

Unemployment Insurance Advisory Council

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

November 19, 2015

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

Members Present: Janell Knutson (Chair), Earl Gustafson, Michael Gotzler, Ed Lump, John Mielke, Scott Manley, Shane Griesbach, Terry Hayden, Michael Crivello, Sally Feistal and Mark Reihl

Department Staff Present: Georgia Maxwell (Deputy Secretary), Joe Handrick (Administrator), Lili Crane, Tyler Tichenor, Karen Schultz, Patrick Lonergan, Sheri Pollock, Mike Myszewski, Amy Banicki, Pam James, Tom McHugh, Rob Usarek, and Robin Gallagher

Members of the Public Present: Mary Beth George (Representative Sinicki's Office), Brian Dake (WI Independent Businesses, Inc.), Rachael Inman (Legislative Audit Bureau), Victor Forberger (UI Appeals Clinic), Cindy Schmelzer (QTI Group), Jim Boullion (WI Associated General Contractors of Wisconsin), Bryan Kirschbaum (Department of Administration), Erika Strebel (Daily Reporter), Bill Jordahl (Labor and Industry Review Commission), and Jeff Shampo (Labor and Industry Review Commission)

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) meeting to order at 10:04 a.m. in accordance with the Wisconsin's Open Meeting law. Council members and department staff introduced themselves. Ms. Knutson welcomed Commissioner Jordahl and Attorney Shampo from the Labor and Industry Review Commission (LIRC), Deputy Secretary Georgia Maxwell and those in attendance.

2. Approval of Minutes October 29, 2015

Motion by Mr. Griesbach, second by Mr. Lump to approve the October 29, 2015 meeting minutes. The motion carried unanimously.

3. Report on the Unemployment Insurance Reserve Fund

Mr. McHugh provided an update on the Unemployment Insurance (UI) Trust Fund. The Trust Fund balance as of November 14, 2015 was \$799.4 million, compared to last year's balance of \$287.2 million. Tax receipts totaled \$1.03 billion and year-to-date UI payments through

November 14 decreased by \$100.4 million (16.6%) for a total of \$502.9 million compared to the same time period last year.

Employer tax rates for 2016 were calculated and mailed in October. Because the Trust Fund balance exceeded a \$300 million threshold on June 30, 2015, the department triggered from Tax Schedule A to Tax Schedule B. The change in the tax schedule will result in the following:

- There are 4,254 employers at the maximum 12% tax rate for 2016 compared to 5,278 in 2015 (a decrease of 19.4%).
- Employers with a tax rate of 0% to 1% (44,352 employers in 2016) resulted in a 12.7% increase and employers with a tax rate of 1% to 2% (32,336 employers in 2016) resulted in a 31.6% increase. These two tax rate categories are the only categories in which the number of employers increased from 2015 to 2016.
- In 2016, a total of 81,363 employers will see a tax rate decrease.
- Since it is unknown what payrolls will be in 2016, a simulation was run assuming taxable payroll remained the same in 2016. In this hypothetical, employers would see a tax reduction of \$113 million (\$100 million for large employers and \$13 million for small employers). Actual 2016 taxable payroll is expected to increase slightly which would also increase the tax reduction.

Mr. McHugh also summarized the Tax Account Comparison Schedule A to Schedule B chart and Tax Rate Comparison 2015 Taxes vs. 2016 Taxes chart.

4. Misclassification Report

Mr. Myszewski provided an update on the worker misclassification unit within the Bureau of Legal of Affairs. Last year, the department received a \$500,000 competitive grant and an additional \$500,000 competitive grant this year from the U.S. Department of Labor, providing the worker misclassification unit adequate funding for the next 24 months.

Between May 15, 2013 and September 30, 2015 (the close of the federal fiscal year), 162 worker misclassification investigations were conducted. Since October 1, 2015, an additional 38 investigations have been conducted, for a project total of 200 investigations. Of the 200 investigations, a total of 45 audits were conducted, with an additional 70 audits scheduled.

Since worker misclassification investigations have started, a total of 671 misclassified workers have been identified, resulting in \$411,611 in UI tax and penalties assessed on employers. Approximately 35%-40% of all investigations conducted resulted in no violations being determined.

With the construction season slowing down, investigations of services industries (such as nail and hair salons and hotels) will increase. The worker misclassification unit is fully staffed, including a Spanish speaking investigator from the Labor Standards Bureau in the Equal Rights Division that assists as needed.

The worker misclassification unit investigates complaints received from workers, employers and citizens that contact the department by telephone or through the department website. The unit also performs many proactive investigations by visiting city halls and reviewing building permits to randomly select investigations.

5. Correspondence

Commissioner Jordahl and Mr. Shampo spoke to the Council on department proposal 15-11 (D15-11) relating to the transfer of circuit court review statutes from Wis. Stat. ch. 102 (Worker's Compensation), to Wis. Stat. ch. 108. Commissioner Jordahl stated that D15-11 was moved through the Council without the opportunity for collaboration in the product by LIRC.

Commissioner Jordahl expressed concerns with D15-11:

- Requiring all parties to respond to a complaint seeking judicial review of LIRC's opinion.
- Requiring parties to name DWD as a defendant in all UI appeals to court.
- Providing that a proceeding shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is DWD, the proceedings shall be in the circuit court of the county where a defendant, other than LIRC, resides.

Commissioner Jordahl stated he firmly believes the Council plays a vital and leading role in forming UI policy and one of the best ways to accomplish this is to produce a solid, well considered proposal. Commissioner Jordahl requested the Council withdraw D15-11, allowing reconsideration.

Ms. Knutson thanked Commissioner Jordahl for attending the meeting and speaking to the Council.

6. Research Requests

At the last meeting, Mr. Griesbach requested a demonstration and review of the rewrite of internet weekly claim questions. This item will be placed on the December agenda as it was not yet ready for review.

7. Review and Discussion of Department Proposals

Ms. Knutson reported that department proposal D15-06 relating to appeals modernization and efficiency, is still awaiting initial action from the Council.

A copy of the LRB draft of department proposals now includes language on concealment. Ms. Knutson stated that technical, non-substantive changes were made by the LRB drafters to the concealment language, which are identified in the memo prepared by Mr. Rubsam. The Council will need to approve the LRB draft language.

8. Labor and Management Proposals

Ms. Knutson stated at the last meeting, Management and Labor members were still working on their proposals.

9. Agenda Items for December 17 Meeting

The next Council meeting is scheduled for December 17 and after conducting a survey, there will be a quorum on this date. It was agreed that the Council meeting will start at 9:30 a.m. Ms. Knutson requested any agenda item suggestions be submitted a week in advance of the meeting.

10. Other Business

Distribution of Council Materials

Ms. Schultz discussed distribution of Council materials and requested Council consideration of alternate methods of distribution. Currently, department staff spends approximately 4-6 hours copying and assembling packets for each Council meeting. Ms. Schultz asked the Council to consider receiving materials electronically, with a hard copy available at each meeting and department staff and members of the public can access materials electronically. Mr. Manley stated use of web application "Dropbox" has been a useful tool to access materials for other meetings he has been part of. The Council will consider alternate methods of receiving meeting materials and the department will explore the use of Dropbox.

Labor and Management Proposals

Mr. Mielke asked for information on the process of presenting Labor and Management proposals. Ms. Knutson stated in a typical cycle, there is an exchange of proposals in open meeting, and an opportunity for members to discuss, ask questions and modify if necessary. In order to have the agreed bill package introduced this session, the final package would need to be approved by the Council at the January meeting.

Legislation

Representative Kerkman's bill on a seven-year ban for collecting UI benefits if a claimant commits fraud in two consecutive years passed in the Assembly. No action has been taken by the Senate.

Representative Kerkman also introduced a bill in the Assembly on criminal penalties for individuals committing UI fraud. The bill mirrors the criminal penalty language that was originally part of the budget bill, but removed. No hearings have been held, and it is unlikely any action will be taken before next year. The department will provide a copy of the bill as well as an analysis at the next Council meeting.

11. Motion to Caucus

Motion by Mr. Reihl, second by Mr. Gotzler to recess and go into closed caucus session pursuant to Wis. Stat. §19.85 (1) (ee), to deliberate department proposals and labor and management proposals at 10:57 a.m. All Council members voted "Aye" and the motion carried unanimously.

12. Report out of Caucus

The Council reconvened at 2:20 p.m. and reported on the following:

D15-06 Appeals Modernization and Efficiency Improvements

Mr. Reihl requested additional time to review the proposed changes that have been suggested to the appeals modernization and efficiency improvement proposal. The proposal has been tabled until the next Council meeting.

LRB Agreed Bill Draft

Motion by Mr. Manley, second by Mr. Hayden to approve LRB agreed bill draft LRB 2020 Version 8. Motion approved unanimously.

Management Proposals

Mr. Manley presented the following proposals from Management members:

- **Suitable work:** Define suitable work in statute and identify that during the first 6-week canvassing period, suitable work would be work that pays 75% or more of what they previously earned during their highest quarter and does not involve a lower grade of skill. After the canvassing period, suitable work would be any work the individual is capable of performing, whether or not they have any experience or training, that pays wages that are above the lowest quartile of wages for similar work in the region. Mr. Manley stated this definition would be included under Wis. Stat. §108.04, and if needed, the department could promulgate rules on suitable work for further clarification.
- **Good Cause:** Define good cause under Wis. Stat. §108.04 relating to circumstances which a claimant can turn down an offer of suitable work as "a compelling reason which would give the claimant no alternative but to refuse."
- **Worker's Compensation:** Provide that if an individual is receiving temporary total or permanent total disability payments under worker's compensation, the individual is presumed to be unavailable for suitable work and not eligible for UI benefits.
- **Requalifying Requirements:** Increase the earning requirement to requalify for UI benefits after a quit, or after failing to accept suitable work from 6 times the weekly benefit rate to 10 times the weekly benefit rate.
- **Wage Data and Classification:** Require the department provide wage data and classification definitions available online for public access and provide a clear process to resolve disputes over how a job is classified and how the average wage for a particular classification in a region is established. This information is currently posted online and is

available to the public. This proposal would require by statute that the department continue to provide this information.

Labor Proposals

Mr. Reihl presented the following proposals from Labor members:

- **Assessments for Failure to Produce Records:** Provide an administrative assessment if an employing unit fails to produce employment records to the department after two written requests from the department. The proposed assessment is \$1,000 per day until the records are produced. The department may waive the assessment under certain circumstances, such as reasons beyond the employing unit's control.
- **Willful Worker Misclassification:** Provide an administrative assessment of the greater of \$1,000 or 40% of the tax owed for a first determination that an employer willfully misclassified workers as independent contractors. A second determination would result in a \$5,000 assessment per worker willfully misclassified in addition to the \$1,000 or 40% assessment. For a third or subsequent determination, assess the employer \$10,000 per worker willfully misclassified in addition to the \$1,000 or 40% assessment.
- **Adjustments to Wage Base, Contribution Schedule Triggers and Contribution Rate:**
 - Provide that the wage base gradually adjust over five years to 50% of the average annual wage and, when the wage base reaches 50% of the average annual wage, indexing the wage base to 50% of the previous year's average annual wage.
 - Modify rate schedule triggers as follows:
 - Schedule A when Wisconsin's Average High Cost Multiple (ACHM) is less than 0.50.
 - Schedule B when Wisconsin's AHCM is between 0.51 and 0.75.
 - Schedule C when Wisconsin's AHCM is between 0.76 and 1.00.
 - Schedule D when Wisconsin's AHCM exceeds 1.00.

Mr. Riehl indicated it is important to resolve issues with the Trust Fund and therefore Labor is not requesting an increase to the maximum benefit rate. Labor requested the Mr. Usarek explain the projected effect of Labor's proposals.

Mr. Gotzler asked what Wisconsin's taxable wage base would be if the taxable wage base were increased to be 50% of the average annual wage. Mr. Usarek responded that the amount would be approximately \$22,000 to \$24,000. Mr. Gotzler also asked what the Trust Fund balance would be for an AHCM of 1.0. Mr. Usarek responded that an AHCM of 1.0 in 2015 equals \$1.6 billion; and it is projected that in 2024, an AHCM of 1.0 would equal \$2.4 billion.

Mr. Usarek reported on the uneven distribution of Wisconsin's UI tax schedules, reviewing the small employer taxable payroll distribution and the large employer taxable payroll distribution. There is a large variance in the change required in an employer's reserve fund balance to move between brackets depending upon the location on the schedule and also in tax rates due to UI tax bracket changes. Mr. Usarek provided an overview on estimates of the UI Trust Fund under different policy options such as:

- The UI Trust Fund under current policy.
- The UI Trust Fund with new trigger values.
- The UI Trust Fund with the wage base increasing to 50% of the average annual wage over 10 years, at which point it is:
 - Indexed to the average annual wage; and
 - Indexed to the average annual wage with new trigger values.
- The UI Trust Fund with the wage base increasing to 50% of the average annual wage over 5 years, at which point it is:
 - Indexed to the average annual wage; and
 - Indexed to the average annual wage with new trigger values.

Additional Labor and Management Proposals

Labor and Management reserve the option to present additional proposals.

13. Motion to Caucus and Adjourn

Motion by Mr. Mielke, second by Mr. Reihl to return to caucus to deliberate labor and management proposals and adjourn at 3:45 p.m. from caucus. All Council members voted "Aye" and the motion carried unanimously.