interest. The non-partisan Legislative Fiscal Bureau estimated that more assessments will be necessary in 2013 and 2014. These are essentially punitive taxes that are going to Washington bureaucrats instead of toward hiring new workers or infrastructure investments.

Another key concern is that many small businesses are facing continuing challenges due to Wisconsin's cumbersome and outdated unemployment insurance laws. Most individuals that make unemployment claims are honest, hardworking people who lost their job through no fault of their own. Unfortunately, some claimants abuse and scam the system, essentially punishing everyone else for their behavior.

Assembly and Senate Republicans have spent the past weeks and months talking to constituents and getting their input about wasteful or fraudulent UI claims at their businesses. Stories ranged from a former employee collecting UI while incarcerated in a state

prison to an individual who received UI benefits despite getting dismissed for sleeping on the job. Most troubling: A number of employers indicated that they don't even bother to contest UI benefits anymore because the standards at the hearings are unattainably high. This is a recipe for substantial fraud.

Therefore, we, the undersigned, urge the Unemployment Insurance Advisory Council to carefully review the attached Unemployment Insurance reform package. This package was put together with the goal of strengthening the solvency of Wisconsin's UI Trust Fund, rooting-out waste, fraud, and abuse within the UI system, and preserving benefits for needy applicants.

In particular, some of the major reforms to Wisconsin's Unemployment Insurance laws include the following:

- Quit Exceptions. Under current law, there are 18 quit exceptions to claim UI benefits. This package would cut those exceptions to seven.
- No checks for law breakers. According to the non-partisan Tax Foundation, Wisconsin is one of only 5 states in which the company can be charged for benefits even if the employee is charged for misconduct under current law. This package strengthens the "willful misconduct" provision and creates a "substantial fault" provision to help prevent law breakers from claiming unemployment insurance benefits.
- No benefits for criminals behind bars. This package adopts Minnesota law in prohibiting prison inmates from collecting UI.
- Ends extended training under federal law. Federal funding has expired for certain training programs previously authorized under 2009 Act 11, forcing the Wisconsin UI Trust fund to foot the bill. This package proposes repealing this program, as other retraining programs have been implemented.

In addition to making changes to reform UI law, this package proposes several changes specifically to strengthen Wisconsin's UI Trust fund, including the following:

- Authorizing a one-time GPR transfer to protect Wisconsin small businesses from another federal assessment. Wisconsin businesses paid the federal government \$36 million for interest on the loan in 2012. Although the trust fund solvency is improving, this proposal would protect small businesses from essentially another tax levied next year.
- Authorizing the temporary transfer of state dollars to improve the federal UI tax rate in Wisconsin.
- Adopting reforms that would create a relationship between Wisconsin's unemployment rate and benefits. Several states, including North Carolina, Florida, and the federal government tie available benefits to the unemployment rate.

As mentioned above, protecting legitimate UI claims is very important. To protect UI claimants and working families throughout Wisconsin, the proposed package includes a cost-of-living

increase for the maximum and minimum amount of Unemployment Insurance benefits that can be claimed. Some claimants would see their first increase since 2009.

Finally, please note that, unlike recent UI reform packages adopted in neighboring states, this proposal preserves the current maximum of 26 weeks during periods of high unemployment. This stands in stark contrast to Michigan, which recently cut 6 weeks of available UI benefits, and Illinois, which cut one week.

Please find attached a brief description of each component of the UI reform package. We look forward to your prompt attention to this important issue, and would appreciate a response no later than Thursday, May 2nd. As with any other unelected body, the Legislature reserves the right to act independently from any recommendations made by the Unemployment Insurance Advisory Council.

We look forward to your input on strengthening Unemployment Insurance laws in the State of Wisconsin.

Sincerely,



Dan Knodl
State Representative
24th Assembly District



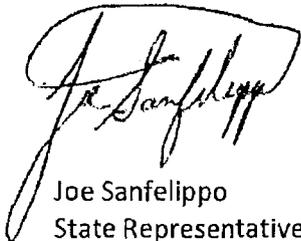
Frank Lasee
State Senator
1st Senate District



Jim Steineke
State Representative
5th Assembly District



Dale Kooyenga
State Representative
14th Assembly District



Joe Sanfelippo
State Representative
15th Assembly District



Dave Murphy
State Representative
29th Assembly District



Dean Knudson
State Representative
30th Assembly District



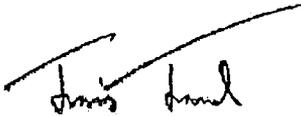
Tyler August
State Representative
32nd Assembly District



John Jagler
State Representative
37th Assembly District



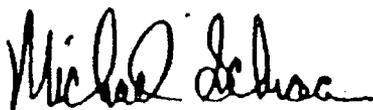
Joan Ballweg
State Representative
41st Assembly District



Travis Tranel
State Representative
49th Assembly District



Jeremy Thiesfeldt
State Representative
52nd Assembly District



Michael Schraa
State Representative
53rd Assembly District



Pat Strachota
State Representative
58th Assembly District



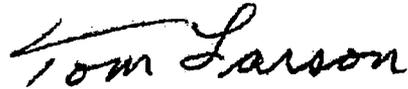
Dan LeMahieu
State Representative
59th Assembly District



Duey Stroebel
State Representative
60th Assembly District



Robin Vos
State Representative
63rd Assembly District



Tom Larson
State Representative
67th Assembly District



Jeff Stone
State Representative
82nd Assembly District



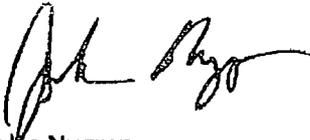
Mike Kuglitsch
State Representative
84th Assembly District



John Spiros
State Representative
86th Assembly District



John Klenke
State Representative
88th Assembly District



John Nygren
State Representative
89th Assembly District



Chris Kapenga
State Representative
99th Assembly District



Leah Vukmir
State Senator
5th Senate District



Rick Gudex
State Senator
18th Senate District



Keith Ripp
State Representative
42nd Assembly District

Item #1 Willful Misconduct Disqualification Standard

We consistently hear from businesses throughout the state that Wisconsin's misconduct statute is too broad and causes benefits to go to those who should not qualify. Wisconsin is one of a handful of states that has such a generous definition of misconduct.

Request:

Pass DWD proposal D12-01 as drafted that would create two different tiers of misconduct. In addition, add language to the substantial fault definition that would include refusing to take a drug test that was in the employer's policy manual.

Item #2 Standardized DWD Handbook for Employers

Small employers do not have the resources available to hire a full time HR Department, which can lead to misconceptions of how UI law is structured and administered.

Request:

Require DWD to create and publish a handbook for employers that clearly outlines the purpose of UI, and under what circumstances it is granted. In addition, provide language defining what would cause an employee to not receive UI. The contents of this manual are not to replace any existing HR manuals, or in any way invalidate others. This is to be used as a tool to ensure both employee and employer are on the same page when it comes to UI, and to provide a line for both to sign to acknowledge receipt of the document. This will not absolve an employer of their duties during hearings, but could be used as evidence of prior acknowledgement of Wisconsin law. Provide the necessary legal disclaimers.

Issue #3 Quit Exceptions

Wisconsin currently has 18 different avenues for an employee to quit and still receive UI.

Request:

Adopt all provisions outlined in DWD proposal D12-19 to eliminate 10 of the quit exceptions.

Item #4 Job Search Requirements

Wisconsin has one of the lowest job search requirements in the nation for recipients on UI.

Request:

Adopt D12-02 as approved by the UIAC that would increase the number of work search requirements from 2 to 4 per week.

Item #5 DWD Overpayments

In the past when overpayments were paid out, the Department has issued a corrective payment from the balancing account if necessary and credited the balancing account when payments were received although there was not clear statutory authority for the Department to do so. In addition, there is some ambiguity on the Department's ability to collect overpayments. This issue has arisen that since more payments will be made, the risk of more errors increases.

Request:

Adopt D12-06 as proposed by DWD to ensure that DWD has the clear authority to collect UI overpayments when an error occurs to make sure claimants do not receive additional funds due to inadvertent Department mistakes.

Item #6 SSDI and UI Payments

Claimants can theoretically receive UI and SSDI payments at the same time. To understand why such "double-dipping" may constitute fraud, please note the following general requirements for each program:

- To receive unemployment insurance benefit payments, claimants must state that they are able to work.
- To receive disability insurance benefit payments, claimants must state that they are unable to work.

Request:

Adopt D12-05 as approved by the UIAC that would prohibit this practice.

Item #7 Pin Numbers

The Handbook for Claimants (UCB-10) is very clear that claimants should not give their personal identification number (PIN) to anyone and should change their PIN if they believe someone else knows it. Situations have arisen where claimants who are accused of fraud can claim that someone else filled in their paperwork without their knowledge, causing a continuation of benefits.

Request:

Adopt D12-03 as proposed by DWD to make it clear it is the responsibility of the claimant to keep their pin confidential.

Item #8 Claimant Fails to Provide Information to Department

Current law imposes no lasting consequence for the claimant's failure to provide information in a timely manner to the Department.

Request:

Adopt D12-08 as proposed by DWD that would create consequences for claimants.

Item #9 Increase Department Collection Abilities

The identification of financial institutions and assets for levy purposes has historically been done by collectors using manual investigation and search techniques. In recent years, other state agencies such as the Department of Children and Families (DCF) and Department of Revenue (DOR) have successfully implemented the Financial Record Matching Program to help identify the debtor's assets and bank accounts.

Request:

Adopt D12-10 as approved by the UIAC that would increase the accuracy and effectiveness of searches for collection efforts.

Item #10 Increase Weekly Benefits

The Wisconsin Legislature has raised UI benefit rates roughly every two years since the 1970's. The last increase in rates was the second week of 2009.

Request:

Adopt D12-31 as proposed by DWD that would increase the maximum benefit rate to \$370 (+\$7) per week, and the minimum to \$55 (+\$1).

Item #11 Amending the Suitable Work Requirement Re-eligibility

Generally claimants who fail to accept suitable work are deemed ineligible to receive benefits. Under current law, to again be eligible for benefits, four weeks needs to elapse from when they did not accept the suitable work and the claimant has earned wages equal to at least four times the employee's weekly benefit rate.

Request:

Adopt D12-30 as proposed by DWD that would increase the penalty for not accepting suitable work to a requalification standard of ten times the weekly benefit rate.

Item #12 Increasing Employer's Ability to Reoffer Employment

There are limited actions available to an employer to contact an individual who is claiming UI against their fund balance to re-offer them suitable employment similar to their previous job.

Request:

Require DWD to provide a claimants contact information to the employer account they are drawing against.

Item #13 Backdate Claims Due to Phone System Down

Claimants can get a waiver under certain circumstances when the DWD phone system for filing a claim was down. The laws governing this exception were put into place prior to the online database system.

Request:

Adopt D12-20 as proposed by DWD that would eliminate the phone system waiver.

Item #14 Increase Department Collection Tools

DWD's debt collection abilities are not consistent with what is available to other state agencies.

Request:

Adopt D12-10, D12-17, and D12-23 as approved by the UIAC.

Item #15 Technical Administrative Proposals Impacting Employers

Technical changes to improve operation of the UI program.

Request:

Adopt D12-28, D12-04, D12-15, and D12-27 as approved by the UIAC.

Item #16 Cafeteria Benefit Plans

Employer paid cafeteria benefit plans are not included in determining an employer's taxable wage base, but can be included to determine a claimant's base period wages.

Request:

Adopt D12-16 as approved by the UIAC that would create consistent treatment of these benefit plans to not include them in base wage calculations.

Item #17 ALJ Reform

Some ALJ's don't have the tools necessary to adequately decide UI cases, and are at times not following Department interpretation and guidelines when it comes to decisions.

Request:

1. Require DWD to create and implement a searchable database of cases determined by ALJ's. The database should be searchable by topic, and have a code citation index. Use is to be limited to other ALJ's and other personnel as determined by the Department.
2. Require DWD to mandate training and continuing education for all ALJs.

Item #18 Prisoners Collecting UI While on Work Release

This was brought to our attention by an employer in the Oshkosh area participating in the Department of Corrections Work Release program. An inmate who was transferred to another facility was allowed to collect UI until he found work from a new work release program.

Request:

Employment by an employee that is in the work release system would fall under the definition of non-covered employment. This would prohibit an employee from collecting UI and would provide an additional incentive for employers to hire these individuals to help transition them back into society.

Item #19 Online Employer Complaint System

Employers currently find it too difficult to report changes to various forms they receive or to file a fraud complaint.

Request:

Require the Department to create an online portal for employers to log in and file a complaint online in addition to other methods available.

Item #20 FUTA Tax Credit Payoff Guarantee

"Taxable" employers are subject to a federal unemployment tax (FUTA), which is currently 6.0% of the first \$7,000 of employee earnings. FUTA allows a 5.4% tax credit for employers in good standing with their state unemployment program, so most employers have a net FUTA rate of 0.6%. However, the credit is reduced, or in other terms the net rate increases each year Wisconsin has an outstanding loan to the Federal Government.

The count date for eliminating the FUTA tax credit reduction occurs on Nov. 9th. If the trust fund is positive on this date, the FUTA credit reduction resets to a net FUTA rate of 0.6%. If not, the rate will increase, regardless of the fund solvency throughout the next year.

In 2014, the FUTA credit reduction will total \$143 million in business taxes. It is possible that on Nov. 9th of 2014 the fund could be nominally negative (< \$50 million), still triggering the FUTA credit reduction for another year.

Request:

According to DWD staff, the state can loan money to the UI fund to make the account balance. Give DOA the ability to provide a loan of no more than \$50 million from existing state revenues to the UI trust fund to ensure solvency on the Nov. 9, 2014 count date. This would be expressly listed as a loan, and would include terms for payment of the original funds (no interest) of future trust fund dollars. Include JFC review prior to transfer. Keep any provision consistent with DOL requirements for repayment.

Item #21 Reporting of Individual Business Reserve Fund Balance

The current ratio system that determines the experience rating for a business is complicated and is frequently misunderstood by employers.

Request:

Require the Department to clarify and provide definitions on reports or in educational material to employers that clearly define how reserve fund balances operate.

Item #22 Random UI Search Audits

The Federal Government requires DWD to do random search audits of all claimants in the Emergency Unemployment Compensation (Federal extensions).

Request:

Adopt this federal provision into state statute. Also require that once a year in one of DWD's fraud reports that the Department report how many audits were performed, what percent of claims this was, and the outcomes of the random audits.

Item #23 Timing of Required Department Reports

The Department is required to provide three reports to the legislature, with deadlines close together.

Request:

Provide the Department greater flexibility with these reports by spacing out the required statutory deadlines.

Item #24 Extended Training Benefits

Act 11 (2009) extends UI benefits to a claimant who is enrolled in approved training for up to 26 weeks after a claimant exhausts regular UI benefits, EUC08 benefits, EB benefits and Trade Act (if applicable) benefit weeks.

The cost of this extended training benefit was funded via American Recovery and Reinvestment Act of 2009 money, which have subsequently ended, and the program liabilities are now all burdened via the state UI trust fund.

Request:
Repeal the program.

Item #25 Temporary Agency Work Search

Individuals can claim UI against a temp. agency under certain circumstances. Under current law, the recipient is not required to check with the temp. agency as part of their required work search.

Request:
Require workers who are drawing against the account or whose last employer was a "temporary help company" to contact their temp. company once a week in order to receive benefits.

Item #26 Standardized Witness Forms for Employers

Situations have arisen where police reports and business documents have not been allowed as evidence during UI hearings.

Request:
Require the Department to create a standardized sworn affidavit witness form for hearings. This would allow for businesses to properly document an incident of an employee that would be presumed admissible during hearings. This will not absolve an employer of their duties during hearings. Also provide any necessary legal disclaimers.

Item #27 SAFI Reimbursement for Businesses

Currently, all businesses are taxed to pay the interest payments on the remaining balance borrowed by the state. Federal law forbids using regular state UI taxes to pay this interest.

Request:
Provide \$19 million in 2013 and \$7 million in 2014 of GPR to pay the SAFI assessment on businesses.

Item #28 Treatment of Legal Holidays for UI

Claimants can claim UI on a holiday (such as Thanksgiving) for the purposes of benefits for that week, even with the business being closed.

Request:

Consider all State and Federal legal holidays as non-working days for the purpose of UI if in the normal course of business the employer is closed.

Item #29 Employer Notification of Work Search

The new database infrastructure for DWD will require a claimant to fill out information for which businesses they applied for. However, there currently is no way for an employer to be notified if someone listed them as applied for a job.

Request:

Require the Department to allow an employer to sign up to receive an electronic notification if someone lists their business as applied for a job.

Item #30 Link Eligibility Weeks to Unemployment Rate

The recession exposed the need for Wisconsin to build up its trust fund balance to avoid the need to borrow money from the Federal Government again.

Request:

Link UI benefits to the unemployment rate of Wisconsin, as other states have proposed and the federal government does when it provides extended benefits.

Unemployment Rate	Wisconsin Eligibility
12.0% - 12.9%	26 week
13.0% - 13.9%	24 week
14.0% - 14.9%	22 week
15.0% - 15.9%	20 week
16.0% - 16.9%	18 week
17.0% - 17.9%	16 week
18.0% - 18.9%	14 week
19.0% or more	12 week

A claimant entering UI would look at what the current quarter's unemployment rate as determined by the Department to determine their number of weeks of eligibility.

Item #31 Increase Lowest Reserve Percent

Special assessments that are triggered during a negative fund balance do not delineate between light and heavy users of the system. In addition, there are concerns that businesses may be using UI as part of their business model for employee salaries.

Request:

Increase the lowest rate percent from -6% or less and create a -6%, -7%, and -8% and more tiers. Increase corresponding rates to a schedule A max of 12% total (Basic rate + solvency rate) for -8% or more.

Item #32 Increase Fraud Workers

There is a shortage of federal reimbursement to adequately combat fraud in Wisconsin's UI system.

Request:

Create 3 additional FTE positions for fraud investigation. Encourage the Department to create more positions if they can leverage additional Federal dollars.

Item #33 Lost Licenses

Under current law, an employee who is at fault for losing their license, which is needed for them to perform their work (such as a CDL for a truck driver), has the ability, under certain circumstances, to qualify for UI.

Request:

Repeal this provision.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Department of Workforce Development
GEF-1 Building Room D203
201 East Washington Avenue
Madison, Wisconsin

April 1, 2013

Members Present: Mr. Buchen, Mr. Gotzler, Mr. Gustafson, Mr. Lump, Mr. LaCourt, Ms. Knutson (Chair), Mr. Neuenfeldt, Ms. Feistel, Mr. McGowan, and Mr. Reihl.

Department Staff: Mr. Rodriguez (UI Administrator), Mr. Sussman, Ms. Maxwell (Executive Assistant to the Secretary), Ms. Schulze (Legislative Advisor for the Office of the Secretary), Mr. Peirce, Mr. McHugh, Ms. James, Ms. Rosenak, Ms. Sausen, Mr. Usarek, Ms. Moksouphanh, Mr. Shahrani, Ms. Banicki, Mr. Schunk, Mr. Brueggeman, and Ms. Gallagher.

Call to order and introductions: Ms. Knutson convened the Unemployment Insurance Advisory Council (Council) meeting at approximately 10:10 a.m. in accordance with Wisconsin's open meetings law. Council members present introduced themselves. Ms. Knutson introduced the state legislators and aides who were in attendance. The state legislators and their aides present were: Representative David Murphy (56th Assembly District), Lindsey Brabender (Representative Chris Kapenga's Office), and Adam Gibbs (Senator Glenn Grothman's Office).

- 1. Approval of Minutes:** Motion by Mr. Lump, second by Mr. Gotzler to approve the minutes of the March 14, 2013 meeting. The minutes were unanimously approved.
- 2. Correspondence:** Ms. Knutson read a letter that Mr. Gibbs provided the Council just before the meeting from State Senator Glenn Grothman. Senator Grothman's letter voiced support for many of the reforms that were contained in a correspondence the Council would be receiving today from Representative Daniel Knodl and Senator Frank Lasee and signed by sixteen other legislators.
- 3. Department Law Change Proposals:** Ms. Knutson indicated that the Council requested the meeting to consider the remaining Department proposals in closed caucus. She noted that there was one matter she needed to address before the Council members went into caucus. Pursuant to section 108.14(19) of the Wisconsin Statutes, Ms. Knutson explained that Council members were provided a copy of a report entitled "Detection and Prevention of Fraud in the Unemployment Insurance Program." Since Council members wanted to spend

all of their time in caucus addressing the Department proposals, there would not be a presentation on the report. Later on today the report would be sent to the Office of the Governor and leaders of both Houses of the Wisconsin Legislature and subsequently it would be posted online.

Motion by Mr. Reihl, second by Mr. Lump to recess and to go into closed caucus session pursuant to section 19.85(1)(ee) of the Wisconsin Statutes and reconvene later in the afternoon. The motion carried unanimously and the meeting was recessed at approximately 10:20 a.m.

The Council reconvened at approximately 3:00 p.m.

Ms. Knutson explained that five minutes before the Council reconvened she had received the aforementioned letter from the state legislators. The letter contains additional items that the legislators would like the Council to consider and requests a report from the Council back to the legislators by May 2, 2013.

Ms. Knutson asked for a report from the Council following caucus on its consideration of the remaining Department proposals. Mr. Buchen explained that the Council had negotiated an agreement on the remaining Department proposals. He noted that in some instances the Council agreed to:

- (A) Not support a Department proposal;
- (B) Support a Department proposal with modifications; or,
- (C) Support a Department proposal without any changes.

He also clarified that if the Council's agreement modified the language of a proposal, the Council would provide the Department the specific statutory language containing the modification.

Mr. Buchen highlighted that with respect to:

- (A) Department Proposal D12-01 (Misconduct Standard) the Council supported this Department proposal with modifications. The Council agreement enumerated within the statute the standard taken from the Wisconsin Supreme Court decision of *Boynton Cab* and amended the proposal to solely provide four examples of conduct that would qualify as misconduct, but not limit misconduct to these four examples. The four examples relate to employee conduct concerning:
 - 1) Illegal Use of Drugs and Use of Alcohol While on the Job;
 - 2) Larceny;
 - 3) Crimes Related to the Job; and,
 - 4) Violations that would lead to Fines or License Suspension of the Employer.

The Council also agreed to amend the language of section 108.04 (5g) of the Wisconsin Statutes with respect to absenteeism and tardiness to make it easier for either reason to disqualify a claimant from benefits.

- (B) Department Proposal D12-19 (Quit Exceptions) the Council supported this Department proposal with modifications. The Council amended the proposal to result in the reduction of the number of quit exceptions from eighteen to sixteen. The exceptions combined together to eliminate one were: Quit Exceptions L (quit to take) and p (quit to take while claiming partial benefits). The quit exception eliminated was: Quit Exception m (labor organization – employee terminates work with the labor organization resulting in loss of seniority).

The Council agreement also changed the requalification framework. The requalification framework determines what a claimant must do to qualify again for benefits if a claimant voluntarily quits and his or her reason for quitting is not covered by one of the quit exceptions. Under the Council's agreement, the requalification framework would be that the claimant must earn six times his or her weekly benefit rate.

The Council agreed to include the amendment proposed by the Department to the quit same good cause exception (e).

- (C) Department Proposal D12-03 (Not Divulging Security Credentials) the Council's agreement included the Department's proposed change to the quit same good cause exception(s) without any modification.
- (D) Department Proposal D12-31 (Minimum and Maximum Benefit Amounts) the Council supported this Department proposal with a modification. The Council amended the proposal so the minimum benefit amount stays at \$54 per week, so that claimants whose prior salary only makes them eligible for this benefit amount still receive benefits of \$54 per week.
- (E) Department Proposal D12-30 (Suitable Work Requalification Framework) the Council supported this Department proposal with a modification. Generally claimants who fail to accept suitable work are deemed ineligible to receive benefits until they requalify for benefits. The Department proposal would have changed the requalification framework so that claimants would have had to earn ten times their weekly benefit rate to qualify again for benefits. The Council amended the proposal to change that the requalification framework to six times the weekly benefit rate.
- (F) Department Proposals D12-06 (Department Error); D12-08 (Demographic Information), and D12-20 (Phone System Waiver) the Council does not support these proposals at this time.

Without any amendments, the Council had previously supported the following Department Proposals:

- (A) D12-02 (Increase Work Search Efforts) on February 6, 2013;
- (B) D12-10 (Financial Record Match Program) on February 6, 2013;
- (C) D12-17 (Suspend Delinquent License Holders) on January 17, 2013;
- (D) D12-23 (Data Sharing with DOT/DMV) on January 17, 2013;
- (E) D12-28 (Treatment of Same Member LLC's) on January 17, 2013;
- (F) D12-04 (Late Successorship Applications) on January 17, 2013;
- (G) D12-15 (Interest Rate Flexibility) on January 17, 2013;
- (H) D12-16 (Cafeteria Plan Benefit Payments) on January 17, 2013;
- (I) D12-27 (Tardy Filing Fee) on January 17, 2013; and,
- (J) D12-32 (Facilitate Claimant's Reemployment) on February 21, 2013.

The Council had previously supported Department Proposal D12-05 (Simultaneous Collection of SSDI & UI) on February 21, 2013 with amendments.

Motion by Mr. Buchen, second by Mr. Neuenfeldt to support sixteen of nineteen Department proposals as outlined above. The motion carried unanimously.

Ms. Knutson then raised the issue that at the last Council meeting the Department had presented specific questions from the Legislative Reference Bureau to the Council. The questions were follow-up questions about Department Proposal D12-05 (Simultaneously Collection of SSDI & UI). Ms. Knutson noted that the Council had never provided a formal response related to these questions. Mr. Buchen stated that he believed the questions were answered by the fact that their agreement only made a claimant ineligible for unemployment insurance benefits if he or she was actually receiving Social Security Disability Insurance benefits during weeks when unemployment insurance benefits were claimed.

The Council members were provided copies of the aforementioned letter from the legislators that Ms. Knutson had received five minutes before the reconvening of the Council meeting. Ms. Knutson then reviewed aspects of the letter.

Mr. Buchen noted that all the Council members thought the letter contained some good ideas, but that he was sure there would be some disagreement on some of the proposals contained in it. He stated that the Council members very much wanted to get working on the proposals in the letter, but thought they should first finish wrapping up their review of the Department proposals.

Ms. Knutson expressed the Department's appreciation for all the hard work the Council members had exerted in considering the Department proposals.

4. Future Meetings: Ms. Knutson reminded Council members that the next meeting was scheduled for April 18, 2013. Ms. Knutson noted that before that meeting the Department would provide Council members with an analysis of the proposals contained in the legislators' letter received by her today.

5. Adjournment: Motion by Buchen, second by Mr. Neuenfeldt to adjourn. The motion carried unanimously and the meeting adjourned at approximately 2:40 p.m.

Memorandum

To: UIAC Members

From: Scott Sussman, (Attorney BOLA) & Janell Knutson (Director BOLA)

Date: 04/17/2013

Re: Analysis of Legislators' Proposals Contained in April 1, 2013 Letter to UIAC

On April 1, 2013 a group of Wisconsin state legislators sent a series of proposals to the Unemployment Insurance Advisory Council (Council) for its consideration. Below is a brief analysis of these thirty-three proposals. The Department's fiscal analysis of these proposals will be included as a separate document.

Item # 1 Willful Misconduct Disqualification Standard

The legislators' proposal is the original Department proposal D12-01 plus adding an example to the substantial fault of a claimant who refuses to take a drug test that was required by an employer's policy manual. A major aspect of Proposal D12-01 was the creation of a two-tier standard to disqualify claimants from unemployment insurance benefits.

The Department has not identified any federal conformity issues with Department Proposal D12-01. For further analysis, the Department will need to see the actual statutory language with respect to the additional example contained in the legislators' proposal.

Item # 2 Standardized DWD Handbook for Employers

The Department is more than willing to work to create a new handbook for employers. As a preliminary note, the Department already has a handbook for employers. The Department would be willing to work with employers to change and modify this already existing handbook to address their concerns. The deadline for when this new handbook is to be completed would necessarily dictate the extent that the Department would be able to make changes to the existing handbook.

One concern that the Department has is with some of the language within the request section of the letter. The language provides "[t]his will not absolve an employer of their duties during hearings, but could be used as evidence of prior acknowledgment of

Wisconsin law.” At unemployment insurance hearings, under current law lack of prior knowledge of Wisconsin law is not a defense that a claimant may offer as a justification to obtain benefits. Unemployment insurance law like almost all areas of law imputes knowledge of all laws to all persons subject to it. Thus, adding this provision to the Department’s handbook for employees to sign may have little impact on the unemployment insurance system. An alternative might be to add a line for the employee to sign within the Department’s manual to attest that the employee was aware of the employer’s human resource manual and its provisions.

On a related note, unemployment insurance law changes and an employee who signs a standardized DWD handbook today would only be acknowledging that they are familiar with the law as it existed today. The Department would attempt to modify the handbook to stay consistent with changes made by both the federal and the Wisconsin State Legislatures and applicable binding court precedent.

The Department, however, would strongly prefer that the version of this handbook only be required to be placed online to save on printing costs.

Item # 3 Quit Exceptions

The proposal is to adopt all of the provisions in Department proposal D12-19 to eliminate ten of the quit exceptions.

The Unemployment Insurance Advisory Council agreement modified Department proposal D12-19.

Item # 4 Job Search Requirements

The Proposal is to enact Department Proposal D12- 02 and the Council approved it. Proposal D12-02 increases the weekly job search requirement of claimants from two to at least four job search actions.

Item # 5 DWD Overpayments

Department Proposal D12-06 contained this proposal, but the Council at its April 1, 2012 meeting elected to not approve it at this time. Department Proposal D12-06 clarifies and narrows the situations where the law would classify Department actions as department error and thus limits when claimants can keep erroneous overpayments.

Item # 6 SSDI and UI Payments

The Proposal is to enact Department Proposal D12-05 as approved by the Council. Department Proposal D12-05 would prevent a claimant from simultaneously collecting both Social Security Disability Insurance and unemployment insurance benefits.

Item # 7 Pin Numbers

The proposal is to enact Department Proposal D12-03 and the Council approved it. Department Proposal D12-03 ensures that claimants are held responsible for giving out personal information that enables another person to improperly file a claim on their behalf.

Item # 8 Claimant Fails to Provide Information to Department

Department Proposal D12-08 contained this proposal, but the Council at its April 1, 2012 meeting elected to not approve it at this time. Department Proposal D12-08 would suspend benefits if claimants do not provide certain requested information, unless there is good cause for their not providing the information.

Item # 9 Increase Department Collection Abilities

The proposal is to enact Department Proposal D12-10 as approved by the Council. Department Proposal D12-10 would enable the Department to match UI delinquent debtor files against accounts held at WI financial institutions.

Item # 10 Increase Weekly Benefits

The proposal is to enact Department Proposal D12-31 and the Council approved this with one modification. The Council amended the proposal so the minimum amount stays at \$54 per week and claimants whose prior salary only makes them eligible for this amount still receive benefits of \$54 per week.

Item # 11 Amending the Suitable Work Requirement Re-eligibility

If a claimant fails to accept suitable work, he or she is ineligible for benefits unless he or she qualifies again for benefits. Under current law, to again be eligible for benefits four weeks needs to elapse from when the claimant did not accept the suitable work and after not accepting the suitable work the claimant needs to earn wages that are equal to at least four times the employee's weekly benefit rate.

The Legislators' proposal is to enact Department Proposal D12-30 so that the requalification framework would be that a claimant must earn ten times the claimant's weekly benefit rate. The Council approved modification of the law to provide that a claimant must earn six times the claimant's weekly benefit rate.

Item # 12 Increasing Employer's Ability to Reoffer Employment

The proposal would require DWD to provide a claimant's contact information to the employer whose account they are drawing against.

This proposal may violate federal regulations. Twenty CFR § 603.4 (b) provides that state unemployment insurance agencies must maintain "the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information, except as provided in this part." Included within confidential information includes the claimant's current (or most recent) home address. Twenty CFR § 603.5 enumerates when the Department may release confidential information including a claimant's current home address. Subsection (c) provides that a state agency may disclose confidential information for non-UC purposes about an individual to that individual, or confidential UC information about an employer to that employer. Providing information to a former employer about the claimant's home address or other contact information is not included in the exception.

Item # 13 Backdate Claims Due to Phone System Down

This proposal is Department Proposal D12-20. The Council at its April 1, 2012 meeting elected to not approve it at this time.

Department Proposal D12-20 provides the Department would no longer backdate claims due to the telephone system being unavailable because claimants may file online. It should also be noted to enact this proposal would not require amending statutory provisions. It only requires the deletion of the provisions of Wis. Admin. Code § DWD 129.01 (4) (e).

Moreover, most claimants will be moving towards the online filing of both their initial and ongoing claims as part of UI modernization. The Department's modernization efforts are modeled after the successful innovation that the Utah unemployment insurance system has used for its program. Utah has achieved an ongoing claims filing rate of over 98% of its claimants. With Wisconsin's unemployment insurance modernization efforts, the Department anticipates a significant increase in the number of claimants that file online and do not use the phone system. As a result, this proposal will not have a significant impact because increasingly claimants will not be using the phone system except in very limited circumstances where they are unable to use a phone to file their claim.

Item # 14 Increase Department Collection Tools

The proposal is to enact Department Proposals D12-10, D12-17, and D12-23 and the Council approved these proposals. These set of proposals would provide the Department collection tools that are used by other state agencies.

Item # 15 Technical Administrative Proposals Impacting Employers

The proposal is to enact Department Proposals D12-04, D12-15, D12-27, and D12-28 and the Council approved these proposals. These proposals are technical improvements that will improve the operation of the unemployment insurance program.

Item # 16 Cafeteria Benefit Plans

The proposal is to enact Department Proposal D12-16 and the Council approved it. Department Proposal D12-16 would make consistent the treatment of cafeteria benefit plan payments by not paying benefits on untaxed wages.

Item # 17 ALJ Reform

The Department is committed to ensuring that Administrative Law Judges (ALJs) have the necessary training and tools to render correct decisions based on applicable laws.

The proposal would require the Department to:

- (1) Mandate training and continuing education for all ALJs; and,
- (2) Create and implement a searchable database of cases to be used by ALJs and select personnel of the Department.

The Department has recently initiated programs to better train and continually educate ALJs.

There are a number of issues that the Department wants to be sure that individuals are aware of related to the portion of the proposal that calls for the creation of the searchable database:

- (a) The number of unemployment insurance cases decided by ALJs is roughly 25,000 per year. To create and maintain a searchable database of all these cases that is accessible by topic would represent a significant resource commitment.
- (b) It may be problematic to include every decision within this database because this would necessarily result in inclusion of decisions that the Department may not want relied upon in future cases heard by other ALJs. With the implementation of this new training program, the Department's objective is to improve the quality of all decisions of ALJs. Still given the volume of annual decisions there is likely to remain some decisions that may be seen as objectionable or overturned by the Labor and Industry Review Commission (LIRC) and that the Department would not want relied upon for future decisions.

(c) Any database would necessarily need to redact personally identifiable information about the employer and claimant in order to avoid privacy considerations. Even if the database were only searchable by other ALJs and Department staff, there would need to be strict security safeguards adopted to ensure that no one improperly used the information contained in the decisions.

(d) A decision by an ALJ is only binding with respect to the litigants who were parties to the administrative hearing. A decision only becomes precedential if the litigants first appeal the decision to the Labor and Industry Review Commission (LIRC) and then appeal the resulting LIRC decision to a circuit court or the court of appeals. LIRC on its website already lists many of its cases that are used as guidance by ALJs. LIRC is the ultimate fact finder and the courts rely upon LIRC's expertise with respect to interpreting unemployment insurance statutes, administrative rules, and policies.

As a result of these concerns, the Department would recommend that the legislation direct LIRC to update its already existing database of decisions and develop a list of commonly decided issues and then for each issue select LIRC decisions to include in a database of searchable cases and redact from these cases any information that would reveal confidential information about the parties to the decision.

Item # 18 Prisoners Collecting UI While on Work Release

The proposal would make a prisoner's work release employment be treated as non-covered employment for purposes of the unemployment insurance program.

Currently, if an inmate incarcerated in a State prison works for an employer (other than the Department of Corrections or a private business leasing space within the prison) and leaves this job because the conditions of incarceration or supervision make it impossible to continue working, the employee is not considered to have voluntarily terminated his employment. If this happens, benefits are charged to the fund's balancing account when the work release employer is a contributing employer. This provision was intended for situations where a prisoner is paroled and is required to reside in a community outside the labor market of the work release employer.

Other states have similar exclusions within their respective laws and the Federal Unemployment Tax Act (26 USC § 3306(c)(21)) excludes from the definition of employment "service performed by a person committed to a penal institution."

It should be important to note that this proposal only impacts prisoners who are collecting unemployment insurance while on work release and does not impact individuals who are incarcerated in county jails and have Huber privileges.

Item # 19 Online Employer Complaint System

The proposal is to require the Department to create an online portal for employers to log in and file complaints in addition to other methods already available.

The Department currently has a number of ways that employers may contact the Department. These include:

- The ability to report unemployment fraud either through an online email web form or through calling the toll free number at 800-909-9472;
- The Department has also created electronic methods for employers to be able to electronically report information pertaining to any separation by an employer;
- The Department also has telephone numbers dedicated to provide assistance for employers; and,
- Specific telephone numbers and email addresses that are listed on the web to receive assistance for specific topics that may be of interest to employers, such as assistance with understanding tax rates.

The Department is always looking to streamline and improve and make more user-friendly its system to enable employers and claimants to raise concerns about the unemployment insurance program.

Item # 20 FUTA Tax Credit Payoff Guarantee

The proposal would authorize the Department of Administration to loan general purpose revenue (GPR) money of no more than \$50 million to the UI trust fund to ensure solvency on November 9, 2014. The purpose behind the loan would be to avoid a FUTA credit reduction on Wisconsin employers.

As a preliminary matter it is important to note there is no guarantee that a time-frame could be guaranteed for repayment of this loan. A lot will depend on the state of the economy, but it will likely not occur until April of 2015 based on current projections.

It is also important to note that Unemployment Insurance Program Letter 07-04 provides the skeletal framework of the Department of Labor's position with respect to such loans. The Department's position is that the principal on a loan from any source that is used to pay UC may be repaid from unemployment fund money if the following conditions are met:

- a. The loan is made for the purpose of paying UC under the state law, and the proceeds of the loan have either actually been used for the payment of UC or have been deposited in the state's account in the Unemployment Trust Fund from which they may be withdrawn only for the payment of UC.
- b. The money used for the payment of UC is explicitly characterized as a loan for the payment of UC at the time it is dedicated to the payment of UC.

c. The loan and repayment are consistent with the state law as interpreted by competent state authority.

This UIPL specifically also states “[u]nemployment fund money may not be used to pay interest, loan/bond fees, or other administrative costs.”

It will be necessary to consult with officials at the Department of Labor to ensure that Wisconsin is taking all necessary steps to avoid the FUTA credit reduction if it uses GPR money to make a loan to the unemployment trust fund. Additionally, consultation with officials in South Carolina would also be a prudent step to be taken with respect to this matter. In FY2011, South Carolina was the only state with outstanding advances on their federal loan to take necessary steps to ensure employers in South Carolina were not subject to a state tax credit reduction in the calculation of their FUTA taxes. While the situation is not completely analogous it would not hurt to, if possible, talk with South Carolina officials about their steps and the adoption of South Carolina Code § 41-31-45, which appears to be the statutory authority that enabled South Carolina to avoid the FUTA credit reduction.

Prior to adopting any legislation with respect to this matter, the Department would need to consult with Department of Labor officials to ensure that the proposed legislation would enable the Department to follow all federal requirements and avoid any unintended consequences including additional FUTA credit reductions.

Item # 21 Reporting of Individual Business Reserve Fund Balance

The proposal would require the Department to clarify and provide definitions to define how an employer’s reserve fund balance operates.

The Department understands that many employers are confused over how their reserve fund balance operates. The Department is committed to assisting employers to understand the unemployment insurance system better in general and, in particular, explaining how an employer’s reserve fund balance operates. The Department will also ensure that this information is prominently displayed within its website.

The Department would also mail to new employers explanatory information regarding how the unemployment insurance system works and include an explanation about how an employer’s reserve fund balance operates.

Item # 22 Random UI Search Audits

The *Middle Class Tax Relief and Job Creation Act of 2012* requires each state to conduct random audits of the work search efforts of Emergency Unemployment Compensation (EUC08) claimants. The proposal is to expand the random UI work search audits beyond simply auditing those claimants who are collecting EUC08. A question was

asked regarding what percentage or how many of EUC08 claimants federal law subjects to random audits with respect to satisfying their UI work search requirements.

The Secretary of Labor is directed to establish a minimum number of claims for which work search records must be randomly selected for audit in any given week. States must conduct these audits to ensure that claimants receiving EUC08 are meeting the particular state's work search requirements.

The number of audits a state must perform is controlled by a formula. The formula provides that states must conduct random audits on a pool of claimants of pre-defined size: 0.5 percent of all weeks paid in any Tier of the EUC program, with a minimum number of 50 and a maximum of number of 1,500, for any given week. Wisconsin conducted 1,603 audits of EUC08 claimants from the time-period of September 30, 2012 through November 11, 2012.

For those claims randomly selected, the audit of the EUC recipients' work search must include a review of the claimant's work search activities for the selected week to determine if the claimant satisfied the work search requirements for the week as prescribed by the state. In conducting random audits, a state must attempt to verify at least one work search activity or contact listed by the claimant. Under state law, a state may waive the work search requirement for certain prescribed reasons, such as when individuals are attending approved training. Thus, the federal government requires that if the claimant who is randomly selected has a waiver as a result of approved training, a state should verify that the claimant did in fact participate in the training program.

The main concern with the expansion of this program will be ensuring that the unemployment insurance program has sufficient resources to conduct adequate audits of the work search efforts of regular UI claimants.

The Department already has the legal authority to conduct these audits with respect to regular unemployment insurance benefits. Wisconsin Administrative Code § DWD 127.04 (1) provides "[t]he department may require a claimant to present evidence of his or her work search efforts to the department for any time period up to and including the 8-week period prior to the date that the department makes the request. The department may also notify the claimant that evidence will be required for a future week. The department may verify the evidence submitted."

The number of regular unemployment insurance claimants varies weekly and is greatly influenced by the health or weakness of the economy. Additionally, the reforms that have already been approved by the Council, with the support of the Legislature, will likely decrease the number of waivers that individuals receive from the work-search requirements for unemployment insurance claimants and also increase the weekly number of work search activities that must be conducted by a claimant. Given these parameters, the potential number of audits for regular UI claimants could result in over

400 audits a week if the Department used the same percentage mandated by the federal government for EUC08 claimants. The Department estimates that it would require significant additional full-time staff to accomplish the objective of conducting thorough audits.

Item # 23 Timing of Required Department Reports

This proposal requests to provide the Department greater flexibility with various reports provided to the Legislature by spacing out the required statutory deadlines.

The statute currently requires the Department to provide three reports that are forwarded onto the Legislature:

- Pursuant to s. 108.141 (19) of the Wisconsin Statute, the Department is to prepare and furnish a report summarizing the Department's activities related to detection and prosecution of unemployment insurance fraud. The Department would recommend that this report be due by March 15.
- Pursuant to s. 16.48 of the Wisconsin Statute, on a biennial basis the Department shall prepare and furnish to the governor and leaders of both houses of the Wisconsin Legislature the unemployment insurance financial outlook. The Department would recommend that this report be due biennially on April 15.
- Pursuant to s. 16.48 (1) (b) of the Wisconsin Statute, biennially the Department shall prepare and furnish to the governor and leaders of both houses of the Wisconsin Legislature a report summarizing the activities of the Council. While this report is tied into the above referenced financial outlook report, the Department would recommend that this report be due biennially on May 15.

Item # 24 Extended Training Benefits

Currently, a claimant may qualify to receive benefits while participating in an extended training program under certain conditions including, but not limited to, he or she has exhausted all other rights to all other unemployment insurance benefits. This proposal would repeal extended training benefits. There is no federal conformity issue with eliminating the right for a claimant to not receive benefits while participating in an extended training program.

Wisconsin enacted extended training benefits as one of the conditions to satisfy in order to be eligible for unemployment compensation modernization incentive payments. The total amount available for all states through this program was \$7 billion. To obtain its share, a state had to make an application to the Department of Labor demonstrating that its UC law contains certain benefit eligibility provisions. Unemployment Insurance Program Letter No. 14-09 provided that applications for incentive payments should only be made under provisions of state laws that are currently in effect as permanent law and not subject to discontinuation.

UIPL No. 14-09 included an attachment that provided answers to a series of questions. This provides that a state agency may discontinue a program that was funded to obtain the UC modernization funding.¹

Item # 25 Temporary Agency Work Search

The proposal provides if a claimant's last employer was a "temporary help company" or the claimant is drawing against the account of a temporary help company the claimant must weekly contact the temporary help company seeking an assignment. Otherwise, the claimant is considered to not have conducted a reasonable search for suitable work. The only exception would be if there is good cause for the failure of the claimant to contact the employer.

The Department has not identified any federal conformity issues with this proposal, but the proposal has raised a few issues:

- (a) While perhaps not appropriate for statute, it would be good to further clarification regarding what constitutes good cause for failing to contact a temporary help agency. This would help to avoid confusion with application of this policy.
- (b) There likely should be some limitation placed on the length of time that a temporary help firm could call the Department and state that the claimant did not contact it seeking an assignment. Otherwise, there will likely be issues with respect to each side being able to provide evidence to support their contention that the claimant did or did not contact the temporary help agency for a particular week.
- (c) There may need to be some additional requirements placed on temporary help firms if they elect to use this provision to disqualify former clients from unemployment insurance benefits. The main requirement would be that temporary help firms must have employees, upon hire, sign a written agreement with the temporary help agency stating that when an assignment ends they are required by UI (if filing) to contact the agency at least once a week for further assignments.

¹ One of those questions provided:

CH 1-1. Question. UIPL No. 14-09 provides that applications for incentive payments should only be made under provisions of state laws that are currently in effect *as permanent law* and not subject to discontinuation. Does this mean that my state may never repeal any of the provisions that qualified it for a UC Modernization payment?

Answer: No. If a state eventually decides to repeal or modify any of these provisions, it may do so, and it will not be required to return any incentive payments. However, in providing the incentive payments, Congress clearly intended to support states that had already adopted certain eligibility provisions and to expand eligibility to additional beneficiaries by encouraging other states to adopt these provisions. By specifying that the provisions must be in effect as permanent law, Congress also made clear its intention that the benefit expansions not be transitory. While states are free to change or repeal the provisions on which modernization payments were based subsequent to receipt of incentive payments, Congress and the Department rely on states' good faith in adopting the eligibility criteria, and the application must attest to this good faith as required by the following Q&A.

(d) Many claimants have multiple employers that work for them was part of their base period wages. Similar laws from other states only require a claimant to contact the temporary help agency if it was the last company that hired the claimant. It would significantly increase the complexity of implementing and administering this proposal if a claimant had to contact a temporary help firm even if that firm was not the claimant's last company that the claimant worked for.

(e) It would be important to have the temporary help firm be required to submit a notice of possible ineligibility if during a particular week in which a former claimant claimed benefits; the claimant fails to contact them for an assignment. Otherwise, their will be substantial administrative costs and programming issues associated with this proposal.

Item # 26 Standardized Witness Forms for Employers

The proposal would require the Department to create a standardized sworn affidavit witness form for hearings to enable businesses to properly document an incident related to an employee that would be presumed admissible during hearings. The proposal notes that the sworn affidavit should not absolve an employer of their duties during hearings and that the affidavits should provide any necessary legal disclaimers.

These caveats are extremely important to the proposal. The Department of Labor (DOL) addresses the use of affidavits and unsworn statements in unemployment insurance hearings. While DOL acknowledges that appeal tribunals in UI hearings may accept affidavits and even unsworn statements in lieu of oral testimony. Yet, if that witness is available, he or she should be required to appear and give testimony orally and under oath. In fact, the more material the evidence is to the issue of the hearing, the more important it is to obtain oral, sworn testimony. The DOL also notes that, where the facts are material and the issue is in dispute; procedural fairness may require that the witness be called before the appeal tribunal for cross examination.

In addition, cross examination of a witness is a critical fair hearing and due process element for an administrative hearing. The opportunity to cross examine is a fundamental right in the eyes of the legal system. Through questioning of the witness contradictions, improbabilities, and doubts about the testimony or evidence can result.

It also is important to note the Wisconsin Supreme Court case, *Gehin v. Wisconsin Group Insurance Board*, addressed this issue. The Court held that an administrative tribunal may admit hearsay evidence, but uncorroborated hearsay alone does not constitute substantial evidence. The rule prohibits an administrative agency from relying solely on uncorroborated hearsay in reaching its decision.

There are two additional issues:

- First, the Department to promote fairness would recommend that standardized sworn affidavit witness forms be available to both employers and claimants; and,

- Second, many of the procedures associated with appeal tribunal hearings are contained in Administrative Code DWD Chapter 140 and it would be logical to place this requirement within Chapter 140. Nonetheless, Wisconsin statute §108.09(4o) does provide an analogous statute related to the admissibility of Departmental Records relating to benefit claims.

Item # 27 SAFI Reimbursement for Businesses

The Federal Unemployment Account provides for a loan fund for state unemployment programs to ensure a continued flow of benefits during times of economic downturn. Wisconsin is one of the states that has taken out a loan to pay benefits. The proposal provides \$19 million in 2013 and \$7 million in 2014 of GPR to pay the interest owed on the federal loan and avoid businesses having to pay a Special Assessment For Interest.

The Department has not identified any federal conformity issues with this proposal.

Item # 28 Treatment of Legal Holidays for UI

The proposal would consider all State and Federal legal holidays as non-working days for the purpose of Unemployment Insurance, but only if in the normal course of business the claimant works for an employer whose business is closed.

The Department has not identified any federal conformity issues with this proposal.

The Department assumes that the intent of this proposal is to modify the provisions of Wisconsin Statute s. 108.05 (3) (b). This currently requires denial of benefits for any week in which a claimant is paid or has the opportunity to earn pay for full-time work (32 hours) from any combination of the following: actual work performed, sick pay, holiday pay, vacation pay or dismissal pay. The proposal would change this disqualification provision to provide that in any week in which there is a holiday and the claimant works at a business that in the normal course of business is closed the 32 hour rule would be modified to 24 hours. Additionally, the proposal would change the disqualification provision to provide that if in any week there are two days that are holidays and the claimant works at a business that in the normal course of business is closed the 32 hour rule would be modified to 16 hours.

It will be necessary to determine what days qualify as "holidays" for purposes of this proposal. It would also be advantageous if employers who desired to use this provision with respect to their employees be required to notify the Department prior to the beginning of every calendar year of the fact that in the normal course of business they are closed on certain holidays covered by this provision. This would help to avoid delays of payment of unemployment insurance or avoid the creation of overpayments.

Item # 29 Employer Notification of Work Search

The proposal would require the Department to allow an employer to sign up to receive an electronic notification if a claimant listed that employer as an employer that they applied to as part of their weekly job search efforts.

This proposal may violate federal regulations. Twenty CFR § 603.4 (b) provides that state unemployment insurance agencies must maintain “the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information, except as provided in this part.” Thus, telling an employer that an individual who applied for a job and that individual is receiving unemployment insurance, may be a violation of federal regulations.

Item # 30 Link Eligibility Weeks to Unemployment Rate

The proposal would amend Wisconsin's unemployment compensation law to reduce benefit duration from a maximum of 26 weeks to a lesser number of weeks depending on the state's seasonally adjusted unemployment rate. The proposal would provide:

Unemployment Rate	Weeks of Eligibility
8% or higher	26 weeks
7.5 - 7.99%	24 weeks
7 - 7.49%	22 weeks
6.5 - 6.99%	20 weeks
6 - 6.49%	18 weeks
5.5 - 5.99%	16 weeks
5 - 5.49%	14 weeks
4.99% or less	12 weeks

Below is a chart providing what the average duration for individuals who were on regular unemployment insurance from 2007 – 2011 and under the proposal what would be the maximum duration that an individual would have been eligible for regular unemployment insurance:

Year	WI Average Total Unemployment Rate for Applicable Year	Average Duration of Receipt of Regular Unemployment Insurance (In Weeks)	Under Proposal, Allowable Duration Based on Average Unemployment Rate for Applicable Year (In Weeks)
2007	4.8	13.2	12
2008	4.8	13.2	12
2009	8.7	17.0	26
2010	8.5	17.8	26
2011	7.5	16.2	24

The duration measure is only for Regular UI and does not include any special programs, such as Emergency Unemployment Compensation (EUC08). It is important to note that the average total unemployment rates listed in the second column represent the total unemployment rate for an entire year. Florida, which has enacted a similar reduction in duration, determines the number of weeks a claimant is eligible for based on state's unemployment rate during the third quarter of the previous calendar year.

The reduced duration does not raise a conformity issue, but it does affect the amount of extended benefits available under state law. Additionally, a reduction in duration would affect benefits under EUC08 law of 2008. A discussion follows.

There is no requirement in the Federal Unemployment Tax Act (FUTA) or Title III of the Social Security Act (SSA) that a state UC law provide for the payment of a specified number of weeks of UC to be certified as eligible for FUTA tax credits or the UC administrative grant under Title III, SSA. Although there are some variations, most state UC laws provide for the payment of a maximum of 26 weeks of UC even though this amount is not specified in FUTA or the SSA. Some states have variable duration formulas where the number of weeks of benefits an individual is eligible to receive varies based upon the amount of earnings in the base period. While reducing the duration of benefits from 26 weeks does not raise a conformity issue, it results in reduced payments of extended benefits if the reduced duration for regular unemployment insurance is effective during weeks of unemployment when an extended benefit program is operational.

The payment of EUC08, which has been extended several times, is based, in part, on the unemployment rate in a state and the amount of regular compensation an individual receives. EUC08 is paid in a series of tiers and the individual must exhaust all rights to regular UC before being eligible for EUC08.

EUC08 is a 100% federally funded program that provides benefits to individuals who have exhausted regular state benefits. The EUC08 program was created on June 30, 2008, and has

been modified several times. These benefits are available for weeks of unemployment ending on or before January 1, 2014. This means that the last payable week of EUC08 benefits in most states will be the week ending December 28, 2013, unless Congress again extends this program.

The Department estimates that this proposal will have the following impacts with respect to federal benefits:

Weeks of Eligibility of Different UI Special Extended Programs Under Proposed Law Change*						
Unemployment Rate	Regular UI	Current Law EUC Durations				EB Weeks
		EUC Tier 1	EUC Tier 2	EUC Tier 3	EUC Tier 4	
8% or higher (Duration Under Current Law)	26	14	14	9	10	13
7.50% - 7.99%	24	13	13	8	N/A**	12
7.0%-7.49%	22	12	12	8	N/A**	11
6.50%-6.99%	20	11	11	N/A**	N/A**	10
6.0%-6.49%	18	10	10	N/A**	N/A**	9
5.5%-5.99%	16	9	N/A**	N/A**	N/A**	8
5.0%-5.49%	14	8	N/A**	N/A**	N/A**	7
Less than 4.99%	12	6	N/A**	N/A**	N/A**	6

* The chart assumes that this proposal is enacted before the end of this year due to fact that the last payable week of EUC08 benefits in most states will be the week ending December 28, 2013, unless Congress again extends this program.

**Except for Tier 1 of EUC08, each Tier has an on and off trigger based on a state's 3-month seasonally adjusted total unemployment rate. For instance, claimants in a state with a 3-month seasonally adjusted total unemployment rate of less than 7% would be ineligible for EUC08 Tier 3. Thus, the chart only shows the impact on the duration for a EUC08 Tier if at the applicable unemployment rate Wisconsin claimants would be eligible for that EUC08 Tier.

Item # 31 Increase Lowest Reserve Percent

This proposal would increase the lowest rate percent from -6% and create a -6%, -7%, and -8% and more tiers. Additionally, it would increase the corresponding rates to a schedule A max of 12% total.

The proposal would strengthen experience rating of the Trust Fund, by assigning employer experience rates based solely on the statutory rate schedules, without any special limitations. Experience rating is a federal mandate and represents the core of the Trust Fund's rate structure. Placing limits on tax rates undermines experience rating and results in subsidization of certain employers with high unemployment experience by those with low unemployment experience.

The Expected Tax Revenue Increase Due to Increasing the Maximum Total Tax Rate to 12%

The UI Tax schedule was changed to increase the maximum Total Tax Revenue rate from 9.8% to 12%. This was done by adding additional brackets at the bottom of the schedule. Over these brackets the Basic Tax Rate was increased while the Solvency Tax Rate was held constant at 1.3%.

Current Rate			
	Basic Rate	Solvency Rate	Total Rate
Less than - 6.0%	8.5	1.3	9.8
New Rates			
	Basic Rate	Solvency Rate	Total Rate
-6.0% to 7.0%	8.5	1.3	9.8
-7.0% to -8.0%	9.25	1.3	10.55
-8.0% to -9.0%	10.0	1.3	11.3
-9.0% to -10.0%	10.7	1.3	12

The new tax rates were used in the tax model simulation to determine the expected change in tax revenue over the current rates. On average the change in tax rates would increase tax revenue by \$24 million per year. This result holds when the model is simulated under Tax Schedule A until 2018 or if Tax Schedule B is in place for the years 2017 and 2018.

	Tax Schedule	Tax Revenue (Millions)		Difference In Revenue
		Current Tax Schedule	New Tax Schedule	
Year				
2014	A	\$1,089	\$1,121	\$32
2015	A	\$1,001	\$1,030	\$29
2016	A	\$981	\$1,005	\$24
2017	A	\$958	\$975	\$17
2018	A	\$911	\$929	\$18
			Average Difference	\$24

	Tax Schedule	Tax Revenue (Millions)		Difference In Revenue
		Current Tax Schedule	New Tax Schedule	
Year				
2014	A	\$1,089	\$1,121	\$32
2015	A	\$1,001	\$1,030	\$29
2016	A	\$981	\$1,005	\$24
2017	B	\$854	\$871	\$17
2018	B	\$785	\$804	\$19
			Average Difference	\$24

Item # 32 Increase Fraud Workers

The proposal would create three additional FTE positions for fraud investigation and encourage the Department to create more positions if the Department can leverage additional federal dollars.

The Department is committed to preventing fraud and supports the additional resources called for within this proposal. The Department is also committed to leveraging additional Federal dollars if they become available for additional resources to pay for fraud investigators.

The Department estimates that the total annual cost for 3 FTE Fraud Investigators would be \$314,560. This position calculation uses the Department standard for identifying all costs, direct and allocated, for maintaining an FTE.

Item # 33 Lost Licenses

The proposal would accomplish three objectives:

- (a) Tighten up the standard for determining when an employee is at fault for the loss of his or her license that is necessary for him or her to perform his or her job;
- (b) Provide that the requalification standard for an employee who loses his or her license is six times the weekly benefit rate.
- (c) Provide that if an employee loses his or her license that is necessary for him or her to perform his or her job, the impact would be similar on the wage base as is done in cases of misconduct.

The Department has not identified any federal conformity issues with this proposal.

Below is a written explanation of the current legal framework for what is the impact on receipt of unemployment insurance benefits when an individual becomes unemployed as a result of losing a license that was necessary for the individual to perform a job.

Pursuant to section 108.04 (1) (f) of the Wisconsin Statute, the Department policy currently is that benefits are denied if the employment relationship was suspended or terminated because the employee's license that was issued by a government agency and was required to do his job was suspended, revoked or not renewed due to the employee's fault. If the employee loses a license for a reason that is beyond the employee's control, it will not result in suspension of benefits under this subsection. As an example, if an employee loses the license due to the fact that he or she is unable to pass an exam or satisfy physical requirements.

Benefits are denied for the week of issue plus five weeks or until the license is renewed or reinstated, whichever comes first.

If the license is not renewed or reinstated by the end of the 6-week suspension period:

- Wages from the issue employer are removed for the purpose of determining the maximum benefit amount. The wages are still used for benefit rate purposes.
- If there are no other base period employers the employee is not eligible for benefits until the license has been renewed or reinstated.
- If there are other base period employers the employee is eligible for benefits based on the other wages. The issue employer is not charged for its percentage of benefit payments while the loss of license exists.

12012

2012-2013 Department Proposals, UIAC Modifications, Legislature Items and the Estimated UI Trust Fund Impact

DWD Proposal-Approved but modified by UIAC-Legislature Letter suggests passing DWD proposal (SSDI/UI pass UIAC modified proposal)				
DWD Proposal- Not Approved by the UIAC-Legislature Letter suggests passing DWD proposal				
DWD Proposal-Approved by the UIAC-Legislature Letter suggests passing DWD proposal				
Legislature Items Not Approved by the UIAC-Legislature Letter suggests passing DWD proposal				
Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
<p>D12-01 / ITEM #1 Misconduct/Substantial Fault</p> <p>Create two-tier standard to determine if a claimant's actions that resulted in a discharge disqualify him or her for benefits. Keep current misconduct standard but enumerate actions that qualify as misconduct to create greater clarity and add a lower threshold to disqualify a claimant from benefits when an employee's conduct does not rise to the misconduct standard. (Substantial Fault). Repeal 5(g)</p> <p>UIAC modification: Dropped substantial fault, modify 5(g) in lieu of repealing, keep misconduct definition, but changed what can constitute misconduct Why the reduction in savings? Cases denied under substantial fault (\$17 million net) not present under UIAC modification. Adding misconduct language under UIAC codifies current practice, thus no change to UI trust fund. 5(g) is difficult to apply. Any change does not affect UI trust fund</p>	<p>Bureau of Legal Affairs Janell Knutson Scott Sussman</p>	<p>\$17 million savings in comparison to current law (Benefit pay reduction)</p>	<p>Modified-04/01/13 and sent to LRB No significant impact in comparison to current law</p>	<p>Pass DWD proposal (\$17 million savings in comparison to current law)</p>

Exhibit 6, Pg. 1

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
<p>Item #2 D12-19 / ITEM #2 Quit exceptions and suspension period</p>	<p>Legislator</p>	<p>UI Proposal</p>	<p></p>	<p>UI Impact</p>
<p>D12-19 / ITEM #3 Quit exceptions and suspension period</p> <p>Reduce number of quit exceptions from eighteen to seven. Change 7(e) to 30 days in lieu of 10 weeks, when claimant quit a new job timeframe. It would change the requalification framework from a 4x4 disqualification to a 10 times the WBR</p> <p>UIAC modification: Keep quit exceptions, and change suspension period to 6xWBR</p> <p>Why the reduction in UI Trust Fund savings? More claimants will requalify under UIAC modified suspension period vs DWD proposal (\$1.4 million savings vs \$13.6 million savings).</p> <p>UIAC modification kept quit exceptions that would have been eliminated (\$2.7 million savings)</p> <p>Change to 7(e) timeframe stayed the same (\$8.3 million savings)</p>	<p>Bureau of Benefits Amy Banicki</p>	<p>\$24.6 million savings in comparison to current law (Benefit pay reduction)</p>	<p>Modified-04/01/13 and sent to LRB</p> <p>\$9.7 million savings in comparison to current law (Benefit pay reduction)</p>	<p>Pass DWD proposal</p> <p>(\$24.6 million savings in comparison to current law)</p>

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal approximate impact to the UI Trust Fund (annually)	UIAC action Modification approximate impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 approximate impact to the UI Trust fund (annually)
<p>D12-02 / ITEM #4 Increase work search from 2 to 4 and change to work search waivers</p> <p>Increase work search requirements from two to at least four each week that a claimant is claiming benefits. Amend administrative code provisions regarding work search & work registration.</p>	<p>Bureau of Legal Affairs Janell Knutson Scott Sussman</p>	<p>Up to \$2.6 million in savings in comparison to current law (Benefit pay reduction)</p>	<p>Approved 04/06/13 and sent to LRB (up to \$2.6 million in savings in comparison to current law)</p>	<p>Pass DWD proposal (up to \$2.6 million in savings in comparison to current law)</p>
<p>D12-05 / ITEM #5 Redefining Dept. Error</p> <p>Create statutory authority to recover benefits paid in error through redefining departmental error for purposes of waiver of recovery of improperly collected benefits.</p>	<p>Bureau of Benefits Amy Banick</p>	<p>\$1 million in savings in comparison to current law (Benefit pay reduction)</p>	<p>Not approved 04/01/13</p>	<p>Pass DWD proposal (\$1 million in savings in comparison to current law)</p>
<p>D12-05 / ITEM #6 SSDI/UI-cannot collect both at the same time</p> <p>Individuals who apply for or receives SSDI in a given week will not be eligible for unemployment insurance unless: Previously earned wages while applying for or collecting SSDI, and provide written doctor note that states that the claimant is able and available to work despite collecting SSDI.</p> <p>UIAC modification: Cannot collect UI and SSDI in same week. Not tied to BP wages, less stringent requirement on showing that truly are AA and on SSDI</p>	<p>Bureau of Legal Affairs Scott Sussman</p>	<p>TBD</p>	<p>Modified-04/01/13 and sent to LRB TBD</p>	<p>Pass UIAC modified proposal TBD</p>

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
<p>D12-03 / ITEM #7 Protect Pin requirement</p> <p>The claimant portal allows claimants to file on line with a username and password. This codifies the responsibility of claimants to not divulge their PIN, username and password that enable them to use the claimant portal and will eliminate fraud resulting from imposters</p>	<p>Bureau of Benefits Amy Banicki</p>	<p>Unable to quantify, impact expected to be small</p>	<p>Approved 04/01/13 and sent to LRB</p> <p>(impact expected to be small)</p>	<p>Pass DWD proposal</p> <p>(impact expected to be small)</p>
<p>D12-08 / ITEM #8 CLT failure to provide information</p> <p>Make a claimant who fails to provide the department with information pertaining to his or her eligibility for benefits and/or demographic information ineligible to receive benefits with good cause exception</p>	<p>Bureau of Benefits Amy Banicki</p>	<p>Unable to quantify, impact expected to be small</p>	<p>Not approved 04/01/13</p>	<p>Pass DWD proposal</p> <p>(impact expected to be small)</p>
<p>D12-10 /ITEM #9 and #14 Increase Department Collection abilities</p> <p>Proposal would enable the Department to identify the accounts of delinquent debtors through a financial record match process on a quarterly basis.</p>	<p>Bureau of Tax & Accounting Pamela James</p>	<p>\$8 million in savings in comparison to current law</p> <p>(OP collections)</p>	<p>Approved 02/06/13 and sent to LRB</p> <p>(\$8 million in savings in comparison to current law)</p>	<p>Pass DWD proposal</p> <p>(\$8 million in savings in comparison to current law)</p>

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
<p>D12-31 / ITEM #10 Increase WBR</p> <p>Minimum amount to be increased to \$55 per week or an increase of \$1 per week. Maximum amount to be increased to \$370 or an increase of \$7 per week. This change would not affect any claimants that fall outside the max or the min amounts; it is not a proposed increase across-the-board.</p> <p>UIAC modification: Keep minimum at \$54</p> <p>Why no change in savings? Too few claimants at \$55 or lower to affect.</p>	<p>Bureau of Legal Affairs Janell Knutson Scott Sussman</p>	<p>\$12 million reduction in comparison to current law</p> <p>(Benefit pay increase)</p>	<p>Modified 04/01/13 and sent to LRB</p> <p>\$12 million reduction in comparison to current law</p> <p>(Benefit pay increase)</p>	<p>Pass DWD proposal</p> <p>(\$12 million reduction in comparison to current law)</p>
<p>D12-30 / ITEM #11 Job refusal suspension period</p> <p>Change 4x4 disqualification period for a job refusal to a 10xWBR</p> <p>UIAC modification: Change to 6xWBR</p> <p>Why no significant impact for both proposals? Any change to the suspension period does not have a significant impact on the fund as there are too few cases to impact</p>	<p>Bureau of Benefits Amy Banicki</p>	<p>No significant impact</p> <p>(Less than \$50,000 annually in comparison to current law)</p>	<p>Modified 04/01/13 and sent to LRB</p> <p>No significant impact</p> <p>(Less than \$5,000 annually in comparison to current law)</p>	<p>Pass DWD proposal</p> <p>(No significant impact)</p> <p>(Less than \$50,000 annually in comparison to current law)</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
<p>D12-20 / ITEM #13 Backdate claims due to phone system down</p> <p>Technological advances enable a claimant to file online and not have to rely on filing a claim via the phone. Moreover, the change is necessary due to recent upgrades to Department's hardware and how it now operates.</p>	<p>Bureau of Benefits Amy Banick</p>	<p>No impact</p>	<p>Not approved 04/01/13</p>	<p>Pass DWD proposal (No impact)</p>
<p>D12-17 / ITEM #14 License renewal cross-match-collection tool</p> <p>Authorize the Department to require license holders to be current on their UI taxes or face non-renewal, discontinuation, suspension or revocation.</p>	<p>Bureau of Tax & Accounting Pamela James</p>	<p>Unable to quantify</p>	<p>Approved 01/17 and sent to LRB Unable to quantify</p>	<p>Pass DWD proposal Unable to quantify</p>
<p>D12-23 / ITEM #14 DOT data sharing</p> <p>The Department currently has a data sharing agreement with DOT/DMV but pursuant to statute the Department cannot look up an individual by their social security numbers.</p>	<p>Bureau of Tax & Accounting Pamela James</p>	<p>Unable to quantify</p>	<p>Approved 01/17/13 and sent to LRB Unable to quantify</p>	<p>Pass DWD proposal Unable to quantify</p>
<p>D12-28 / ITEM 15 LLC change-administrative change impacting ERs</p> <p>Discontinue treating limited liability companies with the same members as a single employer.</p>	<p>Bureau of Tax & Accounting Pamela James</p>	<p>No impact</p>	<p>Approved 01/17/13 and sent to LRB (No impact)</p>	<p>Pass DWD proposal (No impact)</p>

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
<p>D12-04 / ITEM #15 Successorship paperwork- administrative change Impacting ERs</p> <p>Enable Department to have some flexibility when an employer is late in getting its paperwork to the Department with respect to optional successorship applications.</p>	<p>Bureau of Legal Affairs Mike Mathis Janell Knutson</p>	<p>No impact</p>	<p>Approved 01/17/13 and sent to LRB (No impact)</p>	<p>Pass DWD proposal (No impact)</p>
<p>D12-15 / ITEM #15 Interest write-off when appropriate- administrative change Impacting ERs</p> <p>Department to write-off interest when deemed appropriate by the Bureau of Tax and Accounting when an employer later files the required report or makes the required payment and satisfies the Department that the report or payment was tardy due to circumstances beyond the employer's control.</p>	<p>Bureau of Tax & Accounting Pamela James</p>	<p>No impact</p>	<p>Approved 01/17/13 and sent to LRB (No impact)</p>	<p>Pass DWD proposal (No impact)</p>
<p>D12-27 / ITEM #15 Tardy filing fee change- administrative change Impacting ERs</p> <p>Increase the tardy filing fee for employers to \$100 or \$20/ee whichever is greater, but if the employer later files the required report the fee may be decreased to \$50 for each delinquent qtrly report.</p>	<p>Bureau of Tax & Accounting Pamela James</p>	<p>No impact</p>	<p>Approved 01/17/13 and sent to LRB (No impact)</p>	<p>Pass DWD proposal (No impact)</p>

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
D12-16 / ITEM #16 Cafeteria plan wages not usable Restrict payments to cafeteria plans from being included in base period wages for determination of amount of benefits paid to a claimant	Bureau of Tax & Accounting Pamela James	\$.5 million savings in comparison to current law (Benefit pay reduction)	Approved 01/17/13 and sent to LRB (\$.5 million in savings in comparison to current law)	Pass DWD proposal (\$.5 million savings in comparison to current law)
ITEM #17 ALJ reform, searchable databases, and continuing education/training for ALJs	Legislator	No proposal		Unable to quantify
ITEM #18 Work release programs excluded, prisoners not eligible for UI	Legislator	No proposal		Unable to quantify, impact expected to be small
ITEM #19 Create Online ER complaint system	Legislator	No proposal		Unable to quantify, impact expected to be small
ITEM #20 FUTA tax credit payoff Guarantee, state to pay up to \$50mil to avoid FUTA tax for next year	Legislator	No proposal		No foreseen impact May lead to a \$191 million reduction in tax revenue in 2015 via FUTA credit reduction, if projections change.
ITEM #21 More information to employer's regarding reserve fund balance	Legislator	No proposal		No impact

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal approximate impact to the UI Trust Fund (annually)	UIAC action Modification approximate impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 approximate impact to the UI Trust fund (annually)
ITEM #22 Random UI Work Search Audits	Legislator	No proposal		At least \$ 4 million in savings in comparison to current law (Benefit pay reduction)
ITEM #23 Timing of required reports Space out required reports throughout the year	Legislator	No proposal		No impact
ITEM #24 Eliminate ET benefits	Legislator	No proposal		\$8.1 million in savings in comparison to current practice (Benefit pay reduction)
ITEM #25 Temp agency work search Temporary Agency WS requirement: If last ER or BP ER is a temp agency, make it a requirement that the CLT contacts them every week for work	Legislator	No proposal		Unable to quantify, impact expected to be small
ITEM #26 Standardized Witness forms that will hold up in hearings	Legislator	No proposal		Unable to quantify, impact expected to be small
ITEM #27 SAFI Reimbursement Have GPR cover interest payments on Trust Fund Loans	Legislator	No proposal		No foreseen impact** **though no trust fund impact, will reduce taxes

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
<p>ITEM #28 Holiday a nonworking day for UI benefit purposes</p> <p>Legal Holidays to be considered, "non-working" days, assuming that if a clt filed due to a holiday closure, that they would not be eligible for benefits for that day.</p>	Legislator	No proposal		TBD
<p>ITEM #29 Employer notification of a work search log Employer notification of work search-when clt have to log ER that they searched for, the ER would get info that they were used in a work search-Fraud deterrent</p>	Legislator	No proposal		Unable to quantify
<p>ITEM #30 Link weeks of eligibility to unemployment rate</p> <p>Link eligibility weeks to unemployment rate-# of weeks clt eligible for depends on UI rate</p>	Legislator	No proposal		<p>\$86.6 million savings (benefit pay reduction) \$28.9 million reduction in tax revenue Net total: \$57.7 million savings</p>
<p>ITEM #31 Increase lowest reserve percentage</p> <p>Increase lowest Reserve Percentage- Increase max rate to a total of 12% in 2 additional brackets</p>	Legislator	No proposal		<p>\$26 million increase in tax revenue in comparison to current law (savings)</p>

Proposal/Legislature Item Number/Description	Bureau Contact	Department Proposal <u>approximate</u> impact to the UI Trust Fund (annually)	UIAC action Modification <u>approximate</u> impact to the UI Trust Fund (annually)	Legislator Letter ITEMS 04/01/13 <u>approximate</u> impact to the UI Trust fund (annually)
ITEM #32 Increase fraud workers by 3	Legislator	No proposal		TBD
ITEM #33 Repeal Loss of License Claimants who lose their license due to fault needed to perform the job be ineligible for UI	Legislator	No proposal		No significant impact

TOTAL UI FISCAL IMPACT (approx.)	UI Trust Fund (Dept.)	UI Trust Fund (UIAC)	UI Trust Fund (Legislator)
Benefit pay decrease (UI trust fund savings)	\$45.7 million	\$12.8 million	\$140.8 million
OP collections savings (UI tax or benefits savings)	\$8 million	\$8 million	\$8 million
Tax revenue increase (UI Trust fund savings)	\$0	\$0	\$26 million
Benefit pay increase (UI trust fund reduction)	\$12 million	\$12 million	\$12 million
Tax revenue decrease (UI trust fund reduction)	\$0	\$0	\$29 million \$220 million in 2015 (possible)
APPROXIMATE NET TOTAL**** **As of what is available-some items TBD	\$41.7 million savings**	\$8.8 million savings**	\$133.8 million savings** \$57.2 million net reduction in 2015 (possible)**

****Approximate UI Trust Fund impact in comparison to CURRENT law. If Item #30 passes, this will CHANGE all benefit fiscal estimates.