STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance Advisory Council

Meeting Agenda

June 19, 2025, 10 a.m. – 4 p.m.

Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room B406

The public may attend by teleconference.

Phone: 415-655-0003 or 855-282-6330 (toll free) or WebEx
Meeting number (access code): 2664 746 0742 Password: DWD2

Materials: https://dwd.wisconsin.gov/uibola/uiac/meetings.htm

1. Call to order and introductions
2. Approval of minutes of the May 20, 2025 UIAC meeting
3. Department update
4. Trust Fund update – Shashank Partha
5. Worker Classification update – Mike Myszewski
6. Judicial update – *Catholic Charities v. LIRC*
7. Legislation update
   - Delivery network couriers and transportation network drivers (employee classification – AB 269 / SB 256)
8. Department proposals to amend the unemployment insurance law
   - D25-01 – Electronic Communication and Filing
   - D25-02 – Worker Misclassification Penalties
   - D25-03 – Repeal Waiting Week
   - D25-04 – Increase Maximum Weekly Benefit Amount
   - D25-05 – Increase and Index Maximum Wage Cap
   - D25-06 – Amend SSDI Disqualification
   - D25-07 – Repeal UI Drug Testing

- D25-08 – Misconduct
- D25-09 – Repeal Substantial Fault
- D25-10 – Suitable Work
- D25-11 – Quit Exception for Relocating Spouse
- D25-12 – Repeal Work Search and Work Registration Waivers from Statute

9. Labor and Management proposals to amend the unemployment insurance law
10. Research requests
11. 2025-2026 UIAC timeline
12. Future meeting dates: July 17, August 21, September 18, October 16
13. Adjourn

Notice

- The Council may take up action items at a time other than that listed.
- The Council may not address all agenda items or follow the agenda order.
- The Council members may attend the meeting by teleconference or videoconference.
- The employee or employer representative members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items listed in this agenda, under Wis. Stat. § 19.85(1)(ee). The Council may then reconvene again in open session after the closed session.
- This location is accessible to people with disabilities. If you need an accommodation, including an interpreter or information in an alternate format, please contact the UI Division Bureau of Legal Affairs at 608-266-0399 or dial 7-1-1 for Wisconsin Relay Service.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development

201 E. Washington Avenue, GEF 1, Madison, WI

May 20, 2025

Held In-Person and Via Teleconference

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members: Janell Knutson (Chair), Sally Feistel, Corey Gall, Shane Griesbach, Kent Miller, Scott Manley, Jeff Peterson, and Susan Quam.

Department Staff: Jim Chiolino (UI Division Administrator), Jason Schunk (UI Deputy Division Administrator), Andy Rubsam, Darren Magee, Mike Myszewski, Jeff Laesch, Pam Neumann, Robert Usarek, Ashley Gruttke, Lee Sensenbrenner (Assistant Deputy Secretary), Jennifer Wakerhauser (General Counsel), William Kelly (Deputy Legal Counsel), and Joe Brockman.

Members of the Public: Victor Forberger (Attorney, Wisconsin UI Clinic) and Jodi Jensen (Wisconsin Transportation Builders Association).

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:00 a.m. under the Wisconsin Open Meetings Law. Attendees introduced themselves in turn. Ms. Knutson acknowledged the department staff in attendance.

2. Approval of Minutes of the April 17, 2025, UIAC Meeting

Motion by Ms. Feistel, second by Mr. Peterson, to approve the minutes of the April 17, 2025, meeting without correction. Vote was taken by voice vote and passed unanimously.

3. Department Updates

Mr. Chiolino advised there is nothing to report.

4. Quarterly Report on UI Information Technology Systems (1/1/2025 – 3/31/2025)

Ms. Knutson stated a copy of this report is included in members' packets.

5. Trust Fund Update

Ms. Knutson stated the Trust Fund update will be provided at the next meeting.

6. Legislation Update

Ms. Knutson advised that fiscal estimates are complete and included in members' packets. She noted that there is not a fiscal estimate for AB 146 / SB 151 because a fiscal estimate was not requested.

7. Department Proposals to Amend the Unemployment Insurance Law

Ms. Knutson stated the department's 12 proposals are included in members' packets.

8. Labor and Management Proposals to Amend the Unemployment Insurance Law

Ms. Knutson stated that this item was placed on the agenda as an opportunity for Labor and Management to caucus to discuss their proposals.

9. Research Requests

There were no new research requests.

10. 2025-2026 UIAC Timeline

Ms. Knutson stated that the tentative schedule for the 2025-2026 agreed bill cycle is included in members' packets. She highlighted the goal of having the agreed bill finalized by September.

11. Future Meeting Dates

Ms. Knutson stated that the scheduled future meeting dates are:

- June 19, 2025
- July 17, 2025
- August 21, 2025
- September 18, 2025

12. Closed Caucus/Adjourn

Motion by Mr. Manley, second by Mr. Griesbach, to convene in closed caucus session to deliberate the items on the agenda pursuant to Wis. Stat. § 19.85(1)(ee) and to have the opportunity to reconvene or adjourn from closed caucus. Vote was taken by voice vote and passed unanimously.

The Council went into closed caucus at 10:05 a.m. and later adjourned from caucus.

UI Reserve Fund Highlights

June 19, 2025

1. Benefit payments through April 2025 declined by $11.8 million or 7.2% when compared to benefits paid through April 2024.

Benefits Paid	**2025 YTD*** *(in millions)*	**2024 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Regular UI Paid	$151.2	$163.0	($11.8)	(7.2%)

2. Tax receipts through April 2025 declined by $24.3 million or 7.0% when compared to tax receipts through April 2024.

Tax Receipts	**2025 YTD*** *(in millions)*	**2024 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Tax Receipts	$323.4	$347.7	($24.3)	(7.0%)

3. The April 2025 Trust Fund ending balance was above $2 billion, an increase of 13.1% when compared to the same time last year.

UI Trust Fund Balance	**April 2025 (in millions)**	**April 2024 (in millions)**	**Change** *(in millions)*	**Change** *(in percent)*
Trust Fund Balance	**$2,050.9**	$1,814.1	$236.8	13.1%

4. Interest earned on the Trust Fund is received quarterly.

UI Trust Fund Interest	**2025 YTD*** *(in millions)*	**2024 YTD*** *(in millions)*	**Change** *(in millions)*	**Change** *(in percent)*
Total Interest Earned	$15.2	$11.1	$4.1	36.9%

*All calendar year-to-date (YTD) numbers are based on the April 30, 2025 Financial Statements.

FINANCIAL STATEMENTS

For the Month Ended April 30, 2025

Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED April 30, 2025

	CURRENT YEAR	PRIOR YEAR
ASSETS		
CASH:		
U.I. CONTRIBUTION ACCOUNT	4,599,576.84	5,788,490.68
U.I. BENEFIT ACCOUNTS	(277,278.89)	(466,384.29)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	2,099,510,055.28	1,872,733,710.85
TOTAL CASH	2,103,832,353.23	1,878,055,817.24
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	166,797,897.81	182,433,612.68
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	(55,750,865.16)	(60,985,448.78)
NET BENEFIT OVERPAYMENT RECEIVABLES	111,047,032.65	121,448,163.90
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	32,044,031.48	38,891,890.03
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	(21,475,022.76)	(16,064,639.91)
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	10,569,008.72	22,827,250.12
OTHER EMPLOYER RECEIVABLES	21,272,279.88	23,237,597.01
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	(8,617,741.39)	(7,042,326.67)
NET OTHER EMPLOYER RECEIVABLES	12,654,538.49	16,195,270.34
TOTAL ACCOUNTS RECEIVABLE	134,270,579.86	160,470,684.36
TOTAL ASSETS	2,238,102,933.09	2,038,526,501.60
LIABILITIES AND EQUITY		
LIABILITIES:		
CONTINGENT LIABILITIES (7)	87,343,486.70	100,726,484.05
OTHER LIABILITIES	36,955,793.19	49,436,261.73
FEDERAL BENEFIT PROGRAMS	2,699,104.13	1,396,240.37
CHILD SUPPORT HOLDING ACCOUNT	13,861.00	14,959.00
FEDERAL WITHHOLDING TAXES DUE	52,449.00	108,126.00
STATE WITHHOLDING TAXES DUE	788,379.00	877,401.00
DUE TO OTHER GOVERNMENTS (8)	3,225,951.25	3,010,865.72
TOTAL LIABILITIES	131,079,024.27	155,570,337.87
EQUITY:		
RESERVE FUND BALANCE	3,024,600,379.32	2,941,111,022.72
BALANCING ACCOUNT	(917,576,470.50)	(1,058,154,858.99)
TOTAL EQUITY	2,107,023,908.82	1,882,956,163.73
TOTAL LIABILITIES AND EQUITY	2,238,102,933.09	2,038,526,501.60

1. $284,585 of this balance is for administration purposes and is not available to pay benefits.

2. $1,352,364 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

3. $12,007,669 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

4. The allowance for uncollectible benefit overpayments is 34.0%. The allowance for uncollectible delinquent employer taxes is 50.3%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.

5. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is $1,790,923. Deferrals for the prior year were $2,211,585.

6. $14,922,284, or 46.6%, of this balance is estimated.

7. $69,304,565 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. $18,038,922 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.

8. This balance includes SAFI Payable of $900. The 04/30/2025 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is $3,508. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) are $9,605,130.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED April 30, 2025

	CURRENT ACTIVITY	YTD ACTIVITY	PRIOR YTD
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	3,316,995,769.49	3,385,346,039.05	3,290,285,224.79
BALANCING ACCOUNT	(1,454,295,195.25)	(1,466,546,076.17)	(1,608,925,132.26)
TOTAL BALANCE	1,862,700,574.24	1,918,799,962.88	1,681,360,092.53
INCREASES:			
TAX RECEIPTS/RFB PAID	183,559,842.34	222,364,104.93	242,790,757.28
ACCRUED REVENUES	(265,521.12)	(87,893.19)	4,771,722.48
SOLVENCY PAID	87,007,780.29	101,025,626.29	104,883,137.54
FORFEITURES	0.00	(6,272.00)	0.00
BENEFIT CONCEALMENT INCOME	182,213.90	663,178.40	813,264.34
INTEREST EARNED ON TRUST FUND	0.00	15,214,221.86	11,077,299.74
FUTA TAX CREDITS	0.00	(2,637.00)	(3,137.30)
OTHER CHANGES	81,544.95	223,627.26	192,859.88
TOTAL INCREASES	270,565,860.36	339,393,956.55	364,525,903.96
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	22,641,285.85	129,807,643.24	138,354,392.22
QUIT NONCHARGE BENEFITS	2,473,095.45	14,478,966.50	17,772,370.80
OTHER DECREASES	(23,859.27)	320,161.63	231,619.47
OTHER NONCHARGE BENEFITS	1,152,003.75	6,563,239.24	6,571,450.27
TOTAL DECREASES	26,242,525.78	151,170,010.61	162,929,832.76
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	3,024,600,379.32	3,024,600,379.32	2,941,111,022.72
BALANCING ACCOUNT	(917,576,470.50)	(917,576,470.50)	(1,058,154,858.99)
TOTAL BALANCE (9) (10) (11) (12)	2,107,023,908.82	2,107,023,908.82	1,882,956,163.73

9. This balance differs from the cash balance related to taxable employers of $2,063,146,061 because of non-cash accrual items.

10. $284,585 of this balance is set up in the Trust Fund in one subaccount to be used for administration purposes and is not available to pay benefits.

11. $1,352,364 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. $12,007,669 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 04/30/2025

RECEIPTS	CURRENT ACTIVITY	YEAR TO DATE	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	$183,559,842.34	$222,364,104.93	$242,790,757.28
SOLVENCY	87,007,780.29	101,025,626.29	104,883,137.54
ADMINISTRATIVE FEE	35.82	441.29	61.10
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	2,219,019.61	2,533,278.70	2,469,103.06
UNUSED CREDITS	6,339,932.84	6,244,266.95	13,139,660.15
GOVERNMENTAL UNITS	892,061.63	3,600,934.52	3,125,437.95
NONPROFITS	860,964.93	3,338,216.15	3,264,632.28
INTERSTATE CLAIMS (CWC)	207,260.44	999,932.72	1,127,482.90
ERROR SUSPENSE	72,810.91	75,810.64	98,404.85
FEDERAL PROGRAMS RECEIPTS	(1,448,353.16)	(3,676,697.79)	(5,422,283.02)
OVERPAYMENT COLLECTIONS	2,655,351.14	11,296,127.23	12,600,204.21
FORFEITURES	0.00	(6,272.00)	0.00
BENEFIT CONCEALMENT INCOME	182,213.90	663,178.40	813,264.34
EMPLOYER REFUNDS	(521,733.25)	(6,131,762.01)	(3,937,657.59)
COURT COSTS	74,147.19	259,876.32	266,497.10
INTEREST & PENALTY	585,841.79	1,626,949.78	1,284,604.76
CARD PAYMENT SERVICE FEE	6,743.21	18,637.69	18,555.42
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	304,692.34	1,106,120.08	1,426,531.15
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	0.00	1,995.18	16,809.90
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	18,035.92	42,222.10	17,157.15
SPECIAL ASSESSMENT FOR INTEREST	323.45	900.46	4,990.37
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	15,214,221.86	11,077,299.74
MISCELLANEOUS	37,483.84	74,931.86	54,664.69
TOTAL RECEIPTS	$283,054,455.18	$360,673,041.35	$389,119,315.33
DISBURSEMENTS			
CHARGES TO TAXABLE EMPLOYERS	$25,619,249.45	$140,569,626.51	$149,228,453.18
NONPROFIT CLAIMANTS	639,324.56	2,822,342.81	3,194,424.01
GOVERNMENTAL CLAIMANTS	655,455.61	3,268,117.62	3,075,829.24
INTERSTATE CLAIMS (CWC)	242,286.97	1,197,709.03	1,570,246.41
QUITS	2,473,095.45	14,478,966.50	17,772,370.80
OTHER NON-CHARGE BENEFITS	1,102,719.03	6,612,606.87	6,544,633.81
CLOSED EMPLOYERS	(4,541.21)	(9,567.83)	(1,662.26)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	64,789.65	358,193.35	369,468.30
EX-MILITARY (UCX)	26,290.05	132,934.74	92,409.44
TRADE ALLOWANCE (TRA/TRA-NAFTA)	2,679.47	9,764.00	52,040.00
WORK-SHARE (STC)	(232.00)	(403.09)	(7,360.47)
FEDERAL PANDEMIC UC (FPUC)	(763,820.98)	(3,082,987.19)	(4,141,099.88)
LOST WAGES ASSISTANCE $300 ADD-ON (LWA)	(49,090.49)	(202,816.71)	(212,529.37)
MIXED EARNERS UC (MEUC)	0.00	1,375.39	0.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	(134,656.21)	(482,681.42)	(697,082.45)
PANDEMIC EMERGENCY UC (PEUC)	(189,501.10)	(677,714.39)	(862,146.24)
PANDEMIC FIRST WEEK (PFW)	(2,923.51)	(11,774.62)	(19,774.37)
EMER UC RELIEF REIMB EMPL (EUR)	(19,043.16)	(71,509.06)	(117,282.44)
2003 TEMPORARY EMERGENCY UI (TEUC)	(718.26)	(3,376.09)	(882.39)
FEDERAL ADD'L COMPENSATION $25 ADD-ON (FAC)	(9,694.10)	(37,611.97)	(50,224.08)
FEDERAL EMERGENCY UI (EUC)	(90,070.37)	(347,887.28)	(355,382.51)
FEDERAL EXTENDED BENEFITS (EB)	(6,909.77)	(34,012.77)	(30,037.86)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	(135.00)	(960.00)	(1,375.00)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	0.00	(441.10)	(87.93)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(0.22)	(2,111.76)	(87.29)
INTEREST & PENALTY	238,959.04	1,247,072.92	1,132,978.79
CARD PAYMENT SERVICE FEE TRANSFER	4,113.72	15,025.64	16,113.63
PROGRAM INTEGRITY	401,343.41	1,314,313.55	1,605,813.93
SPECIAL ASSESSMENT FOR INTEREST	0.00	1,510.30	10,392.83
COURT COSTS	72,724.74	233,312.79	234,206.47
ADMINISTRATIVE FEE TRANSFER	12.00	437.44	56.96
FEDERAL WITHHOLDING	284,919.00	98,618.00	(127,235.00)
STATE WITHHOLDING	2,404,795.00	1,378,108.94	886,755.17
FEDERAL LOAN REPAYMENTS	0.00	2,637.00	3,137.30
TOTAL DISBURSEMENTS	$32,961,420.77	$168,776,818.12	$179,165,080.73
NET INCREASE(DECREASE)	250,093,034.41	191,896,223.23	209,954,234.60
BALANCE AT BEGINNING OF MONTH/YEAR	$1,853,739,318.82	$1,911,936,130.00	$1,668,101,582.64
BALANCE AT END OF MONTH/YEAR	$2,103,832,353.23	$2,103,832,353.23	$1,878,055,817.24

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED April 30, 2025

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BEGINNING U.I. CASH BALANCE	$1,818,839,070.86	$1,874,111,061.69	$1,627,466,340.60
INCREASES:			
TAX RECEIPTS/RFB PAID	183,559,842.34	222,364,104.93	242,790,757.28
U.I. PAYMENTS CREDITED TO SURPLUS	86,989,673.21	102,629,319.76	107,825,456.60
INTEREST EARNED ON TRUST FUND	0.00	15,214,221.86	11,077,299.74
FUTA TAX CREDITS	0.00	(2,637.00)	(3,137.30)
TOTAL INCREASE IN CASH	270,549,515.55	340,205,009.55	361,690,376.32
TOTAL CASH AVAILABLE	2,089,388,586.41	2,214,316,071.24	1,989,156,716.92
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	22,641,285.85	129,807,643.24	138,354,392.22
BENEFITS CHARGED TO SURPLUS	3,620,283.09	21,433,876.43	24,692,722.98
TOTAL BENEFITS PAID DURING PERIOD	26,261,568.94	151,241,519.67	163,047,115.20
EMER UC RELIEF REIMB EMPL EXPENDITURES	(19,043.16)	(71,509.06)	(117,282.44)
ENDING U.I. CASH BALANCE (13) (14) (15)	2,063,146,060.63	2,063,146,060.63	1,826,226,884.16

13. $284,585 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

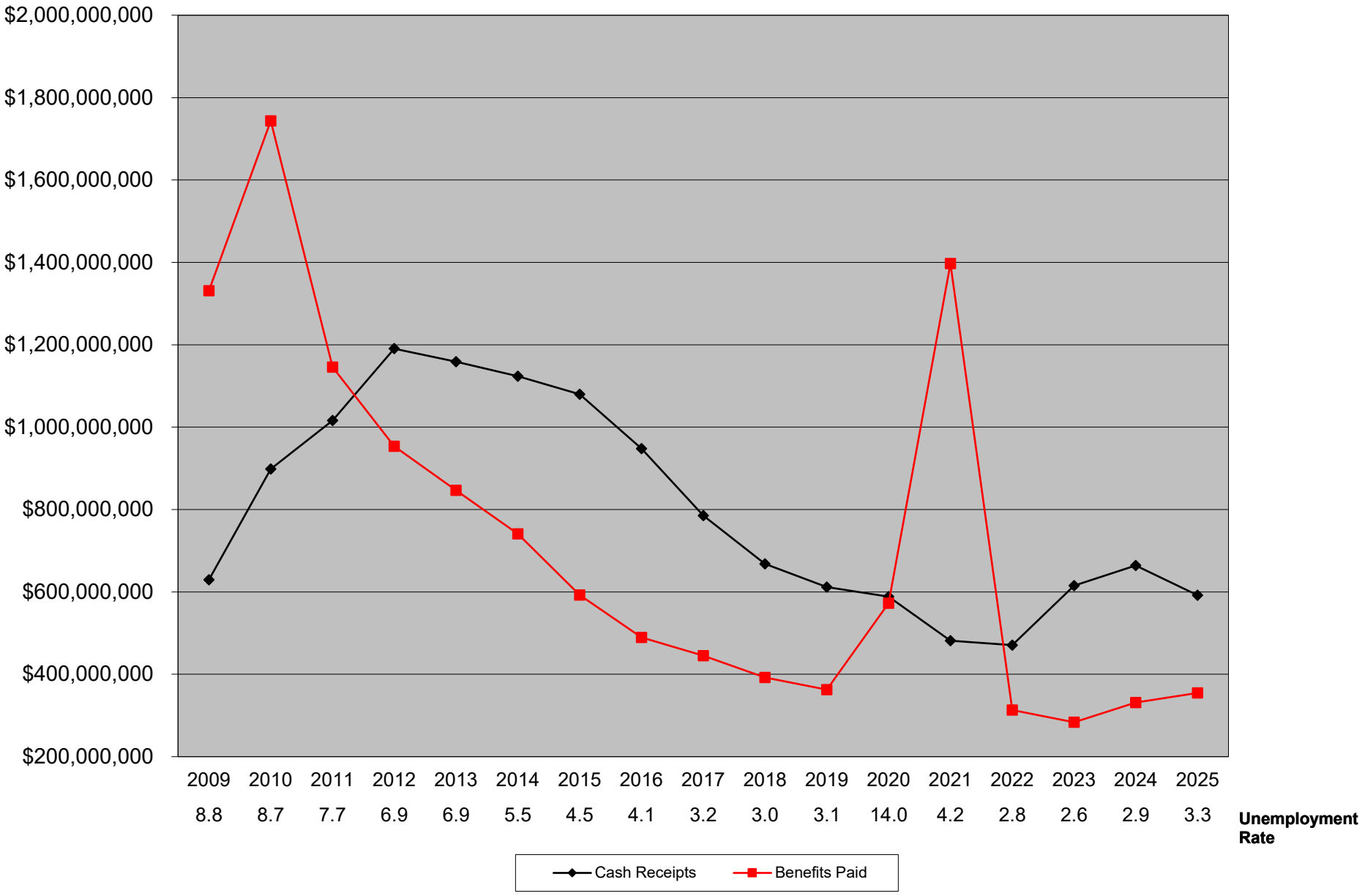
14. $1,352,364 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

15. $12,007,669 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

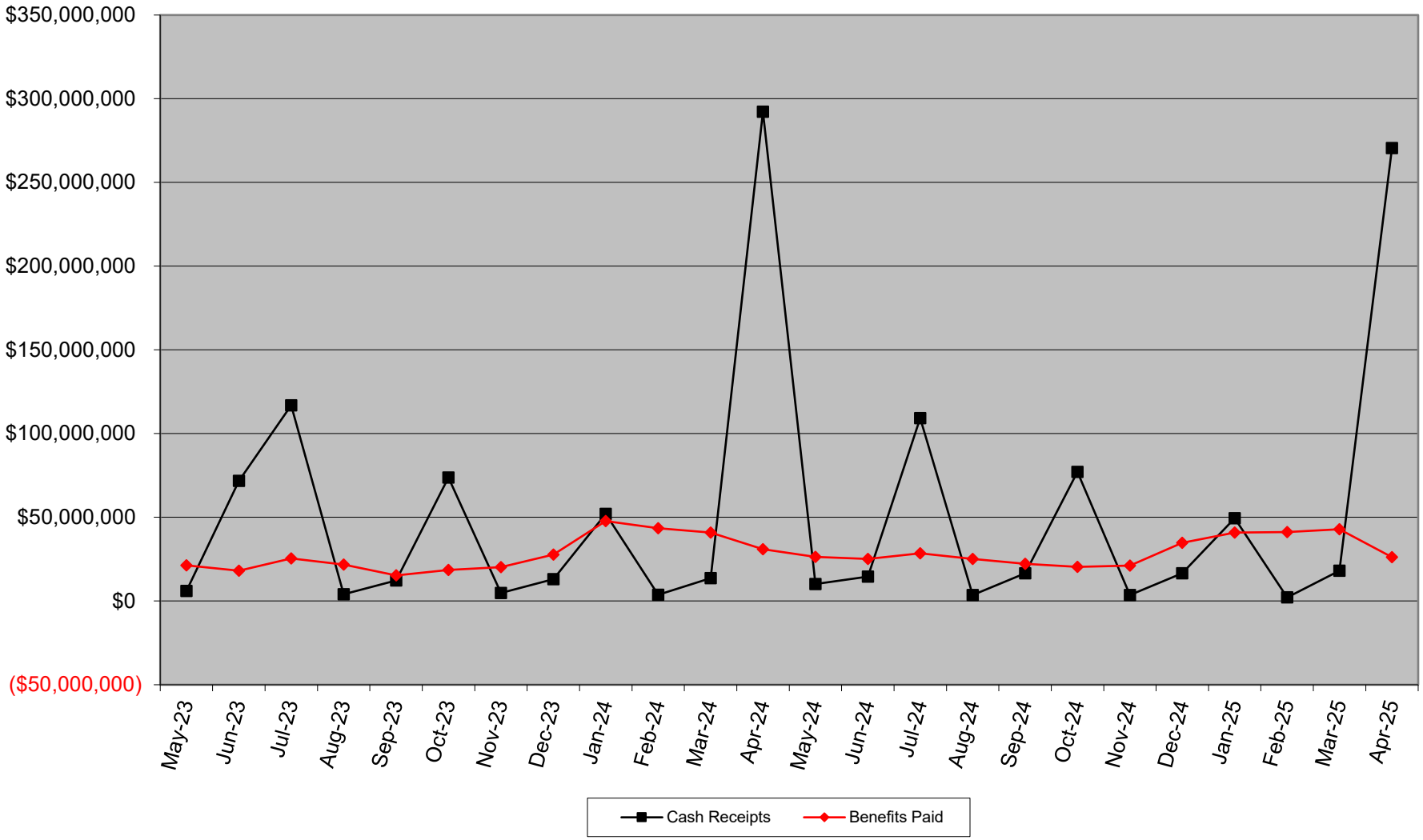
BUREAU OF TAX AND ACCOUNTING
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED April 30, 2025

	CURRENT ACTIVITY	YEAR TO DATE ACTIVITY	PRIOR YTD ACTIVITY
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	($1,044,865,886.89)	($1,058,118,206.52)	($1,209,257,177.64)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	87,007,780.29	101,025,626.29	104,883,137.54
FORFEITURES	0.00	(6,272.00)	0.00
OTHER INCREASES	(18,107.08)	1,609,965.47	2,942,319.06
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	86,989,673.21	102,629,319.76	107,825,456.60
TRANSFERS BETWEEN SURPLUS ACCTS	23,134.92	185,350.58	48,860.58
INTEREST EARNED ON TRUST FUND	0.00	15,214,221.86	11,077,299.74
FUTA TAX CREDITS	0.00	(2,637.00)	(3,137.30)
TOTAL INCREASES	87,012,808.13	118,026,255.20	118,948,479.62
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	2,473,095.45	14,478,966.50	17,772,370.80
OTHER NON-CHARGE BENEFITS	1,149,014.10	6,954,908.46	6,920,352.18
MISCELLANEOUS EXPENSE	(1,826.46)	1.47	0.00
BENEFITS CHARGED TO SURPLUS SUBTOTAL	3,620,283.09	21,433,876.43	24,692,722.98
EMER UC RELIEF REIMB EMPL EXPENDITURES	(19,043.16)	(71,509.06)	(117,282.44)
BALANCE AT THE END OF THE MONTH/YEAR	(961,454,318.69)	(961,454,318.69)	(1,114,884,138.56)

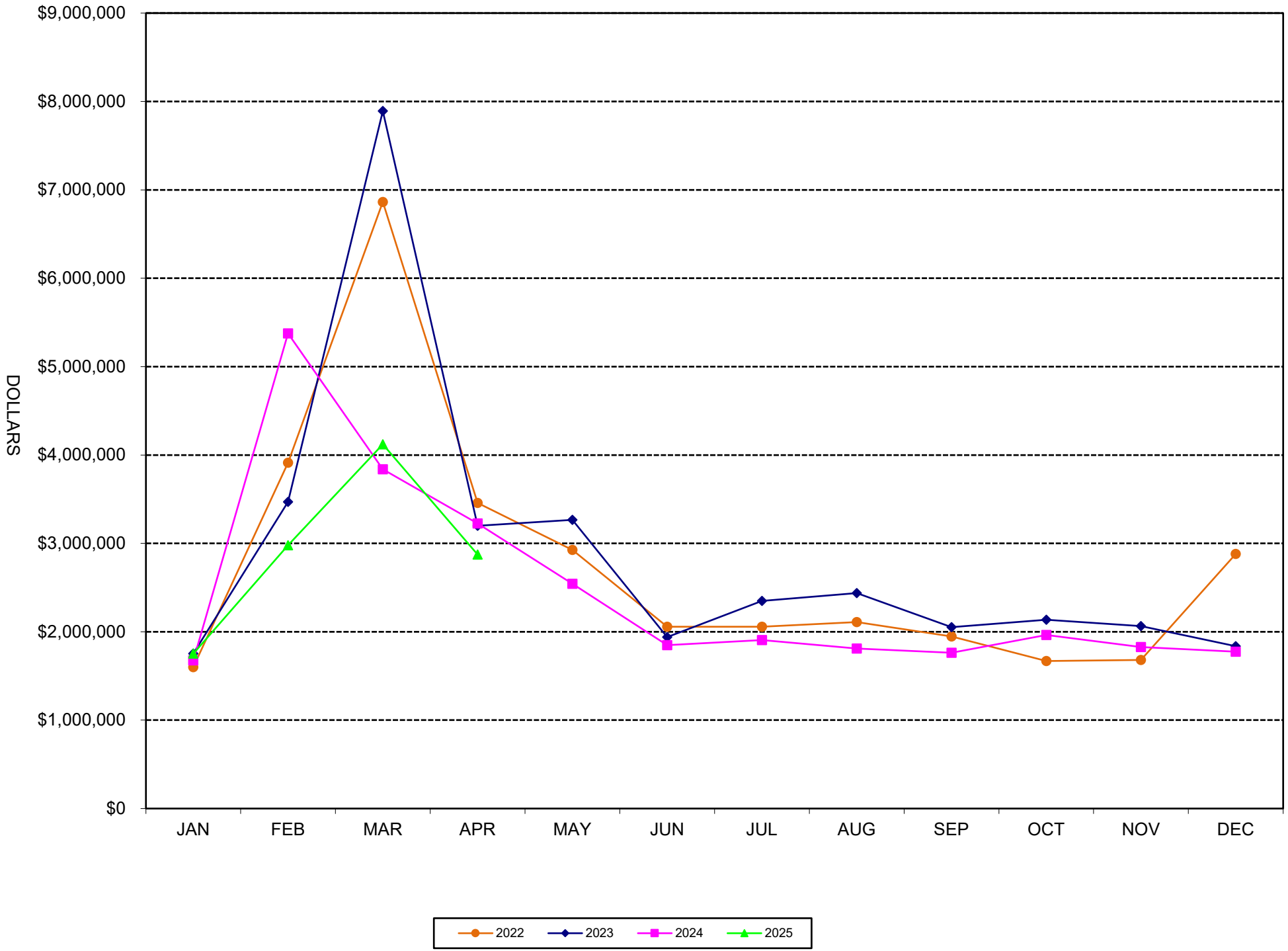
Cash Activity Related to Taxable Employers with WI Unemployment Rate
(for all years from May to April)



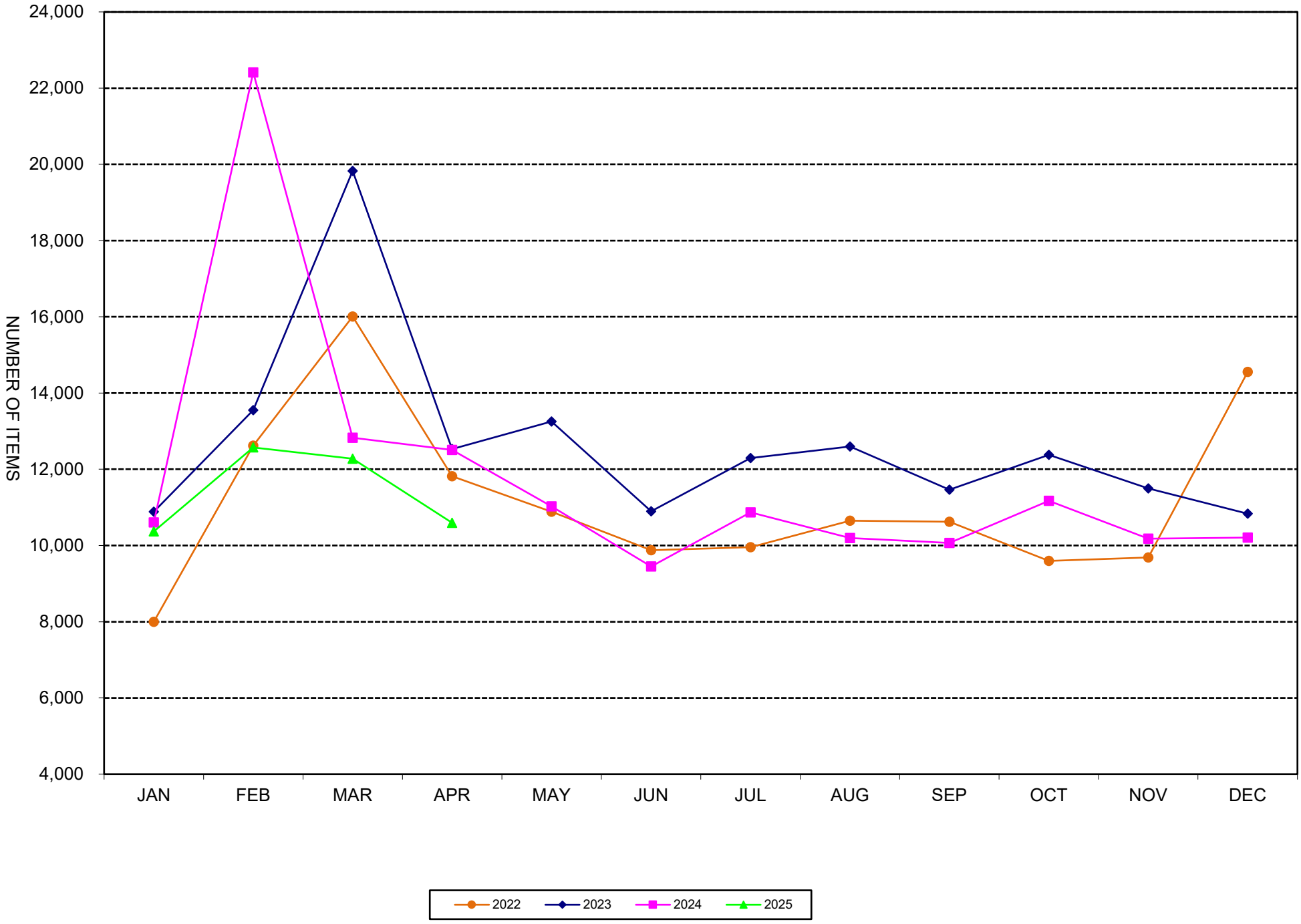
Cash Activity Related to Taxable Employers - Most Recent 24 Months



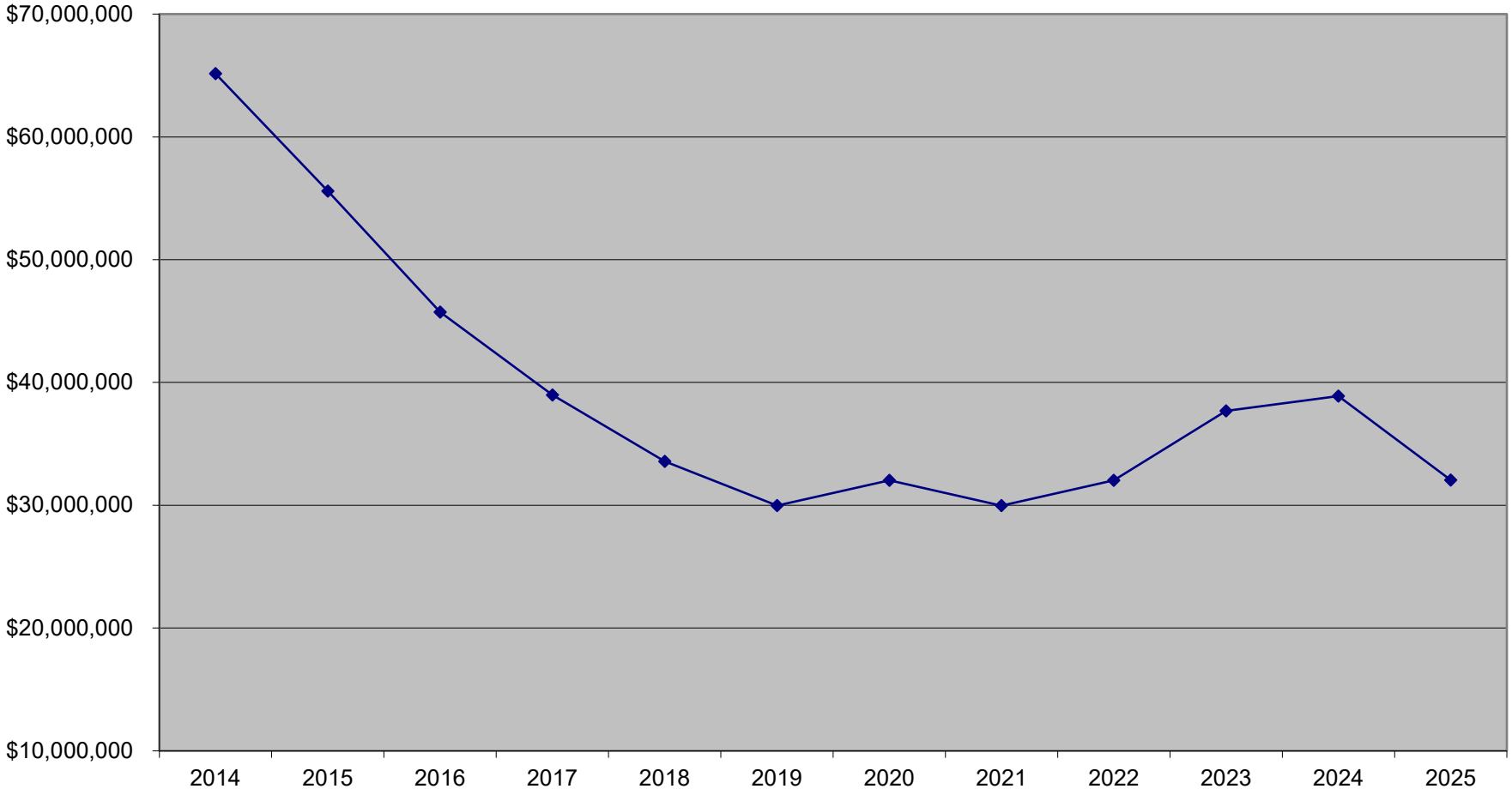
MONTHLY OVERPAYMENT CASH RECEIPTS
(by dollar amount)



MONTHLY OVERPAYMENT CASH RECEIPTS
(by number of items)

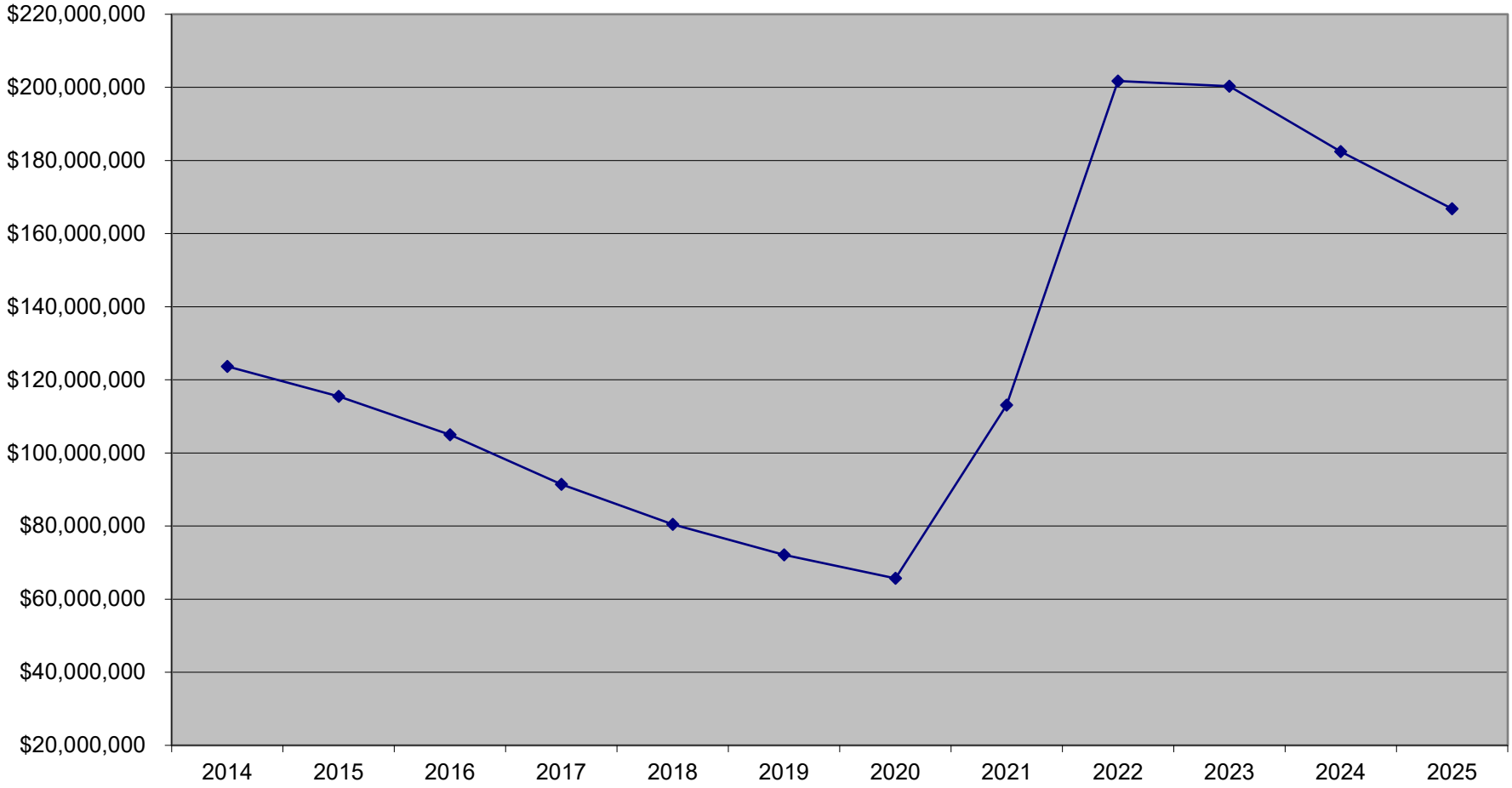


TOTAL TAXABLE EMPLOYER RFB & SOLVENCY RECEIVABLES
(for all years as of April)



Source: Monthly Balance Sheet

TOTAL BENEFIT OVERPAYMENT RECEIVABLES
(for all years as of April)



Source: Monthly Balance Sheet

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CATHOLIC CHARITIES BUREAU, INC., ET AL. *v.* WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION ET AL.

CERTIORARI TO THE SUPREME COURT OF WISCONSIN

No. 24–154. Argued March 31, 2025—Decided June 5, 2025

Wisconsin law exempts certain religious organizations from paying unemployment compensation taxes. The relevant statute exempts nonprofit organizations "operated primarily for religious purposes" and "operated, supervised, controlled, or principally supported by a church or convention or association of churches." Wis. Stat. §108.02(15)(h)(2). Petitioners, Catholic Charities Bureau, Inc., and four of its subentities, sought this exemption as organizations controlled by the Roman Catholic Diocese of Superior, Wisconsin. The Wisconsin Supreme Court denied the exemption, holding that petitioners were not "operated primarily for religious purposes" because they neither engaged in proselytization nor limited their charitable services to Catholics.

Held: The Wisconsin Supreme Court's application of §108.02(15)(h)(2) to petitioners violates the First Amendment. Pp. 7–15.

(a) The First Amendment mandates government neutrality between religions and subjects any state-sponsored denominational preference to strict scrutiny. The Wisconsin Supreme Court's interpretation of §108.02(15)(h)(2) imposes a denominational preference by differentiating between religions based on theological lines. Petitioners' eligibility for the exemption ultimately turns on inherently religious choices (namely, whether to proselytize or serve only co-religionists in the course of charitable work), not "'secular criteria'" that "happen to have a 'disparate impact' upon different religious organizations." *Larson* v. *Valente*, 456 U. S. 228, 247, n. 33. Because that regime explicitly differentiates between religions based on theological practices, strict scrutiny applies. Pp. 8–11.

(b) The State argues that, when it comes to religious accommodations afforded by the government, courts should ask whether the accommodation's eligibility criteria are the product of "invidious discrimination" to determine if strict scrutiny applies. In support of that rule, the State draws on *Gillette* v. *United States*, 401 U. S. 437. *Gillette*, however, is inapposite. Unlike the conscientious objector status in *Gillette*, which was equally available to members of all religions, the Wisconsin Supreme Court's interpretation of §108.02(15)(h)(2) facially differentiates among religions based on inherently theological choices. The State next disputes the premise that petitioners were denied coverage because they do not proselytize or serve only Catholics in the course of performing charitable work. The State instead claims that petitioners were excluded because they engaged in no "distinctively religious activity," meaning "activities that express and inculcate religious doctrine." Tr. of Oral Arg. 81. That understanding of the Wisconsin Supreme Court's ruling, even if assumed correct, cannot save the statute from strict scrutiny because decisions about whether to "express and inculcate religious doctrine" while performing charitable work are fundamentally theological choices driven by religious doctrine. Pp. 11–13.

(c) Section 108.02(15)(h)(2), as applied, cannot survive strict scrutiny because the State has not met its burden to show that the law's application is narrowly tailored to further a compelling government interest. Wisconsin contends that the exemption advances two principal interests. First, it argues that the law serves a compelling state interest in ensuring unemployment coverage for its citizens. The State, however, has failed to demonstrate that the theological lines drawn by the statute are narrowly tailored to advance that interest, particularly as applied to petitioners. Indeed, petitioners operate their own unemployment compensation system, which provides benefits largely equivalent to the state system. The distinctions drawn by Wisconsin's regime, moreover, are underinclusive, exempting religious entities that provide similar services (*i.e.*, without proselytizing or serving only co-religionists) when the work is done directly by a church. Second, the State asserts an interest in avoiding entanglement with employment decisions based on religious doctrine. Resolving misconduct disputes for employees tasked with inculcating religious faith, the State argues, may require it to decide whether those employees complied with religious doctrine. The lines drawn by the exemption, however, are overinclusive in relation to that interest, for they operate at the organizational level, covering employees that do and do not inculcate religious doctrine in equal measure. This poor fit between the State's asserted interests and the distinctions drawn cannot satisfy strict scrutiny. Pp. 13–15.

Syllabus

2024 WI 13, 411 Wis. 2d 1, 3 N. W. 3d 666, reversed and remanded.

SOTOMAYOR, J., delivered the opinion for a unanimous Court. THOMAS, J., and JACKSON, J., filed concurring opinions.

SUPREME COURT OF THE UNITED STATES

No. 24–154

CATHOLIC CHARITIES BUREAU, INC., ET AL., PETITIONERS *v.* WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June 5, 2025]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Wisconsin, like many other States, exempts certain religious organizations from paying taxes into the State's unemployment compensation system. One such exemption covers nonprofits "operated primarily for religious purposes" and controlled, supervised, or principally supported by a church. Wis. Stat. §108.02(15)(h)(2) (2023–2024). Petitioners, Catholic Charities Bureau, Inc., and four of the entities that it operates, claimed that they qualify for the exemption as religious organizations controlled by the Roman Catholic Diocese of Superior, Wisconsin. The Wisconsin Supreme Court disagreed, holding that petitioners are not "operated primarily for religious purposes" because they neither engage in proselytization nor serve only Catholics in their charitable work.

The question here is whether §108.02(15)(h)(2), as applied to petitioners by the Wisconsin Supreme Court, violates the First Amendment. The Court holds that it does. The First Amendment mandates government neutrality be-

tween religions and subjects any state-sponsored denominational preference to strict scrutiny. The Wisconsin Supreme Court's application of §108.02(15)(h)(2) imposed a denominational preference by differentiating between religions based on theological lines. Because the law's application does not survive strict scrutiny, it cannot stand.

I

A

Wisconsin has long operated an unemployment compensation program that seeks to mitigate and "more fairly" distribute the "economic burdens resulting from unemployment." Wis. Stat. §108.01(2); see §108.01 *et seq*. To achieve that goal, Wisconsin law requires most employers to make regular contributions to the State's unemployment fund through payroll taxes. See §§108.17–108.18. Nonprofit employers may choose between contributing to that fund and reimbursing the State for benefits paid to their laid-off employees. See §108.151.

Wisconsin's regime contains an exemption for religious employers. See §108.02(15)(h). The exemption applies to any "church or convention or association of churches," without further qualification, and to services provided "[b]y a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order." §§108.02(15)(h)(1), (3). As relevant here, the exemption also covers nonprofit organizations "operated, supervised, controlled, or principally supported by a church or convention or association of churches," but only if they are "operated primarily for religious purposes." §108.02(15)(h)(2).

Wisconsin is not alone in exempting religious organizations from unemployment compensation taxes. The Federal Unemployment Tax Act, 26 U. S. C. §3301 *et seq*., contains a textually parallel religious-employer exemption.

See §3309(b)(1)(B). Since Congress enacted that law in 1970, over 40 States have adopted similar exemptions.[1]

B

Catholic Charities Bureau, Inc., (Bureau), is a nonprofit organization that serves as the social ministry arm of the Roman Catholic Diocese of Superior, Wisconsin. 2024 WI 13, ¶4, 411 Wis. 2d 1, 13, 3 N. W. 3d 666, 672. The Bureau's stated mission is to "carry on the redeeming work of our Lord." App. to Pet. for Cert. 382a. In aid of that mission, the Bureau "provid[es] services to the poor and disadvantaged" and seeks to "be an effective sign of the charity of Christ." *Id.*, at 383a. It does not distinguish on the basis of "race, sex, or religion in reference to clients served, staff employed and board members appointed." *Ibid.*

The Bureau oversees several separately incorporated entities, including four that, together with the Bureau, are the petitioners here: Barron County Development Services, Inc., Black River Industries, Inc., Diversified Services, Inc., and Headwaters, Inc. 411 Wis. 2d, at 14–16, 3 N. W. 3d, at 672–673. These entities provide a range of charitable services to local communities across Wisconsin. Barron County Development Services, for instance, helps individuals with disabilities secure employment. See *id.*, at 14, 3 N. W. 3d, at 673. Black River Industries provides daily living services to Wisconsinites with developmental or mental health disabilities, among other charitable services. *Id.*, at 15, 3 N. W. 3d, at 673.

The Roman Catholic Diocese of Superior exercises control over both the Bureau and its subentities. *Id.*, at 14, 3 N. W. 3d, at 672. The bishop of the Diocese serves as the Bureau's

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[1] Wisconsin does not cite any decisions interpreting these federal or state laws to require proselytization or exclusively co-religionist service for charitable organizations to qualify for the exemption, as the Wisconsin Supreme Court did here. See *infra,* at 9–10.

president and appoints its membership, which in turn oversees the Bureau "'to ensure'" that it fulfills its mission "'in compliance with the Principles of Catholic social teaching.'" *Ibid.* The Bureau's executive director, who need not be a Catholic priest, supervises the operations of each subentity. *Id.*, at 16, 3 N. W. 3d, at 673; see also 2023 WI App 12, ¶11, 406 Wis. 2d 586, 596, 987 N. W. 2d 778, 783.

Employees of the Bureau and its subentities are not required to ascribe to any particular religious faith, and the same is true for the recipients of their charitable services. 411 Wis. 2d, at 16, 3 N. W. 3d, at 673; see also App. to Pet. for Cert. 383a. Participants in petitioners' charitable programs do not receive religious training or orientation, and neither the Bureau nor its subentities "tr[ies] to 'inculcate'" participants with the Catholic faith. 411 Wis. 2d, at 16, 3 N. W. 3d, at 673. That rule, petitioners explain, reflects religious doctrine prohibiting Catholic bodies from "'misus[ing] works of charity for purposes of proselytism.'" Brief for Petitioners 10 (quoting Directory for the Pastoral Ministry of Bishops "Apostolorum Successores" ¶196 (2004)). According to petitioners, Catholic teachings distinguish between "evangelization," which involves "sharing one's faith," and "proselytization," which seeks to "influence" or "coerc[e]" others into accepting one's religious views. Tr. of Oral Arg. 22–23. The former is permitted, and the latter is not, petitioners say. *Id.*, at 22; see Brief for Petitioners 10.

C

In 2016, petitioners sought from the Wisconsin Department of Workforce Development a determination that they qualified for the religious-employer exemption set forth in Wis. Stat. §108.02(15)(h)(2). The department denied their request. See App. to Pet. for Cert. 351a. It acknowledged that petitioners are "supervised and controlled by the Ro-

man Catholic Church," thereby satisfying one of the two criteria for the exemption. *Id.*, at 352a, 356a, 360a, 364a, 368a. The department determined, however, that petitioners are not "operated primarily for religious purposes" within the meaning of the statute. *Ibid.* Petitioners appealed, and an Administrative Law Judge (ALJ) reversed the department's ruling. *Id.*, at 291a–350a.

In the years that followed, petitioners received a series of alternating wins and losses as the parties appealed up through the state administrative and judicial systems. The Wisconsin Labor and Industry Review Commission reversed the ALJ's decision and reinstated the department's denials of petitioners' exemption requests. See App. to Pet. for Cert. 212a–290a. After petitioners sought judicial review in state court, the state trial court overrode the commission, holding that petitioners are entitled to the exemption. See *id.*, at 190a. The State Court of Appeals, however, subsequently reversed. 406 Wis. 2d 586, 987 N. W. 2d 778. It reasoned that petitioners are not "operated primarily for religious purposes" because petitioners' "provision of charitable social services . . . are neither inherently or primarily religious activities." *Id.*, at 627, 629, 987 N. W. 2d, at 798, 799.

The Wisconsin Supreme Court affirmed. The court began by recognizing, as the lower courts had, that petitioners are "without question 'operated, supervised, controlled, or principally supported' by the Diocese of Superior." 411 Wis. 2d, at 22, 3 N. W. 3d, at 676 (quoting §108.02(15)(h)(2)). The dispositive question, then, was whether petitioners are "operated primarily for religious purposes." *Id.*, at 22, 3 N. W. 3d, at 676. The court interpreted that statutory phrase to require judicial inquiry into not only an organization's "motivations" but also its "activities." *Id.*, at 33, 3 N. W. 3d, at 682. To determine whether an organization's activities are "'primarily' religious in nature," the court held, courts should "focu[s] on whether an organization participated in

worship services, religious outreach, ceremony, or religious education." *Id.*, at 34–35, 3 N. W. 3d, at 682 (citing *United States* v. *Dykema*, 666 F. 2d 1096, 1100 (CA7 1981)). According to the court, that analysis would identify "'[t]ypical activities of an organization operated for religious purposes,'" while avoiding "'any subjective inquiry with respect to religious truth.'" 411 Wis. 2d, at 32, 3 N. W. 3d, at 681 (quoting *Dykema*, 666 F. 2d, at 1100; alteration in original).

Applying that standard, the court held that petitioners' activities are "secular in nature," not religious. 411 Wis. 2d, at 38, 3 N. W. 3d, at 684. Petitioners "neither attempt to imbue program participants with the Catholic faith nor supply any religious materials to program participants or employees," the court observed. *Id.*, at 35, 3 N. W. 3d, at 682. "Both employment with the organizations and services offered by the organizations are open to all participants regardless of religion," and the charitable services offered by the subentities could "be provided by organizations of either religious or secular motivations." *Id.*, at 35–36, 3 N. W. 3d, at 683. Based on that record, the court held that petitioners "are not operated primarily for religious purposes within the meaning of Wis. Stat. §108.02(15)(h)(2)." *Id.*, at 38, 3 N. W. 3d, at 684.

The court then addressed petitioners' argument that its interpretation of §108.02(15)(h)(2) violated the First Amendment's Religion Clauses. The court first held that its interpretation did not transgress church autonomy principles because the exemption "neither regulates internal church governance nor mandates any activity." *Id.*, at 50, 3 N. W. 3d, at 690. The court also determined that there was no risk of excessive government entanglement with religion because Wisconsin's exemption does not ask whether petitioners' "activities are consistent or inconsistent with Catholic doctrine." *Id.*, at 45, 3 N. W. 3d, at 687. Finally,

the court rejected petitioners' argument that its interpretation contravened First Amendment principles of "'neutrality among religions'" by "'favor[ing] religious groups that require those they serve to adhere to the faith of that group or be subject to proselytization.'" *Id.*, at 52–53, 3 N. W. 3d, at 691. This argument failed, the court said, because petitioners had not "demonstrate[d] that the statute imposes a constitutionally significant burden on their religious practice" in the first place. *Id.*, at 55, 3 N. W. 3d, at 692.[2]

Justice Rebecca Grassl Bradley authored a dissent, which Chief Justice Ziegler joined and Justice Hagedorn joined in part. Justice Bradley would have held that a nonprofit is "operated primarily for religious purposes," §108.02(15)(h)(2), when its motivations are religious, irrespective of the nature of its activities. The majority's contrary approach, the dissent warned, "engages in religious discrimination and entangles the state with religion in violation of the First Amendment." *Id.*, at 92–93, 3 N. W. 3d, at 710–711. While Justice Bradley recognized that "the application of secular criteria that leads to disparate treatment of religions is not religious discrimination," she reasoned that the majority's approach "necessarily and explicitly discriminates among certain religious faiths and religious practices." *Id.*, at 105, 3 N. W. 3d, at 717. It did so as applied to petitioners, Justice Bradley explained, by declaring them ineligible for the exemption based on explicitly religious criteria, including their adherence to Catholic teachings forbidding "proselytiz[ation] when conducting charitable acts." *Id.*, at 106, 3 N. W. 3d, at 717. That denominational discrimination, according to Justice Bradley, triggered strict scrutiny, which the State could not satisfy.

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[2]The Court today addresses only the denominational neutrality challenge raised by petitioners and does not reach the further two constitutional arguments considered by the Wisconsin Supreme Court.

See *id.*, at 108–110, 3 N. W. 3d, at 718–719. Justice Hagedorn dissented separately, noting his agreement with Justice Bradley's construction of the statute. *Id.*, at 122, 3 N. W. 3d, at 725.

We granted certiorari to decide whether the Wisconsin Supreme Court's interpretation of §108.02(15)(h)(2), as applied to petitioners, violates the First Amendment. 604 U. S. ___ (2024).

II

A

"The clearest command of the Establishment Clause" is that the government may not "officially prefe[r]" one religious denomination over another. *Larson* v. *Valente*, 456 U. S. 228, 244 (1982). This principle of denominational neutrality bars States from passing laws that "'aid or oppose'" particular religions, *Epperson* v. *Arkansas*, 393 U. S. 97, 106 (1968), or interfere in the "competition between sects," *Zorach* v. *Clauson*, 343 U. S. 306, 314 (1952). The Establishment Clause's "prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause," too. *Larson*, 456 U. S., at 245. That is because the "'fullest realization of true religious liberty requires that government'" refrain from "'favoritism among sects.'" *Id.*, at 246 (quoting *School Dist. of Abington Township* v. *Schempp*, 374 U. S. 203, 305 (1963) (Goldberg, J., concurring)). Government actions that favor certain religions, the Court has warned, convey to members of other faiths that "'they are outsiders, not full members of the political community.'" *Santa Fe Independent School Dist.* v. *Doe*, 530 U. S. 290, 309 (2000).

To guard against that serious harm, this Court in *Larson* v. *Valente*, 456 U. S. 228, set a demanding standard for the government to justify differential treatment across religions on denominational lines. See *id.*, at 244–246. When a state law establishes a denominational preference, courts

must "treat the law as suspect" and apply "strict scrutiny in adjudging its constitutionality." *Id.*, at 246. The government bears the burden to show that the relevant law, or application thereof, is "closely fitted to further a compelling governmental interest." *Id.*, at 251 (internal quotation marks omitted).

A law that differentiates between religions along theological lines is textbook denominational discrimination. Take, for instance, a law that treats "a religious service of Jehovah's Witnesses . . . differently than a religious service of other sects" because the former is "less ritualistic, more unorthodox, [and] less formal." *Fowler* v. *Rhode Island*, 345 U. S. 67, 69 (1953). Or consider an exemption that applies only to religious organizations that perform baptisms, engage in monotheistic worship, or hold services on Sunday. Such laws establish a preference for certain religions based on the content of their religious doctrine, namely, how they worship, hold services, or initiate members and whether they engage in those practices at all. Such official differentiation on theological lines is fundamentally foreign to our constitutional order, for "[t]he law knows no heresy, and is committed to the support of no dogma." *Watson* v. *Jones*, 13 Wall. 679, 728 (1872).

This case involves that paradigmatic form of denominational discrimination. In determining whether petitioners qualified for the tax exemption under §108.02(15)(h)(2), the Wisconsin Supreme Court acknowledged that petitioners are controlled by a church, the Roman Catholic Diocese of Superior, thereby satisfying one of the exemption's two criteria. 411 Wis. 2d, at 22, 3 N. W. 3d, at 676. The court's inquiry instead turned on whether petitioners are "operated primarily for religious purposes." Wis. Stat. §108.02(15)(h)(2); see 411 Wis. 2d, at 22, 3 N. W. 3d, at 676. On that criterion, the court recognized that petitioners' charitable works are religiously motivated. *Id.*, at 34, 3

N. W. 3d, at 682. The court nevertheless deemed petitioners ineligible for the exemption under §108.02(15)(h)(2) because they do not "attempt to imbue program participants with the Catholic faith," "supply any religious materials to program participants or employees," or limit their charitable services to members of the Catholic Church. *Id.*, at 35, 3 N. W. 3d, at 682–683. Put simply, petitioners could qualify for the exemption while providing their current charitable services if they engaged in proselytization or limited their services to fellow Catholics.

Petitioners' Catholic faith, however, bars them from satisfying those criteria. Catholic teaching, petitioners say, forbids "'misus[ing] works of charity for purposes of proselytism.'" Brief for Petitioners 10 (quoting Directory for the Pastoral Ministry of Bishops "Apostolorum Successores" ¶196). It also requires provision of charitable services "without making distinctions 'by race, sex, or religion.'" Brief for Petitioners 7 (quoting App. to Pet. for Cert. 431a). Many religions apparently impose similar rules prohibiting proselytization or religious differentiation in the provision of charitable services. See Brief for Religious Liberty Scholars as *Amici Curiae* 12–13 (discussing beliefs in Judaism, Islam, Sikhism, and Hinduism). Others seemingly have adopted a contrary approach. See *id.*, at 12 (discussing practices of some Protestant denominations).

Wisconsin's exemption, as interpreted by its Supreme Court, thus grants a denominational preference by explicitly differentiating between religions based on theological practices. Indeed, petitioners' eligibility for the exemption ultimately turns on inherently religious choices (namely, whether to proselytize or serve only co-religionists), not "'secular criteria'" that "happen to have a 'disparate impact' upon different religious organizations." *Larson*, 456 U. S., at 247, n. 23. Much like a law exempting only those religious organizations that perform baptisms or worship on

Sundays, an exemption that requires proselytization or exclusive service of co-religionists establishes a preference for certain religions based on the commands of their religious doctrine.

In short, as applied to petitioners by the Wisconsin Supreme Court, Wis. Stat. §108.02(15)(h)(2) imposes a denominational preference by differentiating between religions based on theological choices.

B

The State does not dispute that the government may not prefer one religion over another. See Brief for Respondents 35. Instead, the State argues that, when it comes to "[r]eligious accommodations" afforded by the government, courts should ask whether the accommodation's eligibility criteria are the product of "invidious discrimination" to determine if strict scrutiny applies. *Id.*, at 35, 37; see *id.*, at 42–43. This Court's decision in *Gillette* v. *United States*, 401 U. S. 437 (1971), the State contends, lends support to this rule. See Brief for Respondents 36. As the State would have it, *Gillette* stands for the premise that whenever a religious "accommodation's line serves 'considerations of a pragmatic nature' having 'nothing to do with a design to foster or favor any sect, religion, or cluster of religions,' the Establishment Clause is not offended." Brief for Respondents 36 (quoting *Gillette*, 401 U. S., at 452–453).

The inquiry set forth in *Gillette*, however, is inapposite. There, this Court rejected an Establishment Clause challenge to a provision of the Military Selective Service Act of 1967, which afforded a "conscientious objector" status to any person who, "'by reason of religious training and belief,'" was "'conscientiously opposed to participation in war in any form.'" *Gillette*, 401 U. S., at 441. Importantly, that exemption "focused on individual conscientious belief, not on sectarian affiliation." *Id.*, at 454. Conscientious objector status was thus "available on an equal basis" to members

of all religions under the Military Selective Service Act, as this Court later explained in *Larson*. 456 U. S., at 247, n. 23 (discussing *Gillette*). "[O]n its face," the statute "simply d[id] not discriminate on the basis of religious affiliation." *Gillette*, 401 U. S., at 450.

The same is not true here. The Wisconsin Supreme Court's interpretation of §108.02(h)(15)(2) facially differentiates among religions based on theological choices. After all, an exemption provided only to organizations that engage in proselytization or serve only co-religionists is not, on its face, "available on an equal basis" to all denominations. *Larson*, 456 U. S., at 247, n. 23. That type of "explicit" distinction between religious practices is what this Court has deemed subject to strict scrutiny, including in the context of religious exemptions. *Ibid.*; see *id.*, at 246–251.

Next, the State disputes the premise that petitioners were denied coverage "because they do not proselytize or serve only Catholics" in the course of performing charitable work. Brief for Respondents 37. The State insists that, instead, the Wisconsin Supreme Court excluded petitioners because they had "identified no distinctively religious activity that would create difficulty in resolving unemployment disputes." *Ibid.* When pressed at argument as to what would qualify as such "distinctively religious activity" in the context of providing charitable services, however, the State clarified that it meant "activities that express and inculcate religious doctrine: worship, proselytization, religious education." Tr. of Oral Arg. 81; see also *id.*, at 84 ("What it comes down to is whether the employees of the organization are expressing and inculcating religious doctrine").

That understanding of the Wisconsin Supreme Court's ruling, even if assumed correct, cannot save the statute from strict scrutiny. Decisions about whether to "express and inculcate religious doctrine" through worship, proselytization, or religious education when performing charitable work are, again, fundamentally theological choices driven

by the content of different religious doctrines. *Id.*, at 81. A statute that excludes religious organizations from an accommodation on such grounds facially favors some denominations over others.

III

Because §108.02(15)(h)(2) "grants denominational preferences of the sort consistently and firmly deprecated in our precedents," it "must be invalidated unless it is justified by a compelling governmental interest" and is "closely fitted to further that interest." *Larson*, 456 U. S., at 246–247. The State bears the burden of clearing that high bar, and it has failed to do so here.

Wisconsin justifies its law by reference to two principal interests. First, it argues that the law serves a compelling state interest in "ensuring unemployment coverage for its citizens." Brief for Respondents 44. Yet the State fails to explain how the theological lines drawn by §108.02(15)(h)(2) are narrowly tailored to advance that asserted interest, particularly as applied to petitioners. Indeed, petitioners operate their own unemployment compensation system for employees, which provides benefits largely "'equivalent'" to the state system. 406 Wis. 2d, at 614, 987 N. W. 2d, at 792. Furthermore, Wisconsin does not suggest that organizations like Catholic Charities, which decline to proselytize and choose to serve all-comers, are more likely to leave their employees without unemployment benefits. Nor could it: The record is devoid of such evidence.

The distinctions drawn by Wisconsin's regime, moreover, are vastly underinclusive when it comes to ensuring unemployment coverage for its citizens. Wisconsin exempts over 40 forms of "employment" from its unemployment compensation program. See §§108.02(15)(f)–(kt). Notably, those exemptions cover religious entities that provide charitable services in a similar manner to petitioners (that is, without

proselytizing or denominational differentiation), but are exempt because the work is done directly by the church itself or its ministers, rather than by a separate nonprofit organization controlled by the church. See §§108.02(15)(h)(1), (3). That underinclusiveness leaves "'appreciable damage to [the State's] supposedly vital interest unprohibited'" and therefore belies the State's claim of narrow tailoring. *Reed* v. *Town of Gilbert*, 576 U. S. 155, 172 (2015).

Second, the State argues that the Wisconsin Supreme Court's interpretation of §108.02(15)(h)(2) is "narrowly tailored to avoid entangling the state with employment decisions touching on religious faith and doctrine." Brief for Respondents 44. When an organization's employees "express an[d] inculcate religious doctrine through worship, proselytization, and religious education," the State explains, "misconduct disputes could often force the state to decide whether employees complied with religious doctrine." Tr. of Oral Arg. 72. Yet the State again fails to demonstrate that §108.02(15)(h)(2) is "closely fitted to further" that anti-entanglement interest. *Larson*, 456 U. S., at 247. To the extent the State seeks to avoid opining on employee compliance with religious teachings, it does not explain why it declined to craft an exemption limited to employees who are in fact tasked with inculcating religious doctrine. Instead, the exemption here functions at an organizational level, covering both the janitor and the priest in equal measure. See §108.02(15)(h)(2).

That overinclusiveness pervades Wisconsin's exemption regime more broadly, too. Recall that Wisconsin exempts from its unemployment compensation system all "church[es] or convention[s] or association[s] of churches" without differentiating between employees actually involved in religious works, for whom the anti-entanglement concern is relevant, and other staff. §108.02(15)(h)(1). The State itself concedes, as it must, that this regime contains "an element of over-inclusivity." Tr. of Oral Arg. 87. At

bottom, then, the poor fit between the State's asserted anti-entanglement concern and the line it has drawn among religious organizations cannot be described as narrow tailoring. The State has thus failed to carry its burden under strict scrutiny.

* * *

It is fundamental to our constitutional order that the government maintain "neutrality between religion and religion." *Epperson*, 393 U. S., at 104. There may be hard calls to make in policing that rule, but this is not one. When the government distinguishes among religions based on theological differences in their provision of services, it imposes a denominational preference that must satisfy the highest level of judicial scrutiny. Because Wisconsin has transgressed that principle without the tailoring necessary to survive such scrutiny, the judgment of the Wisconsin Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 24–154

CATHOLIC CHARITIES BUREAU, INC., ET AL., PETITIONERS *v.* WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June 5, 2025]

JUSTICE THOMAS, concurring.

A nonprofit organization is entitled to an exemption from Wisconsin's unemployment-insurance tax on employers if it is controlled by a church and "operated primarily for religious purposes." Wis. Stat. §108.02(15)(h)2 (2021–2022). The Wisconsin Supreme Court concluded that Catholic Charities Bureau (Catholic Charities) and its subentities are not such organizations, reasoning in two steps. First, the court held that the relevant "organization" is Catholic Charities and each of its subentities, not the broader Catholic Diocese of Superior of which it is a part. Second, it held that the purposes of Catholic Charities and its subentities are primarily secular, not religious. The Court concludes that the latter holding of the Wisconsin Supreme Court unconstitutionally discriminates against Catholic Charities and its subentities. I agree and join the Court's opinion in full. I write separately because, in my view, the Wisconsin Supreme Court's first holding was also wrong.

The First Amendment's guarantee of church autonomy gives religious institutions the right to define their internal governance structures without state interference. Religious institutions may create different corporate entities to help manage their temporal affairs, but those entities do

not define the broader religious institution's internal structure. Here, although Catholic Charities and its subentities are separately incorporated from the Diocese of Superior, they are, as a matter of church law, simply an arm of the Diocese.

I

The First Amendment guarantees to religious institutions broad autonomy to conduct their internal affairs and govern themselves. This guarantee, which we have called the "church autonomy doctrine," provides that a religious institution is not defined by the corporate entities it chooses to form.

A

The Religion Clauses of the First Amendment proscribe laws "respecting an establishment of religion, or prohibiting the free exercise thereof." Among other protections, these Clauses guarantee the "right to organize voluntary religious associations," *Watson* v. *Jones*, 13 Wall. 679, 728 (1872), and to allow these associations to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine," *Kedroff* v. *Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U. S. 94, 116 (1952).[1] For instance,

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[1] I have long questioned whether the Establishment Clause, as "a federalism provision intended to prevent Congress from interfering with state establishments," applies to the States. *Elk Grove Unified School Dist.* v. *Newdow*, 542 U. S. 1, 49 (2004) (opinion concurring in judgment). Although our decisions have grounded the church autonomy doctrine in both Religion Clauses, they have also made clear that the Free Exercise Clause is an independently sufficient basis for the doctrine. See, *e.g.*, *Our Lady of Guadalupe School* v. *Morrissey-Berru*, 591 U. S. 732, 746 (2020) (framing interference with church autonomy as independent violations of the Establishment and Free Exercise Clauses); *Kedroff*, 344 U. S., at 107–108, 115–116, 120–121 (basing the doctrine on the Free Exercise Clause alone). My skepticism toward the incorporation of the Establishment Clause therefore does not lead me to doubt the correctness

"courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Our Lady of Guadalupe School* v. *Morrissey-Berru*, 591 U. S. 732, 746 (2020). And, where resolution of a property dispute turns on the internal law of a hierarchically structured church, such as who is the properly appointed pastor of a congregation, courts must defer to "the decisions of the highest ecclesiastical tribunal within [the] church." *Serbian Eastern Orthodox Diocese for United States and Canada* v. *Milivojevich*, 426 U. S. 696, 709 (1976).

The Religion Clauses' special protection for the autonomy of religious institutions derives from at least three sources.

First is the right of association. This Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others." *Roberts* v. *United States Jaycees*, 468 U. S. 609, 622 (1984). As with other voluntary associations, those "who unite themselves to [a religious] body do so with an implied consent to" its internal system of "government, and are bound to submit to it." *Watson*, 13 Wall., at 729. And, since "the text of the First Amendment . . . gives special solicitude to the rights of religious organizations," they must enjoy a greater right to control their own affairs than that enjoyed by other groups. *Hosanna-Tabor Evangelical Lutheran Church and School* v. *EEOC*, 565 U. S. 171, 189 (2012).

Second is the reality that matters of religious "faith and doctrine" are "closely linked to . . . matters of church government." *Our Lady*, 591 U. S., at 746 (internal quotation marks omitted). Who serves as a church's minister, for instance, determines whether the "preaching, teaching, and counseling" a congregation receives conforms to the faith that it professes. *Id.*, at 747. And, the polity of a religious

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of our precedents in this area.

institution is often itself a matter of faith. In the Catholic Church, for instance, the leadership of the Pope over the Church is essential, because it is an article of faith that Jesus Christ personally established the office of Pope. See First Vatican Council, Pastor Aeternus, chs. 1–2 (1870) (citing Matthew 16:16–19), in 2 Decrees of the Ecumenical Councils 811, 812–813 (N. Tanner ed. 1990) (Tanner). The free exercise rights of individuals thus cannot be adequately protected unless the autonomy of religious institutions is also protected.

Third is the understanding that church and state are "two rightful authorities," each supreme in its own sphere. M. McConnell, The Origins and Historical Understanding of Free Exercise of Religion, 103 Harv. L. Rev. 1409, 1496–1497 (1990) (McConnell). This concept has deep roots in the history of Western civilization. Jesus famously said to render "unto Caesar the things which are Caesar's; and unto God the things that are God's." Matthew 22:21. From antiquity onward, many Christians have interpreted this statement to mean that church and state are distinct, and that each has a legitimate claim to authority within its sphere. See *Huntsman* v. *Corporation of President of Church of Jesus Christ of Latter-day Saints*, 127 F. 4th 784, 803–804 (CA9 2025) (en banc) (Bumatay, J., concurring); R. Renaud & L. Weinberger, Spheres of Sovereignty: Church Autonomy Doctrine and the Theological Heritage of the Separation of Church and State, 35 N. Ky. L. Rev. 67, 68–84 (2008) (tracing the historical development of "[t]he doctrine of separate spheres of authority for church and state"). Pre-founding English law accordingly distinguished between temporal matters subject to civil courts' jurisdiction and spiritual matters subject to ecclesiastical jurisdiction. See *McRaney* v. *North Am. Mission Bd. of Southern Baptist Convention, Inc.*, 980 F. 3d 1066, 1076–1078 (CA5 2020) (Oldham, J., dissenting from denial of rehearing en banc).

The First Amendment was adopted "against this background" of distinct spheres for secular and religious authorities. *Hosanna-Tabor*, 565 U. S., at 183. In arguing for religious freedom for Baptists, for example, James Madison appealed to the notion of "independent" "spiritual and earthly authorities." McConnell 1497. According to Madison, man's "duty towards the Creator . . . is precedent, both in order of time and in degree of obligation, to the claims of Civil Society." Memorial and Remonstrance Against Religious Assessments (1785), in 8 Papers of James Madison 295, 299 (R. Rutland, W. Rachal, B. Ripel, & F. Teute eds. 1973). Thus, "Religion is wholly exempt from [Civil Society's] cognizance." *Ibid*. In a similar vein, early American decisions justified protections for church autonomy in part based on the need to respect religious institutions' legitimate and distinct sphere of authority. See, *e.g.*, *Watson*, 13 Wall., at 733 (holding that "the civil courts exercise no jurisdiction" over matters of "ecclesiastical government" because doing so "would deprive [religious] bodies of the right of construing their own church laws"); *Chase* v. *Cheney*, 58 Ill. 509, 538 (1871) ("'Causes spiritual must be judged by judges of the spirituality, and causes temporal by temporal judges'"); *Harmon* v. *Dreher*, 17 S. C. Eq. 87, 120 (1843) ("It belongs not to the civil power to enter into or review the proceedings of a Spiritual Court"); see also K. Funk, Church Corporations and the Conflict of Laws in Antebellum America, 32 J. Law & Religion 263, 281 (2017) (Funk) (observing that 19th century decisions developing the church autonomy doctrine "essentially treated these church tribunals as competent foreign courts").

B

The church autonomy doctrine has important ramifications for the incorporation of religious institutions. Establishing corporate entities is essential for religious institutions to manage their temporal affairs. But, the doctrine

forbids treating religious institutions as nothing more than the corporate entities that they form.

1

Religious institutions do not exist apart from the secular world. They need to buy and sell property. They need to hire and pay staff. They need to form contracts and file lawsuits. They need their property arrangements to persist when personnel changes, and they need their property to remain secure when individual members of the institution become insolvent. These and other considerations make the formation of corporate entities essential for many religious institutions.

At the same time, the church autonomy doctrine forbids treating religious institutions as nothing more than the corporate entities they have formed. A corporation is a "mere creature of law" that generally "possesses only those properties which the charter of its creation confers upon it." *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 636 (1819); see also *Kamen* v. *Kemper Financial Services, Inc.*, 500 U. S. 90, 98–99 (1991) ("Corporations . . . are creatures of state law, and it is state law which is the font of corporate directors' powers" (internal quotation marks and alteration omitted)). And, state law has a great deal to say about how a corporation must be structured. See, *e.g.*, Del. Code Ann., Tit. 8, §141 (2019) (generally requiring Delaware corporations to be overseen by a board of directors). But, under the church autonomy doctrine, religious institutions are a parallel authority to the State, not a creature of state law. *Supra*, at 4–5. And, the State has no legitimate role in defining the structure of its polity. To conclude that a religious institution has no existence outside its corporate form "would be in effect to decide that our religious liberties [are] dependent on the will of the legislature, and not guaranteed by the constitution." *Burr's Ex'rs* v. *Smith*, 7 Vt. 241, 282 (1835).

Instead, courts and commentators have long recognized that "while a legal entity may represent the church or other body of believers, the entity alone is not the church; it is only a part of the entire religious organization." 1 W. Bassett, W. Durham, R. Smith, & M. Goldfeder, Religious Organizations and the Law §8:2, p. 8–7 (2022). "The entity is merely used by the organization rather than being identical to the organization itself." *Ibid.* A religious corporation thus possesses a "dual personality": It is at once a corporation defined by state law and a part of a broader, "unincorporated" religious institution. *Id.*, at 8–6 to 8–7; accord, *Classis of Central Cal.* v. *Miraloma Community Church*, 177 Cal. App. 4th 750, 763, 99 Cal. Rptr. 3d 449, 459 (2009); *Crissman* v. *Board of Trustees of Cathedral of Tomorrow of Akron, Inc.*, 1990 WL 31796, *2 (Ohio Ct. App., Mar. 21, 1990); *Folwell* v. *Bernard*, 477 So. 2d 1060, 1063 (Fla. Dist. Ct. App. 1985); *Trinity Presbyterian Church of Montgomery* v. *Tankersley*, 374 So. 2d 861, 866 (Ala. 1979); *Willis* v. *Davis*, 323 S. W. 2d 847, 848 (Ky. 1959); *Wheelock* v. *First Presbyterian Church*, 119 Cal. 477, 483, 51 P. 841, 843–844 (1897).

For instance, in *Watson*, the "nominal title-holders and custodians of the church property" at issue were "a body corporate" created by an "act of the Kentucky legislature." 13 Wall., at 720. That corporation, this Court recognized, was not itself the church, but merely an entity "under the control of the church session," an ecclesiastical "governing body . . . composed of the ruling elders and pastor." *Ibid.* Thus, "the constitution, usages, and laws of the Presbyterian [Church]," not Kentucky corporate law, controlled the outcome of the dispute. *Ibid.*

2

We have recognized that the original "understanding" of the Religion Clauses' protection of church autonomy is "reflected" in early postratification practice. *Hosanna-Tabor*,

565 U. S., at 184–185; see also *Marsh* v. *Chambers*, 463 U. S. 783, 787–790 (1983) (looking to early federal and state practice to determine the scope of the Establishment Clause). Here, that history confirms that religious institutions are more than the corporate entities that they form—and that conflating the two undermines the First Amendment rights of religious institutions.

Before Independence, corporate law provided the civil government with a mechanism to interfere in ecclesiastical affairs. Religious institutions had a particularly acute need to incorporate during that period, because "an unincorporated association could not hold property in its own right." P. Kauper & S. Ellis, Religious Corporations and the Law, 71 Mich. L. Rev. 1499, 1505 (1973). But, incorporating was not easy. In most Colonies, a religious group had to petition the government for a special charter of incorporation. *Id.*, at 1507. And, the government frequently denied the requests of disfavored religious denominations. *Ibid.*; see M. McConnell, Establishment and Disestablishment at the Founding, Part I: Establishment of Religion, 44 Wm. & Mary L. Rev. 2105, 2134–2135 (2003).

Following the Revolution, New York took a different path, enacting a statute to allow churches to incorporate without a special charter. 1784 N. Y. Laws ch. 18, p. 613 (1784 Act). The State grounded its new approach in respect for church autonomy. Invoking the free exercise clause of the State's 1777 constitution, the preamble to the 1784 Act condemned the legislature's former practice of providing for "illiberal and partial distributions of charters of incorporation to religious societies." *Ibid.* The 1784 Act liberalized the incorporation process "to enable every religious denomination to provide for the decent and honorable support of divine worship." *Id.*, at 614.

The 1784 Act authorized members of a church to elect trustees who, upon registering with a court, would become a body corporate able to hold property, exist perpetually,

and sue in court. *Id.*, at 614–615. But, although this body could be "intrusted with the management, care and disposition of the temporalities of [the] church," the Act made clear that the corporate body was not the church itself. *Id.*, at 618. The Act did not purport to name the trustees the leaders of the church, but took for granted that each church would be headed by a "minister." *Id.*, at 614. And, the Act specifically warranted that its provisions did not "in the least . . . alter or change the religious constitutions or governments" of any "churches." *Id.*, at 618.

The 1784 Act soon became a model for the Nation at large. With a handful of exceptions, analogous statutes were "adopted in every American state during the antebellum era." Funk 268, and n. 20 (collecting statutes). This Court approved this trend, holding that it neither established religion nor restrained free exercise for a legislature to "enact laws more effectually to enable all sects to accomplish the great objects of religion by giving them corporate rights for the management of their property." *Terrett* v. *Taylor*, 9 Cranch 43, 48–49 (1815). Thus, like New York and the States following its approach, this Court too framed incorporation as a way to empower religious institutions, not to define them or alter their polity.

In contrast, when Congress in 1811 attempted to use the corporate form to define a church's internal form of government, President James Madison raised a decisive constitutional objection. "Congress had passed a bill incorporating the Protestant Episcopal Church in the town of Alexandria in what was then the District of Columbia." *Hosanna-Tabor*, 565 U. S., at 184. President Madison vetoed the bill, finding that it violated the First Amendment because it did not respect "the essential distinction between civil and religious functions." 22 Annals of Cong. 982–983 (1811). Madison further explained:

"The bill enacts into, and establishes by law, sundry

> rules and proceedings relative purely to the organization and polity of the church incorporated, and comprehending even the election and removal of the Minister of the same; so that no change could be made therein by the particular society, or by the general church of which it is a member, and whose authority it recognises." *Id.*, at 983.

See also *Hosanna-Tabor*, 565 U. S., at 184–185 (recounting this episode and citing it as an early invocation of the church autonomy doctrine).

In short, the corporation is made for the church, not the church for the corporation. Both the basic principles of church autonomy and the history of religious corporations establish that religious institutions are more than the corporate entities that they form. It follows that the government may not use such entities as a means of regulating the internal governance of religious institutions.

II

As a matter of church law, Catholic Charities and its subentities are an arm of the Diocese of Superior, and thus, for religious purposes, are not distinct organizations. But, when determining whether Catholic Charities was a religious organization entitled to a tax exemption, the Wisconsin Supreme Court nevertheless relied on Catholic Charities' separate corporate charter to treat it as an entity entirely distinct and separate from the Diocese. That holding contravened the church autonomy doctrine.

A

The Catholic Church is a single worldwide religious institution. The Church is headed by the Pope. Code of Canon Law, Canon 331 (Latin-English ed. 1998). Catholics believe that the Pope is the successor of St. Peter, the Apostle chosen by Jesus to lead the Church. *Ibid.*; *supra*, at 4. The

Church is divided into dioceses. A diocese generally consists of "all the faithful living" within "a definite territory," who together constitute "a particular church" within the universal church. Code of Canon Law, Canons 369, 372, §1. Each diocese is "entrusted to a bishop for him to shepherd." Canon 369. The bishop exercises "legislative, executive, and judicial power" over his diocese. Canon 391, §1.

This structure of the Church is a matter of faith, not mere administrative convenience. Catholics believe that in naming the Apostles, Jesus personally established the office of bishop and willed that "the bishops . . . should be shepherds in his church right to the end of the world." Second Vatican Council, Lumen Gentium §18 (1964) (citing John 20:21), in 2 Tanner 849, 863; see Code of Canon Law, Canon 375, §1 ("Bishops . . . by divine institution succeed to the place of the Apostles through the Holy Spirit who has been given to them").

The Church understands itself to have a "three-fold" religious mission: "proclaiming the word of God," "celebrating the sacraments," and "exercising the ministry of charity." Pope Benedict XVI, Deus Caritas Est ¶25(a) (2005). "These duties presuppose each other and are inseparable." *Ibid.* "The Church" therefore "cannot neglect the service of charity"—that is, care "for widows and orphans, prisoners, and the sick and needy of every kind"—"any more than she can neglect the Sacraments and the Word." *Id.*, ¶22.

In keeping with the Church's hierarchical structure, "the Bishops" have "primary responsibility for carrying out . . . the service of charity" at the local level. Pope Benedict XVI, On the Service of Charity, Introduction (2012) (internal quotation marks omitted). In particular, bishops are bound under canon law to establish within their territories organizations to carry out charitable works in the name of the Church subject to their supervision and control. Brief for Catholic Charities USA as *Amicus Curiae* 18; see generally

On the Service of Charity. "In the United States, these organizations are known as Catholic Charities." Brief for Catholic Charities USA as *Amicus Curiae* 15. The works of these organizations are considered acts of the Church itself. Deus Caritas Est ¶29.

The Diocese of Superior covers the northwest corner of Wisconsin. Catholic Charities is the "social ministry arm" of the Diocese. App. to Pet. for Cert. 371a.[2] In keeping with Catholic principles, the Bishop of Superior serves as the head of Catholic Charities and exercises plenary authority over it.

Catholic Charities is organized under state law as a nonprofit corporation governed by three members. The first member is the Bishop, who serves as the organization's president. The second member is the Diocese's vicar general, who is the vice president. Under canon law, the vicar general is a priest chosen by the bishop to "assist him in the governance of the whole diocese." Code of Canon Law, Canons 475, §1, 478, §1. The third member is the organization's executive director, who need not be a priest. The bishop appoints both the vicar general and the executive director, who serve at his pleasure. This structure gives the Bishop control over both Catholic Charities and its separately incorporated subentities, up to and including the power to dissolve them at will. See App. 193.

B

The Wisconsin Supreme Court disregarded this structure of Catholic Charities and its subentities in adjudicating the case below. The court acknowledged Catholic Charities' status as an "arm" of the Diocese of Superior subject to the bishop's "control." 2024 WI 13, ¶¶7, 9, 411 Wis. 2d 1, 13–14, 3 N. W. 3d 666, 672. It nonetheless viewed Catholic

[2]Although there are other organizations called Catholic Charities affiliated with other dioceses, the Catholic Charities involved in this suit is limited to the Diocese of Superior.

Charities and its subentities as distinct, nonreligious organizations merely because they are separately incorporated.

Wisconsin imposes a tax on employers to cover the cost of state-provided unemployment benefits. Wis. Stat. §§108.17–108.18. The tax covers most employers in the State, but an exception applies if the employer is "a church" or "an organization" controlled by a church that is "operated primarily for religious purposes." §§108.02(15)(h)1–2; see *ante,* at 2. Catholic Charities and four of its subentities sought an exemption under the latter category. The Wisconsin Supreme Court held that the organizations were not operated for religious purposes, and thus that excluding Catholic Charities and its subentities from the exemption did not violate the Religion Clauses of the First Amendment. See *ante,* at 5–7.

In construing the scope of the exemption, the court began with "the threshold question of *whose* purposes we must examine in our analysis—those of the Diocese or those of [Catholic Charities] and its sub-entities." 411 Wis. 2d, at 23, 3 N. W. 3d, at 676. The court treated this question as one of ordinary statutory interpretation, determining that the "plain language" of the statute required looking to the individual corporate entity's purpose, not the purpose of the church that operates or controls it. *Ibid.*, 3 N. W. 3d, at 676–677.

Catholic Charities objected that examining "itself and its sub-entities as corporations separate from" the Diocese violates the First Amendment's guarantee of church autonomy by "'divid[ing] up religious bodies according to secular principles.'" *Id.*, at 49, 3 N. W. 3d, at 689 (alteration in original). The Wisconsin Supreme Court disagreed. It acknowledged that, under the First Amendment, matters of ecclesiastical governance "belong to the church alone." *Id.*, at 50, 3 N. W. 3d, at 690. But, it insisted that the exemption

simply "defines what employment is for purposes of unemployment insurance without reference to any religious principles or any attempt to control internal operations." *Ibid.*; see *ante,* at 6.

The Wisconsin Supreme Court's resolution of this threshold question was outcome determinative. The court recognized that the Diocese's "purpose is religious by nature." 411 Wis. 2d, at 24, 3 N. W. 3d, at 677. In contrast, the court found that Catholic Charities' and its subentities' purposes "are primarily charitable and secular." *Id.*, at 35, 3 N. W. 3d, at 683; see *ante,* at 6. As Wisconsin concedes, had the court resolved the threshold question of whose purpose controls the other way, it would have found that Catholic Charities and its subentities "would qualify for the church exemption." Tr. of Oral Arg. 73–74.

C

By failing to defer to the Bishop of Superior's religious view that Catholic Charities and its subentities are an arm of the Diocese, the Wisconsin Supreme Court violated the church autonomy doctrine.

Wisconsin's unemployment tax implicates the church autonomy doctrine. The statute on its face treats religious institutions differently from secular institutions: If an employer is "a church" or "an organization" controlled by a church that is "operated primarily for religious purposes," it is exempt from the tax; if not, the tax applies. Wis. Stat. §§108.02(15)(h)1–2. The statute makes this distinction precisely "to preserve the religious autonomy of [the exempted] organizations." Brief for Respondents 32; see *ante,* at 14. The statute thus does not simply impose neutral and generally applicable burdens that do not affect internal governance; it requires civil courts to classify employers as religious or not, and to treat them differently based on that classification.

But, the church autonomy doctrine leaves it to religious

institutions to define their internal structure for themselves. *Kedroff*, 344 U. S., at 116. When deciding whether an employer qualifies as a religious institution, a civil court must accept the employer's understanding of its internal structure, just as it must accept the employer's understanding of its religious beliefs generally. See *Milivojevich*, 426 U. S., at 709 ("To permit civil courts to probe deeply enough into the allocation of power within a hierarchical church so as to decide religious law governing church polity would violate the First Amendment in much the same manner as civil determination of religious doctrine" (internal quotation marks and alterations omitted)).

Here, there is no dispute that, as a matter of church governance, the Bishop of Superior—the head of both the Diocese of Superior and Catholic Charities—considers Catholic Charities and its subentities to be an "arm" of the Diocese rather than a distinct organization. *Supra*, at 12. In other words, Catholic Charities and its subentities are corporate entities that the Diocese has created to carry out its religious mission. It is therefore dispositive that, as the State concedes, the Diocese qualifies for the religious employer exemption. Tr. of Oral Arg. 73–74. As an arm of the Diocese from the Bishop's perspective, Catholic Charities and its subentities must qualify as well, regardless of whether their activities, considered in isolation, would qualify as religious.

In holding otherwise, the Wisconsin Supreme Court entirely disregarded the Bishop's religious judgment, relying instead on the fact that Catholic Charities and its subentities "are organized as separate corporations apart from the church itself." 411 Wis. 2d, at 35, 3 N. W. 3d, at 682. The court thus made the error of treating a religious institution as nothing more than its corporate entities.

Wisconsin defends its Supreme Court's judgment, arguing that the church autonomy doctrine is inapposite because the State has not compelled the Diocese to alter its

structure. In Wisconsin's view, the State has only imposed a minor tax to which the Diocese has no conscience objection. But, "the First Amendment protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.'" *Carson* v. *Makin*, 596 U. S. 767, 778 (2022). The exclusion of "religious observers from otherwise available public benefits" is a cognizable free exercise burden. *Ibid.* This principle applies with full force to the church autonomy doctrine. The doctrine rests on the premise that "civil courts" must "exercise no jurisdiction" over "*subject-matter[s]*" that are "ecclesiastical in its character." *Watson*, 13 Wall., at 733 (emphasis added). Regardless of whether the religious institution's injury is direct coercion or the withholding of a benefit, "essentially religious controversies" are an inappropriate subject matter for civil courts to decide. *Milivojevich*, 426 U. S., at 709.

* * *

The Court correctly holds that Catholic Charities and its subentities have suffered unconstitutional religious discrimination even on the assumption that those entities should be considered in isolation. See *ante,* at 9–11. I would reverse for an additional reason—that the Wisconsin Supreme Court violated the church autonomy doctrine. However incorporated, Catholic Charities and its subentities are, from a religious perspective, a mere arm of the Diocese of Superior. The Wisconsin Supreme Court should have deferred to that understanding, and its failure to do so amounted to an unlawful attempt by the State to redefine the Diocese's internal governance.

SUPREME COURT OF THE UNITED STATES

No. 24–154

CATHOLIC CHARITIES BUREAU, INC., ET AL., PETITIONERS *v.* WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June 5, 2025]

JUSTICE JACKSON, concurring.

The Federal Unemployment Tax Act (FUTA) allows a State to exempt from its unemployment-coverage mandate any "organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches." 26 U. S. C. §3309(b)(1)(B). Like many States, Wisconsin enacted a religious-purposes exemption that tracks §3309(b)(1)(B). As the Court explains, the Wisconsin Supreme Court's application of that exemption has created a constitutional problem: The State treats church-affiliated charities that proselytize and serve co-religionists exclusively differently from those that do not. *Ante*, at 2. Because I agree that this distinction violates the neutrality principle of the Constitution's Religion Clauses, I join the Court's opinion in full.

I write separately because, in my view, FUTA's religious-purposes exemption does not distinguish between charitable organizations based on their engagement in proselytization or their service to religious adherents. Nor does that exemption differentiate based on religious motivation, as the Government (as *amicus*) insists. Rather, both the text

and legislative history of FUTA's religious-purposes exemption confirm that Congress used the phrase "operated primarily for religious purposes" to refer to the organization's function, not its inspiration. Put differently, §3309(b)(1)(B) turns on *what* an entity does, not *how* or *why* it does it.

I

America constructed its unemployment-insurance system during the Great Depression to mitigate the disruptive effects of sudden job loss on workers. Wisconsin led the way in 1932, after identifying unemployment as "an urgent public problem." Wis. Stat. §108.01(1). Congress followed suit later that same decade by enacting FUTA, which "called for a cooperative federal-state program of benefits to unemployed workers." *St. Martin Evangelical Lutheran Church* v. *South Dakota*, 451 U. S. 772, 775 (1981).

FUTA operates by setting a federal minimum level of unemployment coverage that state programs must provide to remain eligible for certain grants and tax incentives. §§3302, 3304. To obtain federal approval, States must mandate participation by at least those categories of employers that federal law requires to be covered. §3304. FUTA also allows—but does not compel—States to exempt specific categories of employers from mandatory participation.

Before 1970, FUTA allowed States to exempt nearly all nonprofit employers from unemployment coverage. See §3306(c)(8) (1964 ed.). But in 1970, Congress reversed course and required the opposite: that state unemployment-insurance programs cover most nonprofit workers. See Employment Security Amendments of 1970, §104, 84 Stat. 697. Addressing this raising of the unemployment-coverage floor, the House Ways and Means Committee found that, with respect to nonprofit organizations, "unemployment affects a substantial number of their employees, particularly people working in nonprofessional occupations." H. R. Rep. No. 91–612, p. 11 (1969) (H. R. Rep.). FUTA's inclusion of

nonprofits addressed Congress's concerns "about the need of their employees for protection against wage loss resulting from unemployment." *Ibid.*

The 1970 amendments further specified certain "new and narrower" categories of permissible nonprofit exemptions. *St. Martin*, 451 U. S., at 777; see also §3309(b). One was the religious-purposes provision at issue here. Per the statute's language (which Wisconsin subsequently adopted), a State can choose to exempt from its unemployment-insurance mandate "an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches." §3309(b)(1)(B).[1]

II

This case arises out of a dispute about the meaning of the phrase "operated primarily for religious purposes" in Wis. Stat. §108.02(15)(h)(2), which tracks §3309(b)(1)(B). When the Wisconsin Supreme Court affirmed the denial of petitioners' exemption request, it concluded that this clause requires judicial inquiry into "both the motivations and the activities of the organization." 411 Wis. 2d 1, 33 (2024). With respect to activities, the court examined *how* Catholic Charities and its subentities provided their charitable services, and in particular, whether they did so while "attempt[ing] to imbue program participants with the Catholic faith [o]r supply[ing] any religious materials to program participants or employees." *Id.*, at 35. (They did not.) It also observed that "[b]oth employment with the organizations and services offered by the organizations are open to all participants regardless of religion." *Ibid.* The court further suggested that a church-affiliated charity would likely

[1] Wisconsin extended its unemployment-insurance program to cover nonprofits, consistent with the 1970 FUTA amendments, in 1971. See 1971 Wis. Laws ch. 53. It also added a religious-purposes exemption that mirrors §3309(b)(1)(B). See Wis. Stat. §108.02(15)(h)(2).

obtain the exemption if it engaged in "'teaching, evangelism, and worship,'" but not otherwise. *Ibid.*

The Government urges us to hold that FUTA's use of the phrase "operated primarily for religious purposes" refers only to *why* the organization is engaging in the charitable work at issue—*i.e.*, "the motivations that drive the organization to conduct its activities." Brief for United States as *Amicus Curiae* 2. It argues that, in the context of an individual, the word "purposes" most naturally refers to "the mental state" accompanying their activities. *Id.*, at 22. So, the Government contends, a charity's eligibility for the exemption must turn on its underlying motives. *Ibid.*

In my view, however, neither Wisconsin's motivations-plus-activities reading (the *how*) nor the Government's motivations-only interpretation (the *why*) accurately captures what Congress intended when it devised §3309(b)(1)(B) to allow an exemption for church-affiliated entities that are "operated primarily for religious purposes." I think, instead, that §3309(b)(1)(B) relates solely to *what* the entity does. I reach that conclusion first by examining the text of the provision and then by consulting the statute's established enactment history. These sources clarify that the religious-purposes exemption is not applicable to general charitable organizations—*e.g.*, soup kitchens, hospitals, or orphanages. Rather, Congress designed the exemption to capture a much narrower category of employers: church-affiliated entities that exist to perform religious functions.

A

Start with the text. To fall within §3309(b)(1)(B)'s exemption, an employer must satisfy two requirements. First, it must be "operated primarily for religious purposes." §3309(b)(1)(B). Second, it must be "operated, supervised, controlled, or principally supported by a church or convention or association of churches." *Ibid.* Here, no one disputes that the Catholic Church operates, supervises, controls, or

principally supports the charities at issue. The fight is over whether church-affiliated charitable organizations—subentities that primarily provide job training, mental health, and other services to those with developmental disabilities, along with the entity that oversees these and other charities—satisfy the first requirement; that is, whether they "operat[e] primarily for religious purposes" within the meaning of this provision. *Ibid.*

Notably, the language of the provision only goes so far, because §3309(b)(1)(B) does not define the term "religious purposes." And "purposes" admits of several possible meanings. When used in certain contexts, such as "on purpose," the term can refer to one's "intent." Webster's Third New International Dictionary 1847 (1971). But it can also mean "an end or aim to be kept in view in any plan, measure, exertion, or operation." *Ibid.* Another way of conceptualizing this second definition is: "[T]he object which one has in view" or "[t]he object for which anything is done or made, or for which it exists." 12 Oxford English Dictionary 878 (2d ed. 1989). This accords with common usage of the term. If something is put "to no good purpose," then it is not performing any effective function.

The Government does not dispute that "purposes" can refer to ends. Brief for United States as *Amicus Curiae* 15. But it views "ends" as relating solely to "an organization's fundamental motivation for its affairs," not "the nature of [its] activities." *Id.*, at 15–16. The Government does not explain how it makes this logical leap—from the entity's end (*i.e.*, the object it exists to achieve) to the entity's motivation (*i.e.*, its inspiration for seeking that achievement). In my view, the only way to close the gap is to try to ascertain Congress's intent. That is, because "religious purposes" is susceptible to more than one reading in this context (it could mean either *what* an entity does or *why* it does it), an interpreter of this provision must ask: *Which* reading did

Congress intend when it inserted that phrase into this statute?

The text of §3309(b)(1)(B) itself provides a clue. If one reads "operated primarily for religious purposes" to track an organization's motivation, rather than its function, the provision becomes almost entirely superfluous.

Recall that, to be exempt under §3309(b)(1)(B), the organization must be "operated, supervised, controlled, or principally supported by a church or convention or association of churches." And, of course, *every* church has religious motives for its activities. Thus, prong two of §3309(b)(1)(B) *already* establishes religious motivation (the charitable entity is, after all, run by or otherwise closely affiliated with a church)—leaving prong one with no additional work to do if it, too, is interpreted as a religious-motive element. While not dispositive, this superfluidity problem weighs in favor of a construction of "operated primarily for religious purposes" that looks to what an entity does rather than its motives. See *TRW Inc.* v. *Andrews*, 534 U. S. 19, 31 (2001) ("'[A] statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant'" (quoting *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001))).

The functional understanding of "operated primarily for religious purposes" also makes perfect sense. So interpreted, it addresses a different factor than prong two because it gets at what the church-run entity actually does. Workforce programs train workers. Hospitals care for the sick. Soup kitchens feed the hungry. Shelters house the homeless.

That said, I admit that §3309(b)(1)(B)'s text alone may not provide a dispositive answer, and thus requires further exploration. For that reason, I look to the provision's enactment history. See *American Broadcasting Cos.* v. *Aereo, Inc.*, 573 U. S. 431, 438–439 (2014) (turning to legislative

history when text is ambiguous); cf. *Delaware* v. *Pennsylvania*, 598 U. S. 115, 138–139 (2023) ("'[C]lear evidence of congressional intent may illuminate ambiguous text'"). In this case, that history provides illuminating answers.

B

In the House and Senate Reports accompanying the 1970 FUTA amendments, Congress signaled that it designed the §3309(b)(1)(B) exemption to distinguish between church-related organizations performing ministerial functions (which it wanted to allow States to exempt) and those performing general charitable functions (which it wanted to require States to cover). This makes clear that *what* the entity does matters for purposes of applying the exemption.

To explain this, Congress included a series of examples distinguishing the kinds of church-run entities it thought were exemptible. On the exempt side of the line, the Reports list (1) a "college devoted primarily to preparing students for the ministry," (2) "a novitiate," and (3) "a house of study training candidates to become members of religious orders." H. R. Rep., at 44; S. Rep. No. 91–752, pp. 48–49 (1970) (S. Rep.). On the nonexempt side of the line, the Reports state that "a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes." H. R. Rep., at 44; S. Rep., at 49. Nowhere does Congress mention *how*, much less *why*, these paradigmatic entities go about their work.

These examples are instructive. The exempt category as the Reports defined it lists solely church-run nonprofits that have service to the church itself as their main objective. A novitiate, for instance, is an entity that trains and houses novices who are deciding whether to pursue a life in a religious order or priesthood. Indeed, what unites all three "exempt" entities is *what* they do: preparing people

for religious life and for service to the church, *i.e.*, they all serve religious functions. By contrast, the nonexempt category consists of general charitable organizations affiliated with a church. A church-related "orphanage" or "home for the aged" is *not* "operated primarily for religious purposes"—at least within the meaning Congress intended that phrase to carry. H. R. Rep., at 44; S. Rep., at 49.

Through the Reports' examples, Congress thus clarified that it does not matter *how* or *why* the entity goes about its work. All that matters is *what* it does. As such, orphanages, nursing homes, and charities like them—*i.e.*, entities whose "purpose" is to care for children or tend to the elderly—do not exhibit what Congress considered to be "religious purposes" under this exemption. And that is true regardless of whether religion motivates the entity's work.

III

This function-based reading of "operated primarily for religious purposes" not only follows from the text and legislative history of §3309(b)(1)(B). It also best accords with the anti-entanglement justification for the religious-purposes exemption. Wisconsin maintains that it adopted its state version of §3309(b)(1)(B) to keep the government out of unemployment-eligibility adjudications that implicate questions of church doctrine. See Brief for Respondents 21–24. But a reading of the exemption that requires assessment of the entity's motivations, instead of its actual work, does little to further that anti-entanglement objective.

Consider the state unemployment-insurance scheme at issue here. Unemployed workers are not automatically eligible to receive unemployment benefits; those who have been terminated for "misconduct," for example, may be ineligible. Wis. Stat. §108.04(5). Employers can therefore object to any worker's unemployment claim on misconduct grounds. See §108.09(1). When that happens, the State's unemployment agency must then decide whether to deny

benefits by considering the circumstances of the unemployment-benefit applicant's discharge.

For certain church-related employers—*e.g.*, novitiates, houses of study, and colleges that train ministers—that assessment might "entangl[e] the state in employment disputes that turn on religious faith and doctrine." Brief for Respondents 12. Imagine, for example, the adjudication of disputes over the sufficiency of a fired employee's prayers or the accuracy of their scriptural teaching. Indeed, it is precisely because of *what* novitiates, houses of religious study, and ministerial training colleges do (prepare individuals for religious life) that potential entanglement problems occur. By contrast, when a church-run entity provides general charitable services to the public, the same kinds of entanglement issues are far less likely to arise.[2]

What is more, a motive-focused exemption inquiry presents potential entanglement problems of its own. If taken seriously as an eligibility requirement (as opposed to a rubberstamp for any organization that professes religious motives), it would require assessing whether an entity is *really* motivated primarily by religion—an intrusive exploration into the hearts and minds of those who run it. See Brief for United States as *Amicus Curiae* 19–21 (listing evidence courts might examine to assess a nonprofit's "true motivations"). Requiring courts to engage in the business of evaluating religious motivation is a sensitive endeavor. And

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[2] Consider a church-related hospital that employs hundreds of workers—"janitors, cooks, dining assistants, housekeepers, van drivers, technicians, maintenance workers, secretaries, x-ray technologists, groundskeepers, receptionists, orderlies, nurses, anesthesia aides, sonographers, medical aides, occupational therapy assistants, security officers"—the list goes on. Brief for Service Employees International Union et al. as *Amici Curiae* 6–7 (listing jobs that *amici*'s members perform at religiously affiliated nonprofits). While the hospital may have a wholly sincere, Christ-centered mission, its religious motivation has little if anything to do with whether adjudicating unemployment claims from this hospital's laid-off workers will entangle church and state.

here, it is unnecessary, because the church-affiliation prong already does that work. It actually serves no rational objective, as the sincerity of an entity's religious motives has little if anything to do with the problem Congress sought to address.

* * *

Church-related nonprofit employers care for the sick, feed the hungry, and improve the world in countless ways. Most do this—no doubt—for religious reasons. All do this thanks to their employees' labor. As I read §3309(b)(1)(B), evaluating whether a church-affiliated nonprofit "operate[s] primarily for religious purposes" is not a matter of assessing the sincerity or primacy of its religious motives. Instead, as with so many other interpretive issues, determining what the religious-purposes exemption means involves attempting to discern what Congress was trying to achieve. Here, Congress sought to extend to most nonprofit workers the stability that unemployment insurance offers, while exempting a narrow category of church-affiliated entities most likely to cause significant entanglement problems for the unemployment system—precisely because their work involves preparing individuals for religious life. It is perfectly consistent with the opinion the Court hands down today for States to align their §3309(b)(1)(B)-based religious-purposes exemptions with Congress's true focus.

State of Wisconsin
2025 - 2026 LEGISLATURE

LRB-0875/1
MIM/KMS/ARG/KP:cc/cs

2025 SENATE BILL 256

May 15, 2025 - Introduced by Senators BRADLEY, CABRAL-GUEVARA, TESTIN and MARKLEIN, cosponsored by Representatives DALLMAN, BROOKS, ARMSTRONG, ORTIZ-VELEZ, WICHGERS, WITTKE, SNYDER, KNODL and DITTRICH. Referred to Committee on Utilities and Tourism.

AN ACT ***to amend*** 71.63 (2), 102.07 (8) (a) and 108.02 (12) (a); ***to create*** 71.05 (6) (a) 30., 71.05 (6) (b) 57., 71.83 (1) (f), 102.01 (2) (ae), 102.01 (2) (an), 102.01 (2) (ann), 102.01 (2) (anp), 102.01 (2) (ant), 102.01 (2) (dc), 102.01 (2) (ds), 102.01 (2) (gh), 102.07 (8) (bs), 103.08, 104.01 (2) (b) 6., 108.02 (12) (ds), 224.56 and 632.985 of the statutes; **relating to:** delivery network couriers and transportation network drivers, Department of Financial Institutions' approval to offer portable benefit accounts, providing for insurance coverage, modifying administrative rules related to accident and sickness insurance, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

DELIVERY AND TRANSPORTATION NETWORK COMPANIES

General

This bill provides that under specific circumstances, delivery network couriers and drivers for transportation network companies (application-based drivers) are

not employees of the delivery network companies and transportation network companies (network companies) for the purposes of worker's compensation insurance, minimum wage laws, and unemployment insurance. In the bill, "application-based driver" is defined as a delivery network courier or participating driver who provides services through the online-enabled application, software, website, or system of a network company.

Under the bill, if a network company does not engage in all of the following practices, an application-based driver is not an employee or agent of the company: 1) prescribe specific dates, times of day, or a minimum number of hours during which the driver must be logged into the network company's online-enabled application, software, or system; 2) terminate the contract of the driver for not accepting a specific request for transportation or delivery service request; 3) restrict the driver from performing services through other network companies except while performing services through that network company; and 4) restrict the driver from working in any other lawful occupation or business. The bill provides that if this provision is held invalid by a court, the provisions regarding portable benefits accounts and group or blanket accident and sickness insurance coverage for application based drivers are invalid.

Portable benefit accounts

Under the bill, if certain conditions are satisfied, a financial services provider or other person may obtain approval from the Department of Financial Institutions to offer portable benefit accounts. A "portable benefit account" is an account administered by such an approved financial services provider or other person (portable benefit account provider) from which an individual may receive distributions for the purposes described below.

Under the bill, a network company may offer portable benefit accounts. If an application-based driver meets certain eligibility requirements (eligible driver), a network company may contribute an amount equal to 4 percent of that driver's quarterly earnings to a portable benefit account, and the driver may also contribute to the portable benefit account. Contributions to a portable benefit account by the account owner may be subtracted from the owner's income for state income tax purposes. Under the bill, an eligible driver may receive a distribution from a portable benefit account for the following purposes: 1) to compensate for lost income due to an illness or accident or loss of work due to the birth or adoption of the driver's child; 2) to transfer the money to an individual retirement account (IRA); 3) to pay vision, dental, or health insurance premiums; and 4) to compensate for lost income through no fault of the driver from work for a network company. A network company must ensure that the portable benefit account provider it selects offers at least three options for IRA providers and an eligible driver may not transfer money from a portable benefit account to an IRA in an amount exceeding the contribution limits under federal law. A portable benefit account provider may include an income replacement benefit to be made available to eligible drivers. A

financial services provider may not commingle assets in a portable benefit account with other property, except in a common trust fund or common investment fund.

Insurance coverage

The bill provides that a network company may carry, provide, or otherwise make available group or blanket accident and sickness insurance for its application-based drivers. The bill requires a network company to make available, upon reasonable request, a copy of its group or blanket accident and sickness insurance policy. The bill specifies that the state's worker's compensation laws do not apply to such a policy.

The bill also provides that a network company may carry, provide, or otherwise make available group or blanket occupational accident insurance to cover the medical expenses and lost income resulting from an injury suffered by an application-based driver while engaged on the network company's online-enabled application, software, or system. The bill requires a network company to make available, upon reasonable request, a copy of its blanket occupational accident insurance policy. The bill requires that the policy provide, in aggregate, at least $1,000,000 of coverage for the medical expenses, short-term disability, long-term disability, and survivor benefits. The coverage must include at least $250,000 for medical expenses; weekly disability payments equal to two-thirds of an application-based driver's average weekly income, subject to certain restrictions, for up to 104 weeks following an injury; and survivor benefits in an amount equal to an application-based driver's average weekly income, subject to certain restrictions, multiplied by 104. The bill provides that if a claim is covered by occupational accident insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to a contribution for the pro rata share of coverage attributable to one or more other network companies.

Under the bill, any benefit provided to an application-based driver under an occupational accident insurance policy is treated as amounts payable under a worker's compensation law or disability benefit for the purpose of determining amounts payable under uninsured or underinsured motorist coverage.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.05 (6) (a) 30. of the statutes is created to read:

71.05 **(6)** (a) 30. For taxable years beginning after December 31, 2024, any

amount distributed during the taxable year from a portable benefit account, as defined in s. 103.08 (1) (h), that was not used for a permissible use under s. 103.08 (3), except that this subdivision applies only to amounts for which a subtraction was made under par. (b) 57.

SECTION 2. 71.05 (6) (b) 57. of the statutes is created to read:

71.05 **(6)** (b) 57. For taxable years beginning after December 31, 2024, an amount equal to any contribution made during the taxable year to a portable benefit account, as defined in s. 103.08 (1) (h), by the owner of the account.

SECTION 3. 71.63 (2) of the statutes is amended to read:

71.63 **(2)** "Employee" means a resident individual who performs or performed services for an employer anywhere or a nonresident individual who performs or performed such services within this state, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of these entities. The term includes an officer of a corporation, an entertainer and an entertainment corporation, but does not include a direct seller who is not treated as an employee under section 3508 of the Internal Revenue Code ~~or,~~ a real estate broker or salesperson who is excluded under s. 452.38, or an application-based driver excluded under s. 102.07 (8) (bs).

SECTION 4. 71.83 (1) (f) of the statutes is created to read:

71.83 **(1)** (f) *Portable benefit accounts*. An owner of a portable benefit account, as defined in s. 103.08 (1) (h), who uses a distribution from the account for a purpose that is not a permissible use under s. 103.08 (3) is liable for a penalty equal to 10 percent of the amount of the distribution not used for a permissible use. The

department shall assess, levy, and collect the penalty under this paragraph in the same manner as it assesses, levies, and collects taxes under this chapter.

SECTION 5. 102.01 (2) (ae) of the statutes is created to read:

102.01 **(2)** (ae) "Application-based driver" means a delivery network courier or participating driver who provides services through the digital network of a network company.

SECTION 6. 102.01 (2) (an) of the statutes is created to read:

102.01 **(2)** (an) "Delivery network company" means a business that uses a digital network to connect customers to application-based drivers to facilitate delivery services.

SECTION 7. 102.01 (2) (ann) of the statutes is created to read:

102.01 **(2)** (ann) "Delivery network courier" means an individual who provides delivery services through a delivery network company's digital network.

SECTION 8. 102.01 (2) (anp) of the statutes is created to read:

102.01 **(2)** (anp) "Delivery services" means the fulfillment of a delivery request by picking up from any location any item and delivering the item, by using a passenger vehicle, a bicycle, a scooter, public transportation, or other similar means of transportation or by walking, to a location selected by the customer that is typically located within 50 miles of the pickup location. "Delivery services" includes the selection, collection, or purchase of items by a delivery network courier, as well as other tasks incidental to the delivery.

SECTION 9. 102.01 (2) (ant) of the statutes is created to read:

102.01 **(2)** (ant) "Digital network" has the meaning given in s. 103.08 (1) (c).

SECTION 10. 102.01 (2) (dc) of the statutes is created to read:

102.01 **(2)** (dc) "Network company" means a delivery network company or a transportation network company.

SECTION 11. 102.01 (2) (ds) of the statutes is created to read:

102.01 **(2)** (ds) "Participating driver" has the meaning given in s. 440.40 (3).

SECTION 12. 102.01 (2) (gh) of the statutes is created to read:

102.01 **(2)** (gh) "Transportation network company" has the meaning given in s. 440.40 (6).

SECTION 13. 102.07 (8) (a) of the statutes is amended to read:

102.07 **(8)** (a) Except as provided in pars. (b) ~~and~~, (bm), and (bs), every independent contractor is, for the purpose of this chapter, an employee of any employer under this chapter for whom he or she is performing service in the course of the trade, business, profession or occupation of such employer at the time of the injury.

SECTION 14. 102.07 (8) (bs) of the statutes is created to read:

102.07 **(8)** (bs) An application-based driver is not an employee or agent of a network company if the company refrains from doing all of the following:

1. Prescribing specific dates, times of day, or a minimum number of hours during which the application-based driver must be logged into the network company's online-enabled application, software, or system.

2. Terminating the contract of the application-based driver for not accepting a specific delivery service request or request for transportation, except as prohibited by s. 440.45 (2).

3. Restricting the application-based driver from performing services through other network companies except while performing services through that network company.

4. Restricting the application-based driver from working in any other lawful occupation or business.

SECTION 15. 103.08 of the statutes is created to read:

103.08 Application-based drivers; portable benefits accounts. (1) DEFINITIONS. In this section:

(a) "Application-based driver" has the meaning given in s. 102.01 (2) (ae).

(b) "Delivery network company" has the meaning given in s. 102.01 (2) (an).

(c) "Digital network" means an online-enabled application, software, website, or system that enables the provision of delivery services with delivery network couriers or the prearrangement of transportation network services as defined in s. 440.40 (1).

(d) "Earnings" means all moneys paid directly to an application-based driver, including incentives and bonuses, by a delivery network company or a transportation network company, or remitted to the application-based driver from a payment facilitated by a delivery network company or transportation network company, but not including amounts charged for fees, taxes, or other similar charges. "Earnings" does not include any payments for gratuities.

(e) "Eligible driver" means an application-based driver whose earnings from an individual delivery network company or transportation network company totaled

at least $750, without combining earnings from network companies or delivery and rideshare services provided through the same company, during a calendar quarter.

(f) "Loss of earnings" means a decrease of 50 percent or more in earnings in a calendar month from the previous calendar month through no fault of the application-based driver.

(g) "Network company" means a delivery network company or a transportation network company.

(h) "Portable benefit account" means an account from which an individual may withdraw money for a permissible use under sub. (3) that is administered by a portable benefit account provider.

(i) "Portable benefit account provider" means a financial services provider or other person authorized under s. 224.56 (3) to offer and administer portable benefit accounts.

(j) "Transportation network company" has the meaning given in s. 440.40 (6).

(2) ADMINISTRATION AND CONTRIBUTIONS. (a) A network company may offer portable benefit accounts to eligible drivers but is not required to offer such accounts. A network company may make a contribution to a portable benefit account of an eligible driver but is not required to make such a contribution.

(b) If a network company elects to offer portable benefit accounts to eligible drivers, the network company shall ensure that any portable benefit account provider it selects makes available to eligible drivers, under the portable benefit account, at least 3 options for individual retirement account providers.

(c) If a network company elects to make contributions to portable benefit accounts of eligible drivers, all of the following apply:

1. The network company shall make any contribution to the default portable benefit account the company elects on behalf of a driver unless the driver has selected a different account and timely notified the network company.

2. If an application-based driver qualified as an eligible driver for an individual network company for that network company for an entire calendar quarter, each calendar quarter following a quarter in which the eligible driver so qualified, the network company shall contribute to the portable benefit account of the eligible driver an amount equal to 4 percent of the eligible driver's earnings in the preceding calendar quarter that the driver earned through that company. A driver must qualify as an eligible driver individually for each network company. The company shall make the contribution no later than the 30th day of the calendar quarter.

(d) If a network company elects to offer portable benefit accounts to eligible drivers, the network company shall allow an eligible driver to elect to contribute to the eligible driver's portable benefit account, and may deduct the amount elected by the eligible driver from the individual's earnings and designate such amount for contribution to the portable benefit account. The company shall make the contribution on behalf of the eligible driver no later than the 30th day of the calendar quarter.

(e) A network company shall make contributions under par. (c) in addition to, and not as a deduction from, driver earnings.

(3) PERMISSIBLE USES. An eligible driver who has money in a portable benefit account may receive a distribution of amounts for any of the following:

(a) To compensate for lost income due to any of the following:

1. An illness or accident of the driver.

2. Loss of work due to the birth or adoption of a child of the driver.

3. Loss of work due to declared federal state of emergency or emergency declared by the governor under s. 323.10.

(b) To transfer the money to an individual retirement account, except that no such transfer may be made in an amount that exceeds the limit established by section 219 (b) (1) of the Internal Revenue Code for the aggregate amount of contributions to an individual retirement account for the taxable year in which the transfer is made.

(c) To pay premiums for health, vision, or dental insurance coverage in the individual market.

(d) Loss of earnings.

(4) ELIGIBILITY DURATION. An eligible driver shall remain an eligible driver of the delivery network company or transportation network company for 3 calendar quarters following the initial quarter of eligibility, regardless of the amount of earnings the application-based driver has during those 3 quarters. In each subsequent calendar quarter an application-based driver may only qualify as an eligible driver of the delivery network company or transportation network if the driver has $750 of earnings in the calendar quarter.

(5) NONSEVERABILITY. This section does not apply if a court finds s. 102.07 (8) (bs) invalid.

SECTION 16. 104.01 (2) (b) 6. of the statutes is created to read:

104.01 **(2)** (b) 6. An individual excluded under s. 102.07 (8) (bs).

SECTION 17. 108.02 (12) (a) of the statutes is amended to read:

108.02 **(12)** (a) "Employee" means any individual who is or has been performing services for pay for an employing unit, whether or not the individual is paid directly by the employing unit, except as provided in par. (bm), (c), (d), (dm), ~~or~~ (dn), or (ds).

SECTION 18. 108.02 (12) (ds) of the statutes is created to read:

108.02 **(12)** (ds) Paragraph (a) does not apply to an individual who is performing services for an employing unit other than a government unit, an Indian tribe, or a nonprofit organization and who is excluded under s. 102.07 (8) (bs).

SECTION 19. 224.56 of the statutes is created to read:

224.56 Portable benefit accounts. (1) In this section:

(a) "Eligible driver" has the meaning given in s. 103.08 (1) (e).

(b) "Financial services provider" means any of the following:

1. A financial institution, as defined in s. 214.01 (1) (jn).

2. An investment management firm.

3. A technology provider or program manager that offers services through a financial services provider identified in subd. 1. or 2.

(c) "Portable benefit account" has the meaning given in s. 103.08 (1) (h).

(d) "Qualifying event" means an event described in s. 103.08 (3) (a).

(2) A financial services provider or other person may request approval from

the department to offer portable benefit accounts. If the financial services provider or other person demonstrates to the satisfaction of the department that the manner in which the financial services provider or other person will administer the portable benefit account will be consistent with s. 103.08 (2) and (3), and the financial services provider or other person satisfies any applicable rule under sub. (7), the department shall approve the request.

(3) A financial services provider or other person approved by the department under sub. (2) may offer and administer portable benefit accounts.

(4) A financial services provider or other person authorized to offer and administer portable benefit accounts under sub. (3) may include an income replacement benefit to be made available to eligible drivers upon the occurrence of any qualifying event.

(5) A financial services provider may not commingle assets in a portable benefit account with other property, except these assets may be held in a common trust fund or common investment fund.

(6) A financial services provider shall ensure that, if at the time of an eligible driver's death the eligible driver has arranged for distributions from a portable benefit account as provided in s. 103.08 (3) (b), the remaining balance in the portable benefit account is immediately distributed in the form of a direct trustee-to-trustee transfer to the eligible driver's individual retirement account upon the eligible driver's death.

(7) The department may promulgate rules related to the process and requirements for the department's approval under sub. (2).

(8) This section does not apply if a court finds s. 102.07 (8) (bs) invalid.

SECTION 20. 632.985 of the statutes is created to read:

632.985 Insurance coverage provided by network companies. (1) DEFINITIONS. In this section:

(a) "Application-based driver" has the meaning given in s. 102.01 (2) (ae).

(b) "Average weekly earnings" means an application-based driver's total earnings from all network companies during the 28 days prior to a covered incident divided by 4.

(c) "Digital network" has the meaning given in s. 103.08 (1) (c).

(d) "Earnings" has the meaning given in s. 103.08 (1) (d).

(e) "Maximum compensation rate" means the applicable maximum compensation rate under s. 102.11 and any applicable limitation on supplemental benefits under s. 102.44.

(f) "Network company" means a delivery network company, as defined in s. 102.01 (2) (an), or a transportation network company, as defined in s. 440.40 (6).

(2) ACCIDENT AND SICKNESS INSURANCE. (a) A network company may carry, provide, or otherwise make available group or blanket accident and sickness insurance coverage for application-based drivers who provide covered services through the network company's digital network.

(b) A network company shall make available, upon reasonable request, a copy of the policy it carries, provides, or otherwise makes available under this subsection.

(c) Chapter 102 does not apply to a group or blanket accident and sickness insurance policy described in par. (a).

(3) OCCUPATIONAL ACCIDENT INSURANCE. (a) A network company may carry,

provide, or otherwise make available group or blanket occupational accident insurance to cover the medical expenses and lost income resulting from an injury suffered by an application-based driver while engaged on the network company's digital network. For purposes of this paragraph, an application-based driver is engaged on the network company's digital network during the time beginning when the application-based driver accepts a rideshare request or delivery request and ending when the application-based driver completes that rideshare request or delivery request.

(b) A network company shall make available, upon reasonable request, a copy of the policy it carries, provides, or otherwise makes available under this subsection.

(c) A policy under this subsection shall provide, in aggregate, at least $1,000,000 of coverage and at least all of the following:

1. $250,000 of coverage for medical expenses.

2. Continuous weekly disability income payments for total disability, temporary disability payments, or partial disability that are equal to not less than 66 2/3 percent of the application-based driver's average weekly earnings from all network companies as of the date of injury but not more than the maximum compensation rate, unless the application-based driver's average weekly earnings are less than $100, in which case the payments under this subdivision shall be equal to the application-based driver's average weekly earnings. Payments under this paragraph shall be made for up to the first 104 weeks following the injury.

3. For the benefit of spouses, children, or other dependents of app-based drivers, accidental death insurance, for injuries suffered by an application-based

driver while the application-based driver is engaged on the network company's digital network that result in death, in an amount equal to 66 2/3 percent of the application-based driver's average weekly earnings from all network companies as of the date of injury but not more than the maximum weekly compensation rate, unless the application-based driver's average weekly earnings are less than $100, in which case the amount shall be equal to the application-based driver's average weekly earnings, multiplied by 104.

(d) If a claim is covered by occupational accident insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to a contribution for the pro rata share of coverage attributable to one or more other network companies up to the coverages and limits in par. (c).

(e) Any benefit provided to an application-based driver under an occupational accident insurance policy described in par. (a) shall be treated as amounts payable under a worker's compensation law or disability benefit for the purpose of determining amounts payable under insurance provided under s. 632.32 (4) or (4m).

(4) NONSEVERABILITY. This section does not apply if a court finds s. 102.07 (8) (bs) invalid.

SECTION 21. INS 3.14 (6) (intro.), (a), (b) and (c) of the administrative code are amended to read:

INS 3.14 **(6)** (intro.) ELIGIBLE GROUPS. In accordance with s. 600.03 (23), Stats., an eligible group includes any of the following:

(a) The members of the board of directors of a corporation ~~are eligible to be~~

covered under a group accident and sickness policy issued to such ~~corporation,~~ corporation.

(b) The individual members of member organizations of an association, as defined in s. 600.03 (23), Stats., ~~are eligible to be~~ covered under a group accident and sickness policy issued to such association insuring employees of such association and employees of member organizations of such association~~, and~~.

(c) The individuals supplying raw materials to a single processing plant and the employees of such processing plant ~~are eligible to be~~ covered under a group accident and sickness policy issued to such processing plant.

SECTION 22. INS 3.14 (6) (d) of the administrative code is created to read:

INS 3.14 **(6)** (d) Application-based drivers, as defined in s. 632.985 (1) (a), Stats., of a network company, as defined in s. 632.985 (1) (f), Stats., covered under a group accident and sickness policy issued to the network company. This paragraph does not apply if a court finds s. 102.07 (8) (bs), Stats., invalid.

SECTION 23. INS 3.15 (4) (a) 16. of the administrative code is created to read:

INS 3.15 **(4)** (a) 16. Application-based drivers, as defined in s. 632.985 (1) (a), Stats., of a network company, as defined in s. 632.985 (1) (f), Stats. This subdivision does not apply if a court finds s. 102.07 (8) (bs), Stats., invalid.

SECTION 24. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of administrative rules takes effect as provided in s. 227.265.

(END)

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2025 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number **25-0875/1**	Introduction Number **SB-0256**

Description
delivery network couriers and transportation network drivers, Department of Financial Institutions' approval to offer portable benefit accounts, providing for insurance coverage, modifying administrative rules related to accident and sickness insurance, and granting rule-making authority

Fiscal Effect

State:
- ☐ No State Fiscal Effect
- ☒ Indeterminate
  - ☐ Increase Existing Appropriations
  - ☐ Decrease Existing Appropriations
  - ☐ Create New Appropriations
  - ☐ Increase Existing Revenues
  - ☐ Decrease Existing Revenues
  - ☒ Increase Costs - May be possible to absorb within agency's budget
    - ☐ Yes ☒ No
  - ☐ Decrease Costs

Local:
- ☐ No Local Government Costs
- ☐ Indeterminate
  1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
  2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
  3. ☐ Increase Revenue ☐ Permissive ☐ Mandatory
  4. ☐ Decrease Revenue ☐ Permissive ☐ Mandatory
  5. Types of Local Government Units Affected
     - ☐ Towns ☐ Village ☐ Cities
     - ☐ Counties ☐ Others
     - ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☒ GPR ☒ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEGS

Affected Ch. 20 Appropriations
s. 20.445 (1)(a), (1)(o), (1)(n), (1)(ra)

Agency/Prepared By	Authorized Signature	Date
DWD/ Andrew Evenson (608) 405-4472	Lee Sensenbrenner (608) 405-4202	6/5/2025

Fiscal Estimate Narratives

DWD 6/5/2025

LRB Number **25-0875/1**	Introduction Number **SB-0256**	Estimate Type **Original**
Description delivery network couriers and transportation network drivers, Department of Financial Institutions' approval to offer portable benefit accounts, providing for insurance coverage, modifying administrative rules related to accident and sickness insurance, and granting rule-making authority		

Assumptions Used in Arriving at Fiscal Estimate

The bill creates new criteria for determining whether a delivery network courier or transportation network driver is not an employee for purposes of Worker's Compensation liability, wage requirements under Chapter 104, Minimum Wage, Unemployment Insurance assessments under Chapter 108, and Unemployment Insurance Reserves.

The overall fiscal impact of this bill to the Department of Workforce Development (DWD) is indeterminate at this time. The department estimates that this bill will reduce the UI Trust Fund balance by approximately $2.7 million due to transportation network companies not having to pay into to the UI Trust Fund for drivers who would be considered employees under current law, but not under this bill. The impact to department operations, however, is indeterminate.

The bill does not repeal current Worker's Compensation law under s. 102.07 (8) (b) used to determine when a worker is performing duties as an employee or independent contractor. Under this bill, DWD's Worker's Compensation (WC) staff will continue to use current law criteria as well as apply the proposed criteria to determine network companies' Worker's Compensation liability. The department anticipates increased workload for WC staff that administer the new employee test criteria related to delivery network couriers and transportation network drivers, but the workload impact is indeterminate at this time.

Under the bill, the new criteria at s. 102.07 (8), Worker's compensation, Employee Defined, for determining employee status of a delivery network courier or transportation network driver would also be used by staff in DWD's Equal Rights Division (ERD) and Unemployment Insurance Division (UI) to determine if a worker is protected under minimum wage law and/or eligible for unemployment insurance benefits. The department also anticipates increased workload for ERD and UI staff due to the bill's proposed additional steps related to administering the employee status test for delivery network couriers and transportation network drivers, but the workload impact is indeterminate at this time.

Because of the potential change in employment status of certain couriers and/or drivers, the bill is estimated to reduce the UI Trust fund balance by approximately $2.7 million annually. Specifically, the proposed bill would change the employment status of certain couriers and/or drivers. Under the bill, they would not be employees who are eligible for UI benefits. The UI Trust Fund balance would be reduced on an ongoing basis because the employer category that covers couriers and drivers generally pays more in UI wage taxes than their employees receive in benefits and those contributions would no longer be collected. The fiscal impact to the IT and administrative functions of the UI Division are indeterminate, but not expected to be significant.

The bill also establishes portable benefit accounts under s. 103.08 and s. 224.55 and outlines conditions under which a network company may contribute to a portable benefit account for a delivery network courier or transportation network driver under s. 103.08. The network company may contribute to a portable benefit account for a courier or driver regardless of the courier's or driver's employee status. Because the bill's provisions related to portable benefit accounts are created in Chapter 103, Employment Regulations, DWD's existing statutory powers, duties, and jurisdiction would apply to this provision. The proposed bill may result in new department costs for revisions of administrative rules and outreach to employers related to the portable benefits provisions, but these costs, while indeterminate at this time, are anticipated to be minimal.

Long-Range Fiscal Implications

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2025 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number 25-3094/1	Introduction Number AB-0269

Description
delivery network couriers and transportation network drivers, Department of Financial Institutions' approval to offer portable benefit accounts, providing for insurance coverage, modifying administrative rules related to accident and sickness insurance, and granting rule-making authority

Fiscal Effect

State:
- ☐ No State Fiscal Effect
- ☐ Indeterminate
  - ☐ Increase Existing Appropriations
  - ☐ Decrease Existing Appropriations
  - ☐ Create New Appropriations
  - ☐ Increase Existing Revenues
  - ☐ Decrease Existing Revenues
- ☒ Increase Costs - May be possible to absorb within agency's budget
  - ☐ Yes ☒ No
- ☐ Decrease Costs

Local:
- ☐ No Local Government Costs
- ☐ Indeterminate
  - 1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
  - 2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
  - 3. ☐ Increase Revenue ☐ Permissive ☐ Mandatory
  - 4. ☐ Decrease Revenue ☐ Permissive ☐ Mandatory

5. Types of Local Government Units Affected
- ☐ Towns ☐ Village ☐ Cities
- ☐ Counties ☐ Others
- ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEGS

Affected Ch. 20 Appropriations
20.144(1)(g)

Agency/Prepared By	Authorized Signature	Date
DFI/ Amy Moran (608) 261-2309	Amy Moran (608) 261-2309	5/19/2025

Fiscal Estimate Narratives

DFI 5/19/2025

LRB Number **25-3094/1**	Introduction Number **AB-0269**	Estimate Type **Original**
Description delivery network couriers and transportation network drivers, Department of Financial Institutions' approval to offer portable benefit accounts, providing for insurance coverage, modifying administrative rules related to accident and sickness insurance, and granting rule-making authority		

Assumptions Used in Arriving at Fiscal Estimate

If enacted, this legislation would require DFI to evaluate proposals from financial institutions or others to offer portable benefit accounts for application-based drivers. DFI may promulgate rules concerning the process and requirements for approval, and it may approve a proposal to offer portable benefit accounts only if the offeror demonstrates that it will administer the accounts in accordance with the requirements of the bill.

DFI anticipates that it will need at least two new employees to carry out these responsibilities: an auditor-journey with relevant subject matter experience (estimated salary, fringe, and supply costs of $97,800) and an operations program associate (estimated salary, fringe, and supply costs of $82,700), for a total annual staff cost of $180,500.

Long-Range Fiscal Implications

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate Worksheet - 2025 Session

Detailed Estimate of Annual Fiscal Effect

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number 25-3094/1	Introduction Number AB-0269

Description
delivery network couriers and transportation network drivers, Department of Financial Institutions' approval to offer portable benefit accounts, providing for insurance coverage, modifying administrative rules related to accident and sickness insurance, and granting rule-making authority

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	**Annualized Fiscal Impact on funds from:**	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	$140,500	$
(FTE Position Changes)	(2.0 FTE)	
State Operations - Other Costs	40,000	
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	**$180,500**	**$**
B. State Costs by Source of Funds		
GPR		
FED		
PRO/PRS (20.144(1)(g))	180,500	
SEG/SEG-S		

III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, ets.)		
	Increased Rev	Decreased Rev
GPR Taxes	$	$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	**$**	**$**

NET ANNUALIZED FISCAL IMPACT		
	State	Local
NET CHANGE IN COSTS	$180,500	$
NET CHANGE IN REVENUE	$	$

Agency/Prepared By	**Authorized Signature**	**Date**
DFI/ Amy Moran (608) 261-2309	Amy Moran (608) 261-2309	5/19/2025

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2025 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number 25-0875/1	Introduction Number SB-0256

Description
delivery network couriers and transportation network drivers, Department of Financial Institutions' approval to offer portable benefit accounts, providing for insurance coverage, modifying administrative rules related to accident and sickness insurance, and granting rule-making authority

Fiscal Effect

State:
- ☐ No State Fiscal Effect
- ☒ Indeterminate
  - ☐ Increase Existing Appropriations
  - ☐ Decrease Existing Appropriations
  - ☐ Create New Appropriations
  - ☐ Increase Existing Revenues
  - ☐ Decrease Existing Revenues
  - ☐ Increase Costs - May be possible to absorb within agency's budget ☐ Yes ☐ No
  - ☐ Decrease Costs

Local:
- ☐ No Local Government Costs
- ☐ Indeterminate
  1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
  2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
  3. ☐ Increase Revenue ☐ Permissive ☐ Mandatory
  4. ☐ Decrease Revenue ☐ Permissive ☐ Mandatory

5. Types of Local Government Units Affected
  - ☐ Towns ☐ Village ☐ Cities
  - ☐ Counties ☐ Others
  - ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEGS

Affected Ch. 20 Appropriations

Agency/Prepared By	Authorized Signature	Date
OCI/ Jeff Grothman (608) 264-6239	Sarah Smith (608) 267-9460	5/27/2025

Fiscal Estimate Narratives

OCI 5/27/2025

LRB Number **25-0875/1**	Introduction Number **SB-0256**	Estimate Type **Original**
Description delivery network couriers and transportation network drivers, Department of Financial Institutions' approval to offer portable benefit accounts, providing for insurance coverage, modifying administrative rules related to accident and sickness insurance, and granting rule-making authority		

Assumptions Used in Arriving at Fiscal Estimate

This bill provides that under specific circumstances, delivery network couriers and drivers for transportation network companies (application-based drivers) are not employees of the delivery network companies and transportation network companies (network companies) for the purposes of worker's compensation insurance, minimum wage laws, and unemployment insurance.

This bill contains several insurance-related provisions:

Under the bill, if certain conditions are satisfied, a financial services provider or other person may obtain approval from the Department of Financial Institutions to offer portable benefit accounts. A "portable benefit account" is an account administered by such an approved financial services provider or other person (portable benefit account provider) from which an individual may receive distributions for the purposes described below. If an application-based driver meets certain eligibility requirements (eligible driver), a network company must contribute an amount equal to 4 percent of that driver's quarterly earnings to a portable benefit account, and the driver may also contribute to the portable benefit account. Under the bill one of the purposes for which the eligible driver may use the portable benefit account is to pay vision, dental, or health insurance premiums in the individual market.

The bill provides that a network company may carry, provide, or otherwise make available group or blanket accident and sickness insurance for its application-based drivers. The bill requires a network company to make available, upon reasonable request, a copy of its group or blanket accident and sickness insurance policy. The bill specifies that the state's worker's compensation laws do not apply to such a policy.

The bill also provides that a network company may carry, provide, or otherwise make available group or blanket occupational accident insurance to cover the medical expenses and lost income resulting from an injury suffered by an application-based driver while engaged on the network company's online-enabled application, software, or system. The bill requires a network company to make available, upon reasonable request, a copy of its blanket occupational accident insurance policy. The bill requires that the policy provide, in aggregate, at least $1,000,000 of coverage for the medical expenses, short-term disability, long-term disability, and survivor benefits. The coverage must include at least $250,000 for medical expenses; weekly disability payments equal to two-thirds of an application-based driver's average weekly income, subject to certain restrictions, for up to 104 weeks following an injury; and survivor benefits in an amount equal to an application-based driver's average weekly income, subject to certain restrictions, multiplied by 104. The bill provides that if a claim is covered by occupational accident insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to a contribution for the pro rata share of coverage attributable to one or more other network companies.

Under the bill, any benefit provided to an application-based driver under an occupational accident insurance policy is treated as amounts payable under a worker's compensation law or disability benefit for the purpose of determining amounts payable under uninsured or underinsured motorist coverage.

The fiscal effect of this proposed legislation on agency resources or staff time is indeterminate.

Long-Range Fiscal Implications

D25-01
Electronic Communication and Filing

Date: April 16, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Electronic Communication and Filing

1. Description of Proposed Change

Employers must file quarterly tax and wage reports showing the names, Social Security numbers, and wages paid to their employees. Employers with at least 25 employees must file those reports electronically, but all employers may file electronically. Electronic filing is more efficient for employers, ensures that reports are not lost in the mail, and reduces administrative costs for the Department. Employers who make contribution payments of at least $10,000 annually must make those payments by electronic funds transfer but any employer may do so. Currently, about 96% of employers file their tax and wage reports electronically and pay their contributions electronically. Current law also permits the Department to electronically communicate with those who opt for that form of communication—though not all Department communication can currently be sent electronically.

In 2024, the UI Advisory Council approved a Department proposal to make the electronic filing, electronic payment, and electronic communication provisions mandatory unless the person demonstrates good cause for being unable to use the electronic method. The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, includes a proposal identical to the one approved by the Council in 2024. In the Budget Bill, "good cause" is defined to include employers with limited or no internet connection, the filer having digital literacy concerns, the filer having communication barriers (such as a vision disability or other disability that prevents the ease of electronic filing, or being an individual with limited English proficiency), or other circumstances that make electronic filing unusually difficult, as determined by the Department. The Budget Bill also

provides that the Department may use electronic records and electronic signatures. The provision related to electronic communication would be effective when the Department has the technological capability to fully implement it. The tax filing and payment provisions would be effective on January 1, 2027, so that employers have enough time to adjust to the new electronic filing and payment requirements.

The Department continues to modernize its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better customer service. This proposal will ensure the maximization of such efficiencies and service improvements while safeguarding the rights of those whose access to electronic means is severely limited or unavailable.

2. Proposed Statutory Changes

The proposed statutory changes would be identical to the UI Advisory Council-approved language from 2024 except that the effective date would be January 1, 2027 instead of February 1, 2025.

Section 108.14 (2e) of the statutes is amended to read:

108.14 (2e) The department ~~may~~ shall provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, ~~upon request to and with prior approval by the department, may~~ shall be used for departmental transmission or receipt of any document specified by the department that is related to the administration of this chapter and related federal programs in lieu of any other means of submission or receipt specified in this chapter. The secure means of electronic interchange shall be used by employing units, claimants, and other persons unless the person demonstrates good cause, as specified in s. 108.022, for being unable to use the secure means of electronic interchange. Subject to s. 137.25 (2) and any

rules promulgated thereunder, the department may permit the use of electronic records and electronic signatures for any document specified by the department that is related to the administration of this chapter. If a due date is established by statute for the receipt of any document that is submitted electronically to the department under this subsection, then that submission is timely only if the document is submitted by midnight of the statutory due date.

Section 108.17 (2) of the statutes is amended to read:

108.17 (2) (a) Except as provided in par. (b) and subject to sub. (2b) and s. 108.185, every employer that is subject to a contribution requirement shall file quarterly reports of contributions required under this chapter with the department, and pay contributions to the department, in such manner as the department prescribes. Each contribution report and payment is due at the close of the month next following the end of the applicable calendar quarter, except as authorized in sub. (2c) or as the department may assign a later due date pursuant to sub. (1m) or general department rules.

(b) The department may electronically provide a means whereby an employer that files its employment and wage reports electronically may determine the amount of contributions due for payment by the employer under s. 108.18 for each quarter. If an employer that is subject to a contribution requirement files its employment and wage reports under s. 108.205 (1) electronically, in the manner prescribed by the department ~~for purposes of this paragraph~~ under s. 108.205 (2), the department may require the employer to determine electronically the amount of contributions due for payment by the employer under s. 108.18 for each quarter. In such case, the employer is excused from filing contribution reports under par. (a). The employer shall pay the amount due for each quarter by the due date specified in par. (a).

Section 108.17 (2b) of the statutes is amended to read:

108.17 (2b) The department shall prescribe a form and methodology for filing contribution reports under sub. (2) electronically. Each employer ~~of 25 or more employees, as determined under s. 108.22 (1) (ae), that does not use an~~ and employer agent ~~to file its contribution reports under this section~~ shall file its contribution reports electronically in the manner and form prescribed by the department. ~~Each employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to a reporting requirement under this subsection, it shall continue to file its reports under this subsection unless that requirement is waived by the department~~ unless the employer demonstrates good cause, as specified in s. 108.022, for being unable to file contribution reports electronically.

Section 108.17 (2g) of the statutes is repealed.

Section 108.17 (7) of the statutes is repealed.

Section 108.185 of the statutes is created to read:

108.185 Payment of contributions and reimbursements; good cause. Each employer, employer agent, person liable under s. 108.22 (9), and private agency liable under s. 108.22 (10) shall pay all contributions, reimbursements, interest, penalties, assessments, and other amounts due under this chapter by means of electronic funds transfer or another electronic method as approved by the department unless the employer, employer agent, person, or private agency demonstrates good cause, as specified in s. 108.022, for being unable to pay such amounts electronically.

Section 108.205 (1m) of the statutes is repealed.

D25-01
Electronic Communication and Filing

Section 108.205 (2) of the statutes is amended to read:

108.205 (2) Each employer ~~of 25 or more employees, as determined under s. 108.22 (1) (ac), that does not use an employer agent to file its reports under this section~~ and employer agent shall file the quarterly report under sub. (1) electronically in the manner and form prescribed by the department. ~~An employer that becomes subject to an electronic reporting requirement under this subsection shall file its initial report under this subsection for the quarter during which the employer becomes subject to the reporting requirement. Once an employer becomes subject to the reporting requirement under this subsection, the employer shall continue to file its quarterly reports under this subsection unless that requirement is waived by the department~~ unless the employer demonstrates good cause, as specified in s. 108.022, for being unable to file reports electronically.

Section 108.22 (1) (ac) of the statutes is amended to read:

108.22 (1) (ac) In addition to any fee assessed under par. (a), the department may assess an employer or employer agent that is subject to the reporting requirement under s. 108.205 (2) and that fails to file its report in the manner and form prescribed under that subsection a penalty of $20 for each employee whose information is not reported in the that manner and form ~~prescribed under s. 108.205 (1m) (b) or (2)~~.

Section 108.22 (1) (ad) 1. of the statutes is amended to read:

108.22 (1) (ad) 1. An employer agent that is subject to the reporting requirements under s. 108.17 ~~(2g)~~ (2b) and that fails to file a contribution report in accordance with s. 108.17 ~~(2g)~~ (2b) may be assessed a penalty by the department in the amount of $25 for each employer whose report is not filed electronically in the manner and form prescribed by the department.

Section 108.22 (1) (af) of the statutes is amended to read:

108.22 (1) (af) In addition to the fee assessed under par. (a), the department may assess ~~an employer or employer agent~~ a person that is ~~subject to a requirement~~ required to make ~~contributions~~ a payment to the department by means of an electronic ~~funds transfer~~ method under s. ~~108.17 (7)~~ 108.185 and that ~~pays contributions~~ makes the payment by any method inconsistent with s. ~~108.17 (7)~~ 108.185 a penalty of the greater of $50 or an amount equal to one-half of ~~one~~ 1 percent of the total ~~contributions~~ amount paid by the ~~employer or employer agent~~ person for the quarter in which the violation occurs

3. Effects of Proposed Change

a. **Policy:** The proposed change will result in increased efficiencies and improved experiences for claimants and employers.

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

c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

The treatment of section 108.14 (2e) will take effect on the date specified in the notice published in the register. The other provisions will take effect on January 1, 2027.

D25-01
Electronic Communication and Filing

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Currently, with certain exceptions, each employer that has employees who are engaged in employment covered by the UI law must file quarterly contribution (tax) and employment and wage reports and make quarterly contribution payments to DWD. An employer of 25 or more employees or an employer agent that files reports on behalf of any employer must file its reports electronically. Current law also requires each employer that makes contributions for any 12-month period ending on June 30 equal to a total of at least $10,000 to make all contribution payments electronically in the following year. Finally, current law allows DWD to provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, upon request to and with prior approval by DWD, may be used for transmission or receipt of any document specified by DWD that is related to the administration of the UI law in lieu of any other means of submission or receipt.

This proposal makes use of these electronic methods mandatory in all cases unless the employer or other person demonstrates good cause for being unable to use the electronic method. This proposal specifies what constitutes good cause for purposes of these provisions. This proposal also makes various corresponding changes to penalty provisions that apply in the case of nonuse of these required electronic methods. This proposal further provides that DWD may permit the use of electronic records and electronic signatures for any document specified by DWD that is related to the administration of the UI law.

UI Trust Fund Impact:
This proposal is not expected to have an impact on the UI Trust Fund.

IT and Administrative Impact:
The Department has begun the process of modernizing its unemployment insurance information technology systems with the expectation that a new system will result in administrative efficiencies for the Department and better service for employers and claimants. This proposal will ensure the maximization of such efficiencies and service improvements.

If this proposal is implemented as a part of a new system, then the IT costs and administrative impacts will be attributed to that modernization effort.

UI Trust Fund Methodology:
There is not expected to be an impact on the UI Trust Fund. This proposal is expected to increase administrative efficiency.

IT and Administrative Impact Methodology:
Implementation is expected to be a part of a modernization effort.

D25-02
Worker Misclassification Penalties

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Worker Misclassification Penalties

1. Description of Proposed Change

Administrative and criminal penalties were created, as part of the 2015-2016 UIAC Agreed Bill, for employers who intentionally misclassify their workers as independent contractors. The current penalties only apply to construction employers and are:

1. $500 administrative penalty for each employee who is misclassified, but not to exceed $7,500 per incident.
2. $1,000 criminal fine for each employee who is misclassified, subject to a maximum fine of $25,000 for each violation, but only if the employer has previously been assessed a administrative penalty for misclassified workers.
3. $1,000 administrative penalty for each individual coerced to adopt independent contractor status, up to $10,000 per calendar year.

The administrative penalties are deposited into the Department's program integrity fund, which is used, in part, to fund the costs of staff who investigate employee classification.

The Joint Task Force on Payroll Fraud and Worker Misclassification recommended that the penalties for intentional worker misclassification be structured to deter repeat violations.[1] The Budget Bill (2025 AB 50 / 2025 SB 45) proposes to amend the administrative penalties statutes by having the penalties potentially apply to all employers. The Bill also eliminates the $7,500 and $10,000 caps on the administrative penalties and doubles the penalties for subsequent violations. The Bill amends the criminal penalties to potentially apply to any employer.

[1] Joint Task Force on Payroll Fraud and Worker Misclassification 2020 Report, p. 10.

2. Proposed Statutory Changes[2]

Section 108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.) and amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall, for each incident, be assessed a penalty by the department as follows:

1. For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of $500 for each employee who is misclassified~~, but not to exceed $7,500 per incident~~.

Section 108.221 (1) (a) 2. of the statutes is created to read:

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of $1,000 for each employee who is misclassified.

Section 108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who, through coercion, requires an individual to adopt the status of a nonemployee shall be assessed a penalty by the department as follows:

(a) For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of $1,000 for each individual so coerced~~, but not to exceed $10,000 per calendar year~~.

[2] Subject to revision to ensure cross-references are corrected.

Section 108.221 (2) (b) of the statutes is created to read:

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of $2,000 for each individual so coerced.

Section 108.24 (2m) of the statutes is amended to read:

Any employer ~~described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures~~ who, after having previously been assessed an administrative penalty by the department under s. 108.221 (1), knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall be fined $1,000 for each employee who is misclassified, subject to a maximum fine of $25,000 for each violation. The department may, regardless of whether an employer has been subject to any administrative assessment under s. 108.221 or any other penalty or assessment under this chapter, refer violations of this subsection for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

3. Effects of Proposed Change

a. **Policy:** The proposed change will permit the Department to assess administrative penalties against any employer that intentionally misclassifies workers as independent contractors and will increase the amount of the penalties for subsequent violations.

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

c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective for employees misclassified after the law change is enacted.

D25-02
Worker Misclassification Penalties

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is $500 for each employee who is misclassified, not to exceed $7,500 per incident. In addition, current law provides for criminal fines of up to $25,000 for employers who, after having previously been assessed such an administrative penalty, commit another violation. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an employee to adopt the status of a nonemployee; the penalty amount is $1,000 for each employee so coerced, but not to exceed $10,000 per calendar year. Penalties are deposited into the UI Program Integrity Fund.

The proposal does the following: 1) removes the $7,500 and $10,000 limitations on the administrative penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation; 2) removes the limitations on the types of employers to whom the prohibitions apply, making them applicable to any type of employer; and 3) specifies that DWD may make referrals for criminal prosecution for alleged criminal misclassification violations regardless of whether an employer has been subject to any other penalty or assessment under the UI law.

UI Trust Fund Impact:
This proposal is expected to have a positive but indeterminate impact on the UI Trust Fund.

IT and Administrative Impact:
The ongoing administrative impact to the UI program is indeterminate. There is no anticipated IT impact.

UI Trust Fund Methodology:
Because of the incentive this proposal creates for employers to correctly register as an employer and correctly list employees to avoid penalties, it is expected to have a positive but indeterminate impact on the UI Trust Fund.

IT and Administrative Impact Methodology:
The ongoing administrative impact to the UI program is indeterminate. There is no anticipated IT impact.

D25-03
Repeal Waiting Week

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Waiting Week

1. Description of Proposed Change

The 2011 Budget, 2011 Wis. Act 32, established a waiting week for unemployment insurance benefits, effective January 2012, which had not existed since 1977. During the pandemic, the waiting week was suspended because the federal government provided full funding of benefits for the first week of unemployment.

For every new benefit year, no benefits are payable for the first week a claimant would otherwise be eligible for benefits. The waiting week may be a week in which full or partial benefits are payable. The waiting week does not reduce a claimant's maximum benefit amount. A waiting period delays payments to qualified UI claimants that would otherwise spend the funds in Wisconsin supporting our state's economy. USDOL's Comparison of State Unemployment Laws 2023 reports that eight states do not have a waiting week.

Several legislative attempts have been made to eliminate the one-week waiting period including 2013 Assembly Bill 374, 2015 Assembly Bill 318, and Governor's 2021-23 Executive Budget. The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal the waiting week.

Like the 2025 Budget Bill, this proposal would repeal the one-week waiting week for unemployment insurance benefits.

2. Proposed Statutory Changes[1]

Section 108.02 (26m) of the statutes is repealed.

~~Waiting Period. "Waiting period" means any period of time under s. 108.04 (3) for which no benefits are payable to a claimant as a condition precedent to receipt of benefits.~~

Section 108.04 (3) of the statutes is repealed.

~~(a) Subject to par. (b), the first week of a claimant's benefit year for which the claimant has timely applied and is otherwise eligible for regular benefits under this chapter is the claimant's waiting period for that benefit year.~~

~~(b) Paragraph (a) does not apply with respect to benefit years that begin after March 12, 2020, and before March 14, 2021. The department shall seek the maximum amount of federal reimbursement for benefits that are, during the time period specified in this paragraph, payable for the first week of a claimant's benefit year as a result of the application of this paragraph.~~

Section 108.04 (11) (bm) of the statutes is amended to read:

The department shall apply any ineligibility under par. (be) against benefits and weeks of eligibility for which the claimant would otherwise be eligible after the week of concealment and within 6 years after the date of an initial determination issued under s. 108.09 finding that a concealment occurred. ~~The claimant shall not receive waiting period credit under s. 108.04 (3) for the period of ineligibility applied under par. (be).~~ If no benefit rate applies to the week for which the claim is made, the department shall use the claimant's benefit rate for the claimant's next benefit year beginning after the week of concealment to determine the amount of the benefit reduction.

[1] Additional cross-references may be amended.

3. Effects of Proposed Change

a. Policy. The proposed change would result in increased payment of unemployment insurance benefits to claimants who do not exhaust their benefit duration limit.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would apply to benefit years beginning on the effective date of the

D25-03
Repeal Waiting Week

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Currently, a claimant does not receive weekly UI benefits until one week after becoming eligible, except for periods during which the waiting week is suspended. The one-week waiting period does not affect the maximum number of weeks a claimant is eligible for benefits.

This proposal repeals the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with their first week of eligibility.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by approximately $12 million annually.

IT and Administrative Impact:
There is not expected to be any measurable IT or administrative impact.

UI Trust Fund Methodology:
The elimination of the waiting week is expected to increase UI benefits by approximately 5%. For 2024, this would lead to an additional $18 million in benefits charged to the UI Trust Fund and an increase of $6 million in UI tax contributions. This is estimated to result in an expected reduction in the UI Trust Fund of $12 million annually.

IT and Administrative Impact Methodology:
Changes made during the COVID-19 pandemic allow the waiting period to be paused without any IT changes.

D25-04
Increase Maximum Weekly Benefit Rate

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Increase Maximum Weekly Benefit Rate

1. Description of Proposed Change

2013 Wis. Act 36 increased the maximum weekly benefit rate for unemployment insurance benefits from $363 to $370 starting January 2014. The maximum weekly benefit rate has not increased since then.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would increase the maximum weekly benefit rate from $370 to $497 per week for 2026. In January 2027 and each year thereafter, the maximum weekly benefit rate would be increased based on the consumer price index. If the consumer price index does not increase, then the maximum weekly benefit rate would remain the same.

Unemployment benefits, funded by employer contributions, provide temporary economic assistance to Wisconsin's eligible workers during times of unemployment. By contributing to the UI system, Wisconsin employers protect the pool of highly skilled workers and reduce the likelihood that workers affected by a layoff or temporary downturn will take their skills and talents to other states. Wisconsin maximum weekly benefit rate at $370 is significantly lower than neighboring states: Minnesota maximum weekly benefit rate $914; Illinois, $593; and Iowa, $602. Michigan passed legislation to increase its maximum weekly benefit rate to $614 over the next three years and then increase the rate by the Consumer Price Index annually thereafter.

This proposal mirrors the 2025 Budget Bill's proposal pertaining to maximum weekly benefit.

D25-04
Increase Maximum Weekly Benefit Rate

2. Proposed Statutory Changes[1]

Section 108.05 (1) (cm) of the statutes is created to read:

108.05 (1) (cm) For purposes of par. (r), the department shall set the maximum weekly benefit amount as follows:

1. For benefits paid for a week of total unemployment that commences on or after January 5, 2014, but before January 4, 2026, $370.

2. For benefits paid for a week of total unemployment that commences on or after January 4, 2026, but before January 3, 2027, $497

3. For benefits paid for a week of total unemployment that commences on or after January 3, 2027, the department shall set the maximum weekly benefit amount as provided under sub. (2).

Section 108.05 (1) (r) of the statutes is renumbered 108.05 (1) (r) (intro.) and amended to read:

(intro.) Except as provided in s. 108.062 (6) (a), each eligible employee shall be paid benefits for each week of total unemployment ~~that commences on or after January 5, 2014,~~ at ~~the~~ a weekly benefit rate ~~specified in this paragraph. Unless sub. (1m) applies, the weekly benefit rate shall~~ equal to 4 percent of the employee's base period wages that were paid during that quarter of the employee's base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar, except ~~that, if that amount~~ as provided under sub. (1m) and except as follows:

1. If the employee's weekly benefit rate calculated under this paragraph is less than $54, no benefits are payable to the employee ~~and, if that amount~~.

[1] Subject to revision to ensure cross-references are corrected.

2. If the employee's weekly benefit rate is more than ~~$370~~ the maximum weekly benefit amount specified in par. (cm), the employee's weekly benefit rate shall be ~~$370 and except that, if~~ the maximum weekly benefit amount specified in par. (cm).

3. If the employee's benefits are exhausted during any week under s. 108.06 (1), the employee shall be paid the remaining amount of benefits payable to the employee under s. 108.06 (1).

(s) The department shall publish on its Internet site a weekly benefit rate schedule of quarterly wages and the corresponding weekly benefit rates as calculated in accordance with this ~~paragraph~~ subsection.

108.05 (2) of the statutes is created to read:

INDEXING. (a) For benefits paid or payable for a week that commences on or after January 3, 2027, the department shall set the maximum weekly benefit amount under sub. (1) (cm) 3. and the wage limitation under sub. (3) (dm) 2. c. by doing the following:

1. Except as provided in subd. 2., calculating the percentage difference between the consumer price index for the 12-month period ending on July 31 of the prior year and the consumer price index for the 12-month period ending on July 31 of the year before the prior year, adjusting the prior year's amount or limitation by that percentage difference, and rounding that result to the nearest whole dollar.

2. If the consumer price index for the 12-month period ending on July 31 of the prior year has not increased over the consumer price index for the 12-month period ending on July 31 of the year before the prior year, setting the amount or limitation at the same amount or limitation that was in effect in the previous year.

(b) An adjustment under this subsection of the maximum weekly benefit amount under sub. (1) (cm) 3. and the wage limitation under sub. (3) (dm) 2. c. shall take effect on the 1st Sunday in January of each calendar year.

3. Effects of Proposed Change

a. Policy. The proposed change would increase the maximum weekly benefit rate to reflect increases in the average weekly wage.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective for weeks of unemployment beginning January 4, 2026.

D25-04
Increase Maximum Weekly Benefit Rate

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, a person who qualifies for UI receives a weekly benefit rate equal to a percentage of that person's past earnings, but the maximum weekly benefit rate is $370. The proposal changes the maximum weekly benefit rate in the following ways:

1. For benefits paid for weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the maximum weekly benefit rate is $497.
2. For benefits paid for weeks of unemployment beginning on or after January 3, 2027, the maximum weekly benefit rate is increased based upon the change in the consumer price index; it is then increased on the same basis annually thereafter.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $87.2 million annually.

IT and Administrative Impact:
This proposal is expected to have a one-time cost of $130,560 for IT changes to implement the increase in the weekly benefit rate and allow for the annual increase following the consumer price index. There would be an administrative cost of $39,168 for UI staff to implement the program. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
An increase in the maximum weekly benefit rate to $497 per week would increase UI benefit payments by approximately $131 million per year based upon recalculating 2023 benefit years at the $497 maximum weekly benefit rate and 12.2 weeks of paid duration. Of the $131 million, $8.5 million would be charged to reimbursable employers. The remaining $122.5 million would be charged to taxable employer accounts. In time, this would lead to an increase in UI taxes of $41 million per year. The final calculation would reduce the UI Trust Fund by approximately $81.5 million per year.

Using the recalculated benefit years and estimates for inflation for the price level in 2027, an increase of UI benefit payments by approximately $9.1 million annually would occur. Of this amount, $0.6 million would be charged to reimbursable employers with $8.5 million charged to taxable employer accounts. UI taxes would increase by approximately $2.8 million annually leaving a reduction to the UI Trust Fund of approximately $5.7 million annually.

The total impact would then be a $87.2 million reduction in the UI Trust Fund annually.

IT and Administrative Impact Methodology:
DWD estimates a cost of $130,560 to implement the IT changes to the UI benefit system if implemented while the benefits system is on the mainframe before modernization, as well as an administrative cost to implement such programs of $39,168.

D25-05
Increase and Index Maximum Wage Cap for the Partial Benefit Formula

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Increase and Index Maximum Wage Cap for the Partial Benefit Formula

1. Description of Proposed Change

The 2011 Unemployment Insurance Advisory Council agreed bill, 2011 Wis. Act 198, capped the amount of wages that a claimant may earn and still receive partial benefits at $500. Before Act 198, there was no wage cap in the statute, but a claimant would not receive unemployment benefits if they earned more wages than the partial benefit formula allowed. Section 108.05(3)(dm) currently provides that claimants are ineligible for benefits if they receive from one or more employers:

- Wages earned for work performed in that week of more than $500, or
- Holiday, vacation, termination or sick pay which, alone or combined with wages earned for work performed in that week, equals more than $500.

Claimants are also ineligible for partial benefits if they work 32 hours or more in a week.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would increase the $500 weekly maximum earned income disqualification to $672 for 2026. In January 2027 and each year thereafter, the cap would be increased based on the consumer price index. This proposal mirrors the Budget Bill provision.

2. Proposed Statutory Changes[1]

Section 108.05 (3) (dm) of the statutes is renumbered 108.05 (3) (dm) 1. and amended to read:

Except when otherwise authorized in an approved work-share program under s. 108.062, a claimant is ineligible to receive any benefits for a week if the claimant receives or will receive from one or more employers wages earned for work performed in that week, amounts treated as wages under s. 108.04 (1) (bm) for that week, sick pay, holiday pay, vacation pay, termination pay, bonus pay, back pay, or payments treated as wages under s. 108.04 (12) (e), or any combination thereof, ~~totaling~~ totaling more than ~~$500~~ the amount determined under subd. 2.

Section 108.05 (3) (dm) 2. of the statutes is created to read:

The department shall set the wage limitation under subd. 1. as follows:

a. For a week of unemployment that commences before January 4, 2026, $500.

b. For a week of unemployment that commences on or after January 4, 2026, but before January 3, 2027, $672.

c. For a week of unemployment that commences on or after January 3, 2027, the department shall set the wage limitation as provided under sub. (2).

[The indexing for future years would be calculated based on the consumer price index method proposed for the maximum weekly benefit rate increase.]

3. Effects of Proposed Change

a. Policy. The proposed change would result in a significant increase to the maximum wage cap for the partial benefit formula for 2026 followed by slight increases to the maximum wage cap for the partial benefit formula each year after 2026.

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

[1] Additional cross-references may be amended.

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective for weeks of unemployment beginning January 4, 2026.

D25-05
Increase and Index Maximum Wage Cap for the Partial Benefit Formula

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, a person who qualifies for UI is ineligible to receive any UI benefits for a week if the person receives or will receive wages or certain other earnings totaling more than $500 (wage cap) or if they work 32 hours or more per week. The proposal changes the wage cap in the following ways:

1. For weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the wage cap is increased to $672.
2. For weeks of unemployment beginning on or after January 3, 2027, the wage cap is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

UI Trust Fund Impact:
Assuming the current $370 maximum weekly benefit rate, this proposal is expected to reduce the UI Trust Fund by $240,000 annually.

Assuming a $497 maximum weekly benefit rate, this proposal is expected to reduce the UI Trust Fund by $1.8 million annually.

IT and Administrative Impact:
This proposal is estimated to have a one-time IT cost of $52,800. This proposal has an estimated one-time administrative cost of $15,840. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
Previously it was estimated that removing the weekly wage cap while leaving the 32-hour limit in place would have no impact on the UI Trust Fund since the 32-hour limit was still constraining claimants from receiving payments. However, with recent increases in wages, this is no longer the case.

It is important to note that changing the statutory weekly wage cap does not change the maximum earnings allowable under the partial wage formula. If earnings reduce a payment below the minimum $5 per week, no payment is made for that week. Assuming there is no earnings cap, for a $370 maximum weekly benefit rate, a claimant may earn up to $574.77 and still remain eligible for a $5 payment if they were working fewer than 32 hours. Analyzing all weekly claims that reported wages and hours worked in 2024 and assuming all weeks qualified for the maximum weekly benefit rate, there were 11,574 weekly claims that would receive a payment at the higher weekly wage cap after considering the 32-hour limit. These weeks would receive, on average, a partial weekly benefit of $33, leading to an increase in UI benefit payments of approximately $385,000 annually. Of this amount, $25,000 would be expected to be paid by reimbursable employers. UI tax contributions would be expected to increase by $120,000 annually. This results in an expected reduction in the UI Trust Fund of $240,000 annually.

Assuming a $497 maximum weekly benefit rate, the proposed weekly wage cap is determinative, since at $497, the partial wage formula maximum earnings amount is calculated to be $764.32 (higher than the proposed wage cap of $672). The higher maximum weekly benefit rate will also increase partial weekly payment amounts made. Analyzing 2024 claims that reported weekly earnings, considering the 32-hour limit, and assuming all claims qualify for the proposed $497 maximum weekly benefit rate, there would be 21,697 weekly claims that would be payable. On average, such claims would have a weekly benefit amount of $133 leading to an increase in UI benefits of $2.9 million annually. Of this amount, $200,000 would be expected to be paid by reimbursable employers. UI tax contributions would be expected to increase by $900,000 annually. This results in an expected reduction in the UI Trust Fund of $1.8 million annually.

IT and Administrative Impact Methodology:
DWD estimates a cost of $52,800 including changes to the claimant portal, payment processing, and the UI benefit system in general if implemented before those systems are modernized, as well as an administrative cost of $15,840.

D25-06
Amend Social Security Disability Insurance Disqualification

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Amend Social Security Disability Insurance Disqualification

1. Description of Proposed Change

Currently, recipients of federal Social Security Disability Insurance ("SSDI") payments are ineligible for unemployment insurance benefits under s. 108.04(12)(f). Recipients of pension payments are eligible for unemployment insurance benefits, but the unemployment benefit is reduced by the pension payment (s. 108.05(7)). Allowing SSDI recipients to be eligible for UI benefits would treat workers with disabilities similar to recipients of pension payments.

Further, in *Bemke, et al v. Pechacek*, W.D. Wis. Case No. Case 3:21-cv-00560-wmc, a federal district court recently found that the prohibition on SSDI recipients receiving UI benefits, while not motivated by discriminatory animus, has a disparate impact on disabled persons under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. While that litigation is not final, based on its decision on motions for summary judgment, it appears likely that the court will invalidate this provision of Wisconsin's UI law.

The Budget Bill (2025 AB 50 / 2025 SB 45) proposes to amend the prohibition on receipt of UI for SSDI recipients by reducing the amount of weekly UI benefits by the proportionate amount of the claimant's SSDI payment.

Under this proposal, a claimant who receives $1,000 monthly in SSDI and would otherwise be eligible for $300 weekly in UI would receive a weekly UI payment of $69.[1]

[1] This calculation is preliminary and subject to revision.

2. Proposed Statutory Changes

Section 108.04 (2) (h) of the statutes is amended to read:

A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance payments, as defined in ~~sub. (12) (f) 2m~~ s. 108.05 (7m) (b). If the claimant is receiving social security disability insurance payments, the claimant shall, in the manner prescribed by the department, report to the department the amount of the social security disability insurance payments.

Section 108.04 (12) (f) 1m. and 2m. of the statutes are renumbered 108.05 (7m) (a) and (b) and amended to read:

(a) The intent of the legislature in enacting this ~~paragraph~~ subsection is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

(b) In this ~~paragraph~~ subsection, "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

Section 108.04 (12) (f) 3. of the statutes is repealed.

Section 108.04 (12) (f) 4. of the statutes is renumbered 108.05 (7m) (e).

Section 108.05 (7m) (title), (c) and (d) of the statutes are created to read:

(title) SOCIAL SECURITY DISABILITY INSURANCE PAYMENTS.

(c) If a monthly social security disability insurance payment is issued to a claimant, the department shall reduce benefits otherwise payable to the claimant for a given week in accordance with par. (d). This subsection does not apply to a lump sum social security disability insurance payment in the nature of a retroactive payment or back pay.

(d) The department shall allocate a monthly social security disability insurance payment by allocating to each week the fraction of the payment attributable to that week.

Section 108.05 (9) of the statutes is amended to read:

(9) ROUNDING OF BENEFIT AMOUNTS. Notwithstanding sub. (1), benefits payable for a week of unemployment as a result of applying sub. (1m), (3) ~~or~~, (7), or (7m) or s. 108.04 (11) or (12), 108.06 (1), 108.13 (4) or (5) or 108.135 shall be rounded down to the next lowest dollar.

Section 108.05 (10) (intro.) of the statutes is amended to read:

(10) DEDUCTIONS FROM BENEFIT PAYMENTS. (intro.) After calculating the benefit payment due to be paid for a week under subs. (1) to ~~(7)~~ (7m), the department shall make deductions from that payment to the extent that the payment is sufficient to make the following payments in the following order:

3. Effects of Proposed Change

a. **Policy:** Under this proposed change, recipients of SSDI may receive UI benefits, but the benefits would be reduced due to the receipt of SSDI benefits.

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

c. **Fiscal:** A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would take effect on the first Sunday of the 7th month beginning after publication.

D25-06
Amend Social Security Disability Insurance Disqualification

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, for each week in any month that a claimant is issued a benefit under the federal Social Security Disability Insurance program (SSDI payment), that claimant is ineligible for UI benefits. The proposal eliminates that prohibition and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. This proposal requires DWD to allocate a monthly SSDI payment by allocating to each week the fraction of the payment attributable to that week.

UI Trust Fund Impact:
This proposal is expected to have a small negative impact on the UI Trust Fund, but the actual magnitude is indeterminate.

IT and Administrative Impact:
This proposal would have an estimated one-time IT impact of $110,400 and a one-time administrative impact of $33,120. There are no expected ongoing administrative costs to the UI program above the normal administration of benefits. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
In 2024, the average SSDI payment in Wisconsin was $1,500 per month. The average weekly SSDI payment for UI purposes is calculated at $346.20 per week. This weekly amount will in many cases fully reduce the UI benefit a SSDI recipient can receive.

There are strict federal limits on income a SSDI claimant can earn from employment (labeled Substantial Gainful Activity) while maintaining benefits. For disabled SSDI recipients, the maximum amount is $1,620 per month and for blind SSDI recipients, it is $2,700 per month.

If a disabled SSDI recipient earns the maximum amount of wages allowed by federal law each month, they would qualify for a $259 weekly benefit rate. That benefit rate would likely lead to no UI weekly benefits payable, given an average $1,500 monthly SSDI payment and a weekly reduction of $346.20 per week.

If a blind SSDI recipient earns the maximum allowed each month, they would qualify for a $370 weekly benefit rate under the current maximum. If the SSDI recipient receives the average federal benefit of $1,500, then they may qualify for a $23 weekly UI benefit amount.

SSDI offers a trial work period for SSDI recipients who wish to return to the workforce. This allows recipients to avoid any limits on earnings but will result in the person no longer receiving SSDI benefits after a period of time.

In summary, most SSDI claimants will not be able to receive UI benefits. While some may be able to receive UI benefits, it is expected that the weekly UI payment would be small. Given that many claimants would not qualify for any UI payment on a weekly basis and that those who do qualify

would receive small payments, this proposal is expected to cause a small reduction in the UI Trust Fund of indeterminate size.

IT and Administrative Impact Methodology:
DWD estimates a cost of $110,400 to update information in the portal application and implement the payment process and calculations in the UI benefit mainframe system if implemented before modernization, plus a one-time administrative cost of $33,120.

D25-07
Repeal UI Drug Testing

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

AMENDED ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal UI Drug Testing

1. Description of Proposed Change

The 2015 Budget, 2015 Wis. Act 55,[1] created Wis. Stat. §§ 108.04(8)(b) and 108.133, requiring the Department, by administrative rule, to create a voluntary program for employers to report the results of a failed or refused pre-employment drug test to DWD, and a program for DWD to test certain UI applicants for unlawful use of controlled substances if their only suitable work is in an occupation that regularly conduct drug testing, as defined by the U.S. Department of Labor.[2]

Under the pre-employment drug testing program, if a reported individual is receiving UI benefits, the individual is presumed to have failed, without good cause, to accept suitable work and is ineligible for benefits.[3] If the drug test was failed, the individual may maintain eligibility for UI benefits if the individual enrolls in and complies with a substance abuse treatment program, completes a job skills assessment, and otherwise meets all program requirements.

Similarly, under the occupational drug testing program, an individual who is deemed ineligible for benefits could maintain eligibility by participating in a job skills assessment and substance abuse treatment program.

Under this law, DWD would pay the reasonable cost of drug treatment, however, the Legislature appropriated only $250,000 annually for administration of the program, testing, and

[1] The provisions in the Budget Bill for pre-employment and occupational drug testing were not presented to the UIAC for approval and were not included in the agreed bill.
[2] See 20 CFR § 620.3.
[3] However, the provisions of Wis. Stat. § 108.04(9) still apply.

treatment.

No claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules and denied benefits because of the employers' reports of a failed drug test as a condition of an offer of employment. Because no claimants have been determined to be ineligible for UI benefits under the pre-employment drug testing statutes and rules, no claimants have maintained benefit eligibility by enrolling in and complying with a substance abuse treatment program and completing a job skills assessment.

The Legislature appropriates $250,000 of GPR funding annually ($500,000 per biennium) to DWD to fund and administer UI drug testing and treatment programs for both pre-employment and occupational drug testing programs. No GPR funds have been expended for substance abuse treatment programs as a result of pre-employment drug testing reports filed by employers. Unused appropriated GPR funds are transferred to the Program Integrity Fund at the end of the biennium.[4]

The Governor's 21-23 Executive Budget Bill proposed to repeal the UI pre-employment and UI occupational drug testing statutes and to provide that the GPR be used for administration of the UI program.

Similarly, the 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal the pre-employment and occupational drug testing statutes. Like the 2025 Budget Bill, this proposal would repeal the pre-employment and occupational drug testing statutes. Employees who are terminated for drug use may be found ineligible for benefits under the drug testing misconduct statute, section 108.04(5)(a), general misconduct, or substantial fault.

[4] 2017 Wis. Act 157, effective April 1, 2018.

D25-07
Repeal UI Drug Testing

2. Proposed Statutory Changes[5]

Section 108.04(8)(b) of the statutes is repealed.

Section 108.133 of the statutes is repealed.

Wis. Admin. Code Chapter DWD 131, "Pre-Employment Drug Testing, Substance Abuse Treatment Program and Job Skills Assessment," is repealed.

3. Effects of Proposed Change

Fiscal: The proposed change will save GPR funding of $500,000 per biennium. The proposal would not affect benefit payments or UI tax revenue. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would first apply to initial claims filed on or after the effective date.

[5] Additional cross-references may also need to be amended.

D25-07
Repeal UI Drug Testing

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Current state law requires DWD to establish a program to test certain claimants who apply for UI benefits for the presence of controlled substances in a manner that is consistent with federal law. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. The bill eliminates the requirement to establish the drug testing program.

Also under current law, an employer may voluntarily submit to DWD the results of a pre-employment test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an individual declined to submit to the test. If DWD then verifies that submission, the employee may be ineligible for UI benefits until he or she requalifies. However, a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. The proposal eliminates the pre-employment drug testing provisions.

UI Trust Fund Impact:
There is not expected to be any impact to the UI Trust Fund.

IT and Administrative Impact:
There is not expected to be any measurable IT or administrative impact.

UI Trust Fund Methodology:
The occupational drug testing and treatment program has not been established so its elimination would not impact UI benefit payments or tax contributions.

The pre-employment drug testing law has not resulted in any determinations denying benefits since 2016, so the elimination of pre-employment drug testing is not expected to impact UI benefit payments or tax contributions.

IT and Administrative Impact Methodology:
There are not expected to be any changes made outside normal business operations.

D25-08
Misconduct

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Misconduct

1. Description of Proposed Change

Current law provides that an employee's termination for attendance violations may disqualify them from receiving unemployment insurance benefits if misconduct or substantial fault are found. Attendance cases are reviewed under a three-step approach. First, the employee's conduct is analyzed under section 108.04(5)(e), which provides that the discharge is for misconduct if the following criteria are met:

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

The Wisconsin Supreme Court, in the *Beres* case, held that section 108.04(5)(e) "allows an employer to adopt its own absenteeism policy that differs from the policy set forth in § 108.04(5)(e), and that termination for the violation of the employer's absenteeism policy will result in disqualification from receiving unemployment compensation benefits even if the employer's policy is more restrictive than the absenteeism policy set forth in the statute."[1]

A recent published Wisconsin Court of Appeals decision, *Bevco Precision Mfg. Co. v. Wisconsin Lab. & Indus. Rev. Comm'n,* 2024 WI App 54, interpreted the *Beres* decision to mean "that violation of an employer's attendance policy of which an employee is aware (as evidenced

[1] *Wisconsin Dep't of Workforce Dev. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 2018 WI 77, ¶ 5, 382 Wis. 2d 611, 616, 914 N.W.2d 625, 628.

by a signed acknowledgement of receipt) constitutes 'misconduct' for the purpose of disqualification from unemployment benefits, full stop."[2] This new decision means that the notice and reasons for absenteeism are not to be analyzed under the common law. Under *Bevco*, misconduct may now be found when an employer has a "no fault" attendance policy that results in termination regardless of the reasons for the absences and regardless of whether the employee gives notice of the absences.

If the employee's attendance violations do not fall within the parameters of section 108.04(5)(e), then the employee's conduct is analyzed under "general" misconduct, the standard in the current version of section 108.04(5)(introThis definition of misconduct from the Supreme Court's decision in the *Boynton Cab* case, limits "misconduct" to "conduct evincing such wilful or wanton disregard of an employer's interests . . . .".[3]

The Federal Unemployment Tax Act permits states to totally reduce (deny) unemployment benefits to a worker only for "discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income."[4] The US Department of Labor interprets federal law to mean that states may only find misconduct where the worker's conduct is "an intentional or controllable act or failure to take action, which shows a deliberate disregard of the employer's interests."[5] "Section 3304(a)(10) protects claimants' right to compensation by preventing states from enacting overly-severe denial provisions except

[2] *Bevco Precision Mfg. Co. v. Wisconsin Lab. & Indus. Rev. Comm'n,* 2024 WI App 54, ¶ 18, 413 Wis. 2d 668, 680, 12 N.W.3d 552, 558.
[3] *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 296 N.W. 636, 640 (1941).
[4] 26 USC § 3304(a)(10).
[5] *Benefit Denials*, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, https://oui.doleta.gov/unemploy/content/denialinformation.asp.

for serious offenses."[6] (See also the US Department of Labor's Employment and Training Handbook).[7]

This proposal, which adopts the same proposal in the 2025 Budget Bill, reinstates the general misconduct standard in conformity with federal standards. It provides that when determining misconduct for attendance violations or excessive tardiness, if the employee's notice and reason for an attendance violation are valid and if their conduct does not violate the current general misconduct standard, then misconduct is not found.

Additionally, the 2025 Budget Bill also proposes to legalize marijuana possession. Section 1717 of the Budget Bill provides that misconduct and substantial fault do "not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35." Under current law, an employment termination may also be found to be misconduct if it is the result of a "violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee had knowledge of the" policy and admitted to using the alcohol or drugs or tested positive for the use of alcohol or drugs. (Wis. Stat. § 108.04(5)(a)). If the use is lawful and under nonworking hours, this proposal provides that it is not misconduct or substantial fault, except as provided under s. 111.35.

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[6] Total Reduction/Cancellation of Wage Credits, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, Benefit Standards of Conformity Requirements for State UC Laws, available at https://oui.doleta.gov/unemploy/pdf/uilaws_wagecredits.pdf.

[7] The Legal Authority of Unemployment Insurance Program Letters and Similar Directives, UNITED STATES DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, Unemployment Insurance Program Letter No. 01-96 (Oct. 5, 1995) available at https://wdr.doleta.gov/directives/attach/UIPL1-96.cfm (explaining the legal effect of US-DOL directives, including that such directives "state or clarify the Department's position, particularly with respect to the Department's interpretation of the minimum Federal requirements for conformity or compliance, thereby assuring greater uniformity of application of such requirements by the States.").

2. Proposed Statutory Changes

Section 108.04 (5) (intro.) of the statutes is renumbered 108.04 (5) (cm) and amended to read: (cm) An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This ~~subsection~~ paragraph 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~~ paragraph 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~~ paragraph.

(am) For purposes of this subsection, "misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest

culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer.

(bm) In addition to the conduct described in par. (am), "misconduct" includes all of the following:

Section 108.04 (5) (a) to (g) of the statutes are renumbered 108.04 (5) (bm) 1. to 7., and 108.04 (5) (bm) 5. and 7., as renumbered, are amended to read:

108.04 (5) (bm) 5. Absenteeism by an employee on more than 2 occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature~~, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee,~~ if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism ~~or tardiness~~. For purposes of this subdivision, an employee's notice and reason for an occasion of absenteeism or tardiness shall be analyzed under the standard specified in par. (am).

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

Section 108.04 (5m) of the statutes is created to read:

DISCHARGE FOR USE OF MARIJUANA. (a) Notwithstanding sub. (5), "misconduct," for purposes of sub. (5), does not include the employee's use of marijuana off the employer's

premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

(b) Notwithstanding sub. (5g), "substantial fault," for purposes of sub. (5g), does not include the employee's use of marijuana off the employer's premises during nonworking hours or a violation of the employer's policy concerning such use, unless termination of the employee because of that use is permitted under s. 111.35.

3. Effects of Proposed Change

a. Policy: The proposed change will clarify the circumstances where attendance violations and marijuana use result in a finding of misconduct or substantial fault.

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

c. Fiscal: A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal will apply to determinations issued on or after the effective date of the agreed-upon bill.

D25-08
Misconduct

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, if a claimant for UI benefits is terminated by their employer for misconduct connected with their work, the claimant is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria. And the claimant's wages paid by the employer that terminates the claimant for misconduct are excluded for purposes of calculating benefit entitlement. Current law defines "misconduct" using a general, common law standard derived from *Boynton Cab Co. v. Neubeck*, 237 Wis. 249 (1941), and enumerates several specific types of conduct that also constitute misconduct. Under one of these specific provisions, misconduct includes: 1) absenteeism on more than two occasions within the 120-day period before the date of the claimant's termination, unless otherwise specified by his or her employer in an employment manual of which the claimant has acknowledged receipt with his or her signature, or 2) excessive tardiness by a claimant in violation of a policy of the employer that has been communicated to the claimant. In *Department of Workforce Development v. Labor and Industry Review Commission (Beres)*, 2018 WI 77, the Wisconsin Supreme Court held that an employer could, under the language described above, institute an attendance policy more restrictive than two occasions within the 120-day period.

Current law also provides that an absence or tardiness occasion counts as misconduct only if the claimant did not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness. In *Bevco Precision Manufacturing v. Labor and Industry Review Commission*, 2024 WI App. 54, the Wisconsin Court of Appeals held that under *Beres*, this qualifying language did not apply if an employer had adopted its own standard on absenteeism and tardiness, as described above.

The proposal does all of the following:

1. Eliminates the language referencing "excessive tardiness."
2. Reverses the holding in *Bevco* by providing that a claimant's notice and reason for an occasion of absenteeism or tardiness are to be analyzed under the common law misconduct standard. Under the proposal, therefore, an employer may not establish its own policy for determining the reasonableness of absenteeism or tardiness. The proposal does not, however, affect the general ability of an employer to institute a standard for absenteeism and tardiness more restrictive than two occasions within the 120-day period before termination.
3. Clarifies, in another provision defining misconduct, that "tribal government" has the meaning given under state and federal law for what is considered an Indian tribe.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $2.2 million annually.

IT and Administrative Impact:
There is not expected to be any measurable IT or administrative impact.

UI Trust Fund Methodology:
Part 1 would remove excessive tardiness from being specifically investigated under the existing misconduct attendance provisions, but discharges due to tardiness would still be investigated under the standard misconduct provisions. It is likely that all or nearly all current misconduct findings for excessive tardiness would be found to be misconduct under the standard misconduct provisions.

Part 2 involves decisions UI has been making under *Bevco* since October 2, 2024. From that date through the end of 2024, there were 237 decisions denying benefits under the provisions specified in *Bevco*. Projecting out over the entire year, it is estimated that 846 decisions denying benefits would be issued each year. Using the 2024 average weekly benefit amount of $347 and the average duration of 12.2 weeks in 2024, the expected amount of additional benefit payments is $3.6 million annually. Considering an estimated $230,000 of reimbursable benefit payments and $1.1 million in additional tax revenue results in a reduction in the UI Trust Fund by $2.2 million annually.

Part 3 is a technical correction that is not expected to impact benefits paid or UI tax contributions.

IT and Administrative Impact Methodology:
This proposal would include only minor changes to documents to update cited statutes. This work would be included under the normal review of documentation and there would be no additional costs.

D25-09
Repeal Substantial Fault

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Substantial Fault

1. Description of Proposed Change

Under current law, a discharged employee is ineligible for unemployment insurance benefits if the discharge is for misconduct or substantial fault by the employee connected with their employment. In either case, the employee is ineligible for unemployment benefits until seven 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.

For misconduct discharges (but not for substantial fault), the wages paid by an employer which terminates the employee for misconduct are excluded from the employee's base period wages for purposes of benefit entitlement. This is known as cancellation of wage credits.

The 2013 Budget, 2013 Wis. Act 20, repealed a disqualification for attendance failures in section 108.04(5g) and replaced it with the disqualification for substantial fault:

> (a) An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination 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 benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:
>
> 1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.

2. One or more inadvertent errors made by the employee.

3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

Act 20 also created a two-tiered approach for deciding certain absentee and tardiness issues. Under current law, absenteeism and tardiness cases are analyzed first under s. 108.04(5)(e), then under general misconduct (s. 108.04(5)(intro)). If disqualification does not result under s. 108.04(5)(e) or general misconduct, the next step is to analyze the reasons for discharge under substantial fault.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal substantial fault.

Like the 2025 Budget Bill, this proposal would repeal substantial fault. The substantial fault statute has been the subject of litigation to the courts, including the Supreme Court. Repealing substantial fault would result in more predictability for claimants and employers. The Department is unaware of any other state having an unemployment insurance benefit disqualification for substantial fault, but North Carolina previously had a substantial fault disqualification.

2. Proposed Statutory Changes[1]

Section 108.04(5g) of the statutes is repealed.

3. Effects of Proposed Change

a. Policy. The proposed change would result in payment of unemployment insurance benefits to claimants who would currently be denied on substantial fault grounds. The proposed change would result in more predictability for claimants and employers. The proposed change could result in less litigation on discharge issues.

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

[1] Cross-references to the substantial fault statute would also be repealed.

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would apply to determinations issued on the first Sunday after the effective date of the repealed statute.

D25-09
Repeal Substantial Fault

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, a claimant for UI benefits whose work is terminated by his or her employer for substantial fault by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria. With certain exceptions, current law defines "substantial fault" to include those acts or omissions of a claimant over which the claimant exercised reasonable control and that violate reasonable requirements of the claimant's employer. The proposal eliminates this provision on substantial fault.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $3.8 million annually.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $19,200. This proposal is expected to have a one-time administrative cost of $5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
Substantial fault is the last step when considering a denial when someone is discharged:
(1) check for statutory misconduct (under a-g); if no denial then
(2) check for general misconduct; if no denial then
(3) check for substantial fault.

Under the proposed change, if the case doesn't meet the first two denial reasons, the determination would be an allow. So, any determination that is currently substantial fault would be an allow under this proposed change.

There was an annual average of 1,428 substantial fault decisions that denied benefits for the years 2022 to 2024. With the elimination of substantial fault decisions, these would now be situations where benefits were allowed. Using the 2024 average weekly benefit amount of $347 per week and the average duration of 12.2 weeks in 2024, the expected additional benefit payments is $6.0 million annually. Accounting for an estimated $400,000 of reimbursable benefit payments and $1.8 million in additional tax revenue leads to a reduction in the UI Trust Fund by $3.8 million annually.

IT and Administrative Impact Methodology:
DWD estimates a cost of $19,200 to make changes to forms and update information in the portal application, plus a one-time administrative cost of $5,760 to support implementation.

D25-10
Suitable Work

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Suitable Work

1. Description of Proposed Change

The definition of "suitable work" in the Unemployment Insurance law provides a standard for determining whether an unemployment benefit claimant has good cause for accepting work when offered. The Unemployment Insurance administrative rules currently define "suitable work" as "work that is reasonable considering the claimant's training, experience, and duration of unemployment as well as the availability of jobs in the labor market."[1]

Under the 2015 Unemployment Insurance Advisory Council agreed bill, 2015 Wis. Act 334, suitable work changes, a two-tiered approach is used to determine whether work refused is suitable based on when the job is refused. For claimants who refuse a job within the first six weeks of unemployment, the Department will compare the skill level and rate of pay to the claimant's most recent jobs and determine whether the hourly wage is at least 75 percent of what the claimant earned in their highest paying most recent job.[2] Beginning in the seventh week after the claimant became unemployed, suitable work means any work that the claimant is capable of performing, as determined by the Department.

Also, under current law, if a claimant has accepted work that was not suitable under the UI law, which the claimant could have refused with good cause, and the claimant terminates the

[1] Wis. Admin. Code DWD § 100.02(61).
[2] Wis. Stat. § 108.04(8)(d).

work within 30 calendar days, a claimant is eligible to receive UI benefits (generally, an individual is not eligible for UI benefits if they quit a job).

The Governor's 2021-23 Executive Budget included a proposal to change UI suitable work law to allow a claimant four additional weeks to find work that matches their skill level and replaces the majority of their lost wages. The Governor's 2021-23 Executive Budget also proposed to extend the period a UI claimant has to try out a job from 30 days to 10 weeks and, if the individual determined the job was not suitable, retain eligibility for UI benefits.

A proposal extending the time available to find and try out suitable work helps an individual avoid a significant deterioration in job quality or wages. An individual with unique or specialized skills may need a longer period to find work in their field due to, for instance, a scarcity of jobs in their field or because work may become more available during certain times of the year. Extending the period to look for suitable work, gives an individual a better chance to stay in their field and maintain their skills. Similarly, upon taking a position, it may take an individual more than 30 days to determine if the accepted work utilizes their skills, or if a monthly or annual pay rate is within 75 percent of their prior pay.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, proposes again the following changes related to suitable work: (1) extends the period, from 6 weeks to 10 weeks, that claimants must find work that is comparable to the work lost; and (2) allows claimants up to 10 weeks (a change from 30 days) to determine if a job taken is suitable.

This proposal adopts the proposed changes in the 2025 Budget Bill related to suitable work.

2. Proposed Statutory Changes[3]

Section 108.04 (7) (e) of the statutes is amended to read:

Paragraph (a) does not apply if the department determines that the employee accepted work that the employee accepted work that the employee could have failed to accept under sub. (8) and terminated the work on the same grounds and within the first ~~30 calendar days~~ 10 weeks after starting the work, or that the employee accepted work that the employee could have refused under sub. (9) and terminated the work within the first ~~30 calendar days~~ 10 weeks after starting the work. For purposes of this paragraph, an employee has the same grounds for voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) to (em) when it was offered, regardless of the reason articulated by the employee for the termination.

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

With respect to the first ~~6~~ 10 weeks after the employee became unemployed, "suitable work," for purposes of par. (a), means work to which all of the following apply:

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

With respect to the ~~7th~~ 11th week after the employee became unemployed and any week thereafter, "suitable work," for purposes of par. (a), means any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department.

[3] Subject to revision to ensure cross-references are corrected.

3. Effects of Proposed Change

a. Policy. The proposed change will provide claimants with more time to refuse work and continue to receive unemployment benefits.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would first apply to determinations issued on or after the effective date of the proposal.

D25-10
Suitable Work

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Acceptance of Suitable Work

Summary of Proposal:
Under current law, if a claimant for UI benefits fails, without good cause, to accept suitable work when offered, the claimant is ineligible to receive benefits until he or she earns wages after the week in which the failure occurs equal to at least six times the claimant's weekly UI benefit rate in covered employment. Current law specifies what is considered "suitable work" for purposes of these provisions, with different standards applying depending on the amount of time that has elapsed since the claimant became unemployed. If the job refusal occurs within the first six weeks (known as the canvassing period), the department compares the skill and rate of pay to the claimant's most recent jobs and determines if the hourly wage is at least 75% of what the claimant earned in their highest paying most recent job. After six weeks have elapsed since the claimant became unemployed, the claimant is required to accept any work they are capable of performing, even if the pay is significantly lower than their most recent job.

This proposal modifies these provisions described above extending the canvassing period so that the claimant is not required to accept less favorable work until more than 10 weeks have elapsed since the claimant became unemployed.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $102,000 annually.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $19,200. This proposal is expected to have a one-time administrative cost of $5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
Reviewing previous data from 2019, 40 cases that had UI benefits denied due to refusal of suitable work were investigated to see if making a change from six weeks to 10 weeks would have impacted the decision. In one case, the claimant would not have been found ineligible because they failed to accept work within ten weeks of being unemployed. An additional six decisions may have been reversed under this proposed law change. This implies up to 17.5% cases denied for suitable work may be allowed under this proposal. Over the years 2022 to 2024, there were on average 219 denials for refusing suitable work. Using the 2024 average weekly benefit amount of $347 and the average duration of 12.2 weeks in 2024, the expected amount of additional benefits is up to $162,000 annually. Accounting for an estimated $10,000 of reimbursable benefits and $50,000 in additional tax revenue leads to a reduction in the UI Trust Fund by $102,000 annually.

IT and Administrative Impact Methodology:
DWD estimates a one-time cost of $19,200 to update information in the portal application as well as a one-time administrative cost of $5,760 to support implementation.

D25-10
Suitable Work

Quit Exception for Unsuitable Work

Summary of Proposal:
Under current law, unless an exception applies, a person who quits their job is generally ineligible to receive UI benefits until they requalify through subsequent covered employment. Under one such exception, if a claimant 1) accepts work that they could have refused under UI law, and 2) terminated the new work within 30 days after starting the work, the claimant remains eligible for UI benefits. Under the proposal, this exemption applies if the claimant terminated that work within 10 weeks after starting the work.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $1.495 million annually.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $19,200. This proposal is expected to have a one-time administrative cost of $5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
Using past data analysis under prior law (when Wisconsin allowed quits for up to 10 weeks), it is estimated that approximately 31% of allowed decisions were past the 30-day threshold. There were, on average, 1,842 decisions annually for the period 2022 to 2024. Using the 31% expected increase, there would be an additional 571 allow decisions annually. This would lead to an increase in UI benefits of approximately $2.4 million. There would be an expected annual increase of $155,000 in reimbursable benefits and $750,000 in additional tax revenue. Overall, this proposal is expected to lead to a reduction in the UI Trust Fund by $1.495 million annually.

IT and Administrative Impact Methodology:
DWD estimates the cost to update information in the portal application is $19,200, plus a one-time administrative cost of $5,760.

D25-11
Quit Exception for Relocating Spouse

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Quit Exception for Relocating Spouse

1. Description of Proposed Change

Employees who quit a job are generally ineligible for unemployment insurance benefits unless an exception applies.

As a condition of Wisconsin receiving federal grant money (American Recovery and Reinvestment Act of 2009 Funds), 2009 Wis. Act 11 created a quit exception. The exception permitted claimants to be eligible for unemployment insurance benefits (assuming they were otherwise qualified) if they quit their job to move with a spouse who was required to relocate for employment, and it would have been impractical for the claimant to commute from the new location.

The 2013 Budget Act, 2013 Wis. Act 20, amended and repealed several quit exceptions, including amending the "quit to relocate" exception in Wis. Stat. § 108.04(7)(t). The amended quit exception, effective January 2014, was narrowed to cover only a claimant whose spouse is on active duty with the U.S. Armed Forces, is required to relocate by the U.S. Armed Forces and it is impractical for the claimant to commute to work.

The 2025 Budget Bill, 2025 AB 50 / 2019 SB 45, effectively repeals the changes to this quit exception made by 2013 Wis. Act 20 and provides that the quit exception covers all spouses who move with a relocating spouse, not just those serving in the U.S. Armed Forces.

This proposal adopts the Budget Bill changes related to the quit exception.

2. Proposed Statutory Changes[1]

Section 108.04 (7) (t) 1. of the statutes is repealed.

~~1. The employee's spouse is a member of the U.S. armed forces on active duty.~~

Section 108.04 (7) (t) 2. of the statutes is amended to read:

The employee's spouse was required by ~~the U.S. armed forces~~ his or her employing unit to relocate to a place to which it is impractical for the employee to commute.

3. Effects of Proposed Change

a. Policy. The proposed change may encourage workers to relocate to take better jobs. This proposal may ensure that spouses of workers who relocate to take better jobs can receive unemployment insurance benefits after relocating if it is impractical for the spouse to commute, assuming that the spouse is otherwise eligible for unemployment insurance benefits.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with the other provisions of the agreed bill.

[1] Cross-references may be amended.

D25-11
Quit Exception for Relocating Spouse

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, unless an exception applies, if an individual quits their job, the individual is generally ineligible to receive UI benefits until they requalify through subsequent employment.

Under one exception, if the employee's spouse is a member of the U.S. armed forces on active duty and is relocated, and the employee quits their job to relocate with their spouse, the employee remains eligible to collect UI benefits. This proposal expands this exception so that it applies to an employee who quits employment to relocate with a spouse who is required by any employer, not just the U.S. armed forces, to relocate.

UI Trust Fund Impact:
This proposal is expected to reduce the UI Trust Fund by $390,000 annually.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $28,800. This proposal is expected to have a one-time administrative cost of $8,640. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
When this quit exception was in effect in 2011, benefits were allowed in 417 claims under this provision. Comparing the number of initial claims in 2011 to the average of initial claims for 2022 through 2024, it is expected that 147 claims would be allowed under this provision. Using the average weekly benefit payment in 2024 of $347 and the average duration of 12.2 weeks in 2024, this would result in an expected increase in benefits of $622,000 annually. Of this amount, $40,000 would be expected to be reimbursable benefit payments. There would be an increase of $192,000 in UI tax contributions; with an expected decrease in the UI Trust Fund of $390,000 annually.

IT and Administrative Impact Methodology:
DWD estimates the cost to update information in the portal application to be $28,800, plus a one-time administrative cost of $8,640.

D25-12
Repeal Work Search and Work Registration Waivers from Statute

Date: April 17, 2025
Proposed by: DWD
Prepared by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Work Search and Work Registration Waivers from Statute

1. Description of Proposed Change

Federal law requires claimants to be actively seeking work and to register for work. In Wisconsin, unemployment benefit claimants must conduct at least four work searches each week and register for work, unless a waiver relieves them of these requirements.

Before 2017 Wis. Act 370 (enacted during the 2018 extraordinary session), the unemployment work search waivers were set forth in Wis. Admin. Code DWD § 127.02. The unemployment work registration waivers were in Wis. Admin. Code DWD § 126.03. Act 370 codified in statute the work search and work registration waivers that existed in Administrative Code chapters DWD 126 and 127 (2018). Act 370 also created statutory language to permit the Department to promulgate administrative rules that modify the statutory work search and work registration waivers or create additional work search or work registration waivers "to comply with a requirement under federal law or is specifically allowed under federal law." During the pandemic, the Department promulgated emergency rules to add waivers during the public health emergency. Those temporary waivers have expired.

The 2025 Budget Bill, 2025 AB 50 / 2025 SB 45, would repeal the work search waiver provisions in statute as created by Act 370, restore the applicable statutes to their pre-Act 370 language, and direct the Department to establish work search waivers by administrative rule, including by emergency rule for temporary waivers. The Budget Bill proposal would permit the Department to promulgate the emergency rule without making a finding of emergency and would permit the emergency rule to be extended up to 60 days without the prior approval of the

Joint Committee for Review of Administrative Rules and without a limit on the number of extensions. This proposal mirrors the 2025 Budget Bill proposal.

2. Proposed Statutory Changes[1]

Section 108.04 (2) (a) (intro.) of the statutes is amended to read:

Except as provided in ~~pars.~~ par. (b) ~~to (bd)~~, sub. (16) (am) and (b), and s. 108.062 (10) and (10m) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week only if all of the following apply:

Section 108.04 (2) (a) 3. of the statutes is repealed and recreated to read:

The claimant conducts a reasonable search for suitable work during that week and provides verification of that search to the department. The search for suitable work must include at least 4 actions per week that constitute a reasonable search as prescribed by rule of the department. In addition, the department may, by rule, require a claimant to take more than 4 reasonable work search actions in any week. The department shall require a uniform number of reasonable work search actions for similar types of claimants. This subdivision does not apply to a claimant if the department determines that the claimant is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the claimant has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the claimant's employment status and shall consider all of the following:

a. The history of layoffs and reemployments by the employer.

b. Any information that the employer furnished to the claimant or the department concerning the claimant's anticipated reemployment date.

[1] Subject to revision to ensure cross-references are corrected.

c. Whether the claimant has recall rights with the employer under the terms of any applicable collective bargaining agreement.

Section 108.04 (2) (b) of the statutes is repealed and recreated to read:

1. The department may, by rule, establish waivers from the registration for work requirement under par. (a) 2. and the work search requirement under par. (a) 3.

2. a. The department may promulgate rules under subd. 1. as emergency rules, using the procedure under s. 227.24, if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this subd. 2. a. as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subd. 2. a. Except as provided under subd. 2. b., a rule promulgated under this subd. 2. a. remains in effect only for 150 days.

b. Notwithstanding s. 227.24 (2), the secretary of workforce development may extend the effective period of an emergency rule promulgated under subd. 2. a. for a period specified by the secretary not to exceed 60 days. Any number of extensions may be granted under this subd. 2. b. Whenever the secretary extends an emergency rule under this subd. 2. b., it shall file a statement of its action with the legislative reference bureau. The statement shall identify the specific emergency rule to which it relates.

Section 108.04 (2) (bb) of the statutes is repealed.

Section 108.04 (2) (bd) of the statutes is repealed.

D25-12
Repeal Work Search and Work Registration Waivers from Statute

Section 108.04 (2) (bm) of the statutes is amended to read:

A claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to comply with the registration for work and work search requirements under par. (a) 2. or 3. or failed to provide verification to the department that the claimant complied with those requirements, unless the department has waived those requirements under par. (b)~~, (bb), or (bd)~~ or s. 108.062 (10m). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22.

3. Effects of Proposed Change

a. Policy. The proposed change would restore the law on work search and work registration waivers to the status quo before Act 370 and permit waivers to again be modified by rule.

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

c. Fiscal. A fiscal estimate is attached.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with the other provisions of the agreed bill.

D25-12
Repeal Work Search and Work Registration Waivers from Statute

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Under current law, a claimant for UI benefits is generally required to register for work and to conduct a work search for each week to remain eligible for benefits. Current law requires DWD to waive these requirements under certain circumstances, for example, if a claimant who is laid off from work reasonably expects to be recalled to work within 12 weeks, will start a new job within four weeks, routinely obtains work through a labor union referral, or is participating in a training or work share program. Under current law, DWD may modify the statutory waivers or establish additional waivers by rule only if doing so is required or specifically allowed by federal law.

This proposal removes the waiver requirements from statute and instead allows DWD to establish waivers for the registration for work and work search requirements by rule. DWD may establish a waiver by emergency rule if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted. This proposal allows the secretary to extend the emergency rule for up to 60 days at a time. Also, the proposal specifies that the work search requirement does not apply to a claimant who has been laid off but DWD determines that the claimant has a reasonable expectation to be recalled to work by the same employer. If this proposal is enacted, then DWD will apply the waivers in the administrative code, including the 8 plus 4 week recall waiver.

UI Trust Fund Impact:
This proposal is estimated to have no impact on the UI Trust Fund.

IT and Administrative Impact:
This proposal is expected to have a one-time IT cost of $19,200. This proposal is expected to have a one-time administrative cost of $5,760. The estimated operations cost of this proposal is absorbable within the current UI administrative budget.

UI Trust Fund Methodology:
This proposal would revert statute to rule and policy matching the current statute, so there would be no impact.

IT and Administrative Impact Methodology:
DWD estimates a one-time cost of $19,200 to update information on the mainframe system forms and a one-time administrative cost of $5,760 to support implementation.

NOTE REGARDING FISCAL ANALYSIS

For ease of understanding, each fiscal analysis, with the exception of the change in the weekly earnings cap, is drafted with the assumption each proposal is a standalone change. There is possible interaction among the various proposals, but the interaction is not expected to be significant except in two cases – the end of the waiting period and increasing the maximum weekly benefit rate. When looking at the other estimates, the elimination of the waiting period would increase UI Trust Fund impacts by 5-8% and the increase in the maximum weekly benefit rate would increase UI Trust Fund impacts by approximately 23%.

2025 Unemployment Advisory Council Labor Proposals

1.) Increasing maximum weekly benefits

Under current law, a person who qualifies for UI receives a weekly benefit rate equal to a percentage of that person's past earnings, but the weekly benefit rate is capped at $370. The proposal changes the maximum weekly benefit rate in the following ways:
1. For benefits paid for weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the maximum weekly benefit rate is capped at $497.
2. For benefits paid for weeks of unemployment beginning on or after January 3, 2027, the maximum weekly benefit rate is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

2.) Waiting period

Currently, a claimant must wait one week after becoming eligible to receive UI benefits before the claimant may receive benefits for a week of unemployment, except for periods during which the waiting period is suspended. The waiting period does not affect the maximum number of weeks of a claimant's benefit eligibility.
The proposal deletes the one-week waiting period, thus permitting a claimant to receive UI benefits beginning with his or her first week of eligibility.

3.) Increasing benefit wage cap

Under current law, a person who qualifies for UI is ineligible to receive any UI benefits for a week if the person receives or will receive wages or certain other earnings totaling more than $500 (wage cap). The proposal changes the wage cap in the following ways:
1. For weeks of unemployment beginning on or after January 4, 2026, but before January 3, 2027, the wage cap is increased to $672.
2. For weeks of unemployment beginning on or after January 3, 2027, the wage cap is increased based upon the change in the consumer price index and is then increased on the same basis annually thereafter.

4.) Unemployment insurance; worker misclassification penalties

Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is $500 for each employee who is misclassified, not to exceed $7,500 per incident. In addition, current law provides for criminal fines of up to $25,000 for employers who, after having previously been assessed such an administrative penalty, commit another violation. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an employee to adopt the status of a nonemployee; the penalty amount is $1,000 for each employee so coerced, but not to exceed $10,000 per calendar year. Penalties are deposited into the unemployment program integrity fund.

The proposal does the following: 1) removes the $7,500 and $10,000 limitations on the administrative penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation; 2) removes the limitations on the types of employers to whom the prohibitions apply, making them applicable to any type of employer; and 3) specifies that DWD may make referrals for criminal prosecution for alleged criminal misclassification violations regardless of whether an employer has been subject to any other penalty or assessment under the UI law.

5.) Acceptance of suitable work

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

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

6.) Quits due to relocations

Under current law, unless an exception applies, if an individual quits his or her job, the individual is generally ineligible to receive UI benefits until he or she qualifies through subsequent employment.

Under one such exception, if the employee's spouse is a member of the U.S. armed forces on active duty and is relocated, and the employee quits his or her job in order to relocate with his or her spouse, the employee remains eligible to collect UI benefits. The proposal expands this exception so that it applies to an employee who quits employment in order to relocate with a spouse who is required by any employer, not just the U.S. armed forces, to relocate.

7.) Substantial fault

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for substantial fault by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria. With certain exceptions, current law defines "substantial fault" to include those acts or omissions of a claimant over which the claimant exercised reasonable control and that violate reasonable requirements of the claimant's employer. The proposal eliminates this provision on substantial fault.

8.) Misconduct

Under current law, a claimant for UI benefits whose work is terminated by his or her employer for misconduct by the claimant connected with the claimant's work is ineligible to receive UI benefits until the claimant satisfies certain requalification criteria, and the claimant's wages paid by the employer that terminates the claimant for misconduct are excluded for purposes of calculating benefit entitlement. Current law defines "misconduct" using a general, common law standard derived from *Boynton Cab Co. v. Neubeck*, 237 Wis. 249 (1941), and enumerates several specific types of conduct that also constitute misconduct. Under one of these specific

provisions, misconduct includes 1) absenteeism on more than two occasions within the 120-day period before the date of the claimant's termination, unless otherwise specified by his or her employer in an employment manual of which the claimant has acknowledged receipt with his or her signature, or 2) excessive tardiness by a claimant in violation of a policy of the employer that has been communicated to the claimant. In *Department of Workforce Development v. Labor and Industry Review Commission (Beres)*, 2018 WI 77, the supreme court held that an employer could, under the language described above, institute an attendance policy more restrictive than two occasions within the 120-day period.

Current law also provides that absenteeism or tardiness count as misconduct only if the claimant did not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness. In *Bevco Precision Manufacturing v. Labor and Industry Review Commission*, 2024 WI App. 54, the court of appeals held that under *Beres*, this qualifying language did not apply if an employer had adopted its own standard on absenteeism and tardiness, as described above.

The proposal does all of the following:

1. Eliminates the language referencing "excessive tardiness."
2. Reverses the holding in *Bevco* by providing that a claimant's notice and reason for an occasion of absenteeism or tardiness are to be analyzed under the common law misconduct standard. Under the proposal, therefore, an employer may not establish its own policy for determining the reasonableness of absenteeism or tardiness. The proposal does not, however, affect the general ability of an employer to institute a standard for absenteeism and tardiness more restrictive than two occasions within the 120-day period before termination.
3. Clarifies, in another provision defining misconduct, that "tribal government" has the meaning given under state and federal law for what is considered an Indian tribe.

9.) Drug testing

Current state law requires DWD to establish a program to test certain claimants who apply for UI benefits for the presence of controlled substances in a manner that is consistent with federal law. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. The proposal eliminates the requirement to establish the drug testing program.

Also under current law, an employer may voluntarily submit to DWD the results of a preemployment test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify DWD that an individual declined to submit to such a test. If DWD then verifies that submission, the employee may be ineligible for UI benefits until he or she requalifies. However, a claimant who tested positive may maintain eligibility by enrolling in a substance abuse treatment program and undergoing a job skills assessment. The proposal eliminates these preemployment drug testing provisions.

10.) Quits due to non suitable work

Under current law, unless an exception applies, if a claimant for UI benefits quits his or her job, the claimant is generally ineligible to receive UI benefits until he or she qualifies through subsequent employment. Under one such exception, if a claimant quits his or her job and 1) the claimant accepted work that was not suitable work under the UI law or work that the claimant could have refused, and 2) the claimant terminated the work within 30 calendar days after

starting the work, the claimant remains eligible to collect UI benefits. Under the proposal, this exemption applies if the claimant terminated that work within *10 weeks* after starting the work.

11.) Work search and registration

Under current law, a claimant for UI benefits is generally required to register for work and to conduct a work search for each week in order to remain eligible. Current law requires DWD to waive these requirements under certain circumstances, for example, if a claimant who is laid off from work reasonably expects to be recalled to work within 12 weeks, will start a new job within four weeks, routinely obtains work through a labor union referral, or is participating in a training or work share program. Under current law, DWD may modify the statutory waivers or establish additional waivers by rule only if doing so is required or specifically allowed by federal law.

The proposal removes the waiver requirements from statute and instead allows DWD to establish waivers for the registration for work and work search requirements by rule. DWD may establish a waiver by emergency rule if the secretary of workforce development determines that the waiver is needed only on a temporary basis or that permanent rules are not warranted, and the proposal allows the secretary to extend the emergency rule for up to 60 days at a time. Also, the proposal specifies that the work search requirement does not apply to a claimant who has been laid off but DWD determines that the claimant has a reasonable expectation to be recalled to work.

12.) Social security disability insurance payments

Under current law, in any week in any month that a claimant is issued a benefit under the federal Social Security Disability Insurance program (SSDI payment), that claimant is ineligible for UI benefits. The proposal eliminates that prohibition and instead requires DWD to reduce a claimant's UI benefit payments by the amount of SSDI payments. The proposal requires DWD to allocate a monthly SSDI payment by allocating to each week the fraction of the payment attributable to that week.

13.) Electronic communications

Currently, with certain exceptions, each employer that has employees who are engaged in employment covered by the UI law must file quarterly contribution (tax) and employment and wage reports and make quarterly contribution payments to DWD. An employer of 25 or more employees or an employer agent that files reports on behalf of any employer must file its reports electronically. Current law also requires each employer that makes contributions for any 12-month period ending on June 30 equal to a total of at least $10,000 to make all contribution payments electronically in the following year. Finally, current law allows DWD to provide a secure means of electronic interchange between itself and employing units, claimants, and other persons that, upon request to and with prior approval by DWD, may be used for transmission or receipt of any document specified by DWD that is related to the administration of the UI law in lieu of any other means of submission or receipt.

The proposal makes use of these electronic methods mandatory in all cases unless the employer or other person demonstrates good cause for being unable to use the electronic method. The proposal specifies what constitutes good cause for purposes of these provisions. The proposal also makes various corresponding changes to penalty provisions that apply in the case of nonuse of these required electronic methods. The proposal further provides that DWD may permit the use of electronic records and electronic signatures for any document specified by DWD that is related to the administration of the UI law.

14.) Unknown Imposter Penalty

Under current law, if any person makes a false statement or representation in order to obtain benefits in the same name of another person, the person may be required to repay the amount of the benefits obtained and to pay an additional amount equal to the amount of benefits obtained. Current law does not specify a penalty for when such a person makes a false statement or representation in order to obtain benefits in the name of another person but fails to obtain any benefits. The proposal provides that if a person makes a false statement or representation on an initial claim in order to intentionally obtain benefits in the name of another person, but fails to obtain benefits, the person is subject to a penalty of $5,000.

15.) Federal Administrative Financing Account; Reed Act Distributions

The Proposal creates a segregated fund to receive various program revenue moneys received by DWD under the UI law that are not otherwise credited to other segregated funds, including various moneys collected by DWD as interest and penalties under the UI law and all other nonfederal moneys received for the administration of the UI law that are not otherwise appropriated. Current law provides for the depositing these revenues in appropriations in the general fund. In addition, the proposal makes various changes to reorganize, clarify, and update provisions relating to the financing of the UI law; and to address numerous out-of-date or erroneous cross-references in the UI law.

Unemployment Reform Ideas for 2025-2026 Session

Program Integrity Measures

- **Work Search Verification -** Require the Department to randomly verify work search information reported by at least 50% of claimants to ensure the work searches are legitimate.

- **Ghosting Portal for Employers** – Create an online portal that allows employers to report to the Department a job applicant's refusal of work, a refusal of an offer to attend a job interview, a no-show for a scheduled job interview with an applicant, or a no-show for their first day of work. Provide that a claimant is ineligible for benefits for any week in which the claimant refused a job offer or interview offer, or failed to attend a scheduled job interview, without good cause.

- **Federal Unemployment Funds** – Require the Legislature and Governor to approve an increase in federally-funded unemployment benefits.

- **Identity Verification** – Require the Department to verify an applicant's identity prior to awarding benefits. Require multi-factor identification to ensure validity of applicants. Match applicant data against death records, inmate records, employment records, immigration records, and current UI recipients to prevent fraudulent benefits. In addition, require department staff to flag benefit applications with duplicate, out-of-state, or foreign I.P. addresses for further review, as well as applicants who use the same bank account or mailing address.

Other Items

- **Union Referral Service Reporting Requirement –** Require union hiring halls/referral services to report to the Department within 24 hours each instance where a worker refuses an offer of work.

- **Benefit Charge Liability –** Provide that an employer is not liable for benefit charges for an employee who quit to take another job (and then left the new employer), or who was fired for misconduct or substantial fault, then took another job (and then left the new job).

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

  Under current law if you quit a job within the first 30 days of hire and you could have refused the offer of work under the "suitable work" provisions you can collect benefits. This proposal would eliminate that quit exception.

- **Link Benefit Eligibility Weeks to Unemployment Rate –** Under current law individuals that are eligible for unemployment are generally entitled to 26 weeks of benefits The average benefit duration has historically been about 14 weeks. This proposal would reduce the weeks of unemployment eligibility as follows, based upon the unemployment rate.

State Unemployment Rate	Weeks of Benefit Eligibility
Less than or equal to 3.5%	16
3.6% to 5.5%	20
Greater than 5.6%	26

  Determine the applicable unemployment rate and corresponding benefit eligibility, by using the seasonally adjusted statewide unemployment rate published by the US Department of Labor for April and October. The benefit eligibility for January through June would be based on the prior October unemployment rate, while the benefit eligibility for July through December would be based on the April unemployment rate.

- **Clarify Definitions/Grounds for Misconduct and Substantial Fault** – Based upon a number of appellate court decisions and case-specific experiences of employers, make changes to these definitions to more accurately capture the intent and spirit of the 2013-2014 session reforms. Draft language attached.

Misconduct & Substantial Fault Clarification – Draft Language

(5) DISCHARGE FOR MISCONDUCT. An employee whose work is terminated by an employing unit for misconduct by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be the rate that would have been paid had the discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for

misconduct from establishing a benefit year using the base period wages excluded under this subsection if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection. For purposes of this subsection, “misconduct" means one or more actions or conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer. In addition, “misconduct" includes:

(a) A violation by an employee of an employer's reasonable written policy concerning the use of alcohol beverages, or use of a controlled substance or a controlled substance analog, if the employee:
    1. Had knowledge of the alcohol beverage or controlled substance policy; and
    2. Admitted to the use of alcohol beverages or a controlled substance or controlled substance analog or refused to take a test or tested positive for the use of alcohol beverages or a controlled substance or controlled substance analog in a test used by the employer in accordance with a testing methodology approved by the department.

(b) Theft or unauthorized possession of an employer's property or services ~~with intent to deprive the employer of the property or services permanently~~, theft or unauthorized distribution of an employer’s confidential or proprietary information, use of an employer’s credit card or other financial instrument for an unauthorized or non-business purpose without prior approval from the employer, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes the destruction of an employer’s records or substantial damage to his or her employer's property.

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

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

(e) Absenteeism or tardiness by an employee that constitutes any of the following, unless the employee provides his or her employer with both advance notice and one or more valid reasons for each instance of absenteeism or tardiness:
    1. More than 2 ~~occasions~~ absences within the ~~120~~ 180-day period before the date of the employee's termination; or
    2. One or more ~~occasions~~ absences if prohibited by unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature,; or
    3. More than 3 instances of ~~excessive~~ tardiness by an employee in violation of the employer’s normal business hours or a policy of the employer that has been communicated to the employee., ~~if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.~~

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

(g) Unless directed by the employer, a willful and deliberate violation of a written and uniformly applied standard or regulation of the federal government or a state or tribal government by an employee of an employer that is licensed or certified by a governmental agency, which standard or regulation has

been communicated by the employer to the employee and which violation would cause the employer to be sanctioned or to have its license or certification suspended by the agency.

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

(5g) DISCHARGE FOR SUBSTANTIAL FAULT.

(a) An employee whose work is terminated by an employing unit for substantial fault by the employee connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination 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 benefit rate shall be the rate that would have been paid had the discharge not occurred. For purposes of this paragraph, "substantial fault" includes those acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the employee's employer but does not include any of the following:

1. One or more minor infractions of rules unless an infraction is repeated after the employer warns the employee about the infraction.

2. One or more inadvertent errors made by the employee, unless the error violates a written policy of the employer, endangers the safety of the employee or another person, causes bodily harm to the employee or another person, or the error is repeated after the employer warns the employee about the error.

3. Any failure of the employee to perform work because of insufficient skill, ability, or equipment.

(b) 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 the employer and paragraph (a) applies.

Unemployment Insurance Advisory Council
Tentative Schedule for 2025-2026 Session

January 16, 2025	Scheduled UIAC Meeting Discuss Public Hearing Comments
March 20, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals **UI Fraud Report**
April 17, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Exchange of Labor & Management Law Change Proposals
May 15, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Discuss Labor & Management Proposals
June 19, 2025	Scheduled UIAC Meeting Discuss Department Law Change Proposals Discuss Labor & Management Proposals
July 17, 2025	Scheduled UIAC Meeting Discussion and Agreement on Law Changes for Agreed Upon Bill
August 21, 2025	Scheduled UIAC Meeting Review and approval of draft of Agreed Upon Bill
September 18, 2025	Scheduled UIAC Meeting Final review and approval of LRB draft of Agreed Upon Bill
October 16, 2025	**Scheduled UIAC Meeting** **Agreed Upon Bill Sent to the Legislature for Introduction** **UIAC Activities Report (due January 2026)**
November 20, 2025	Scheduled UIAC Meeting
December 18, 2025	Tentative UIAC Meeting
January 15, 2026	Tentative UIAC Meeting