

# **STATEMENT OF SCOPE**

## **Department of Workforce Development**

**Rule No:** DWD 102

**Relating to:** Employer contribution rates for 2021

**Rule Type:** Emergency

**Finding/nature of emergency:**

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

Under 2019 Wisconsin Act 185, s. 50, which created s. 108.07 (5) (bm), Stats., the Department of Workforce Development is directed to charge unemployment benefits for initial claims that are related to the public health emergency declared by Executive Order 72 to the balancing account of the Trust Fund for contribution employers. This treatment of claims charging applies to weeks of benefits payable starting with the week of March 15, 2020 through December 26, 2020.

The Department's antiquated computer systems are ill-equipped to handle the changes in charges from the employers' accounts to the balancing account. Each weekly claim to be charged to the balancing account under new s. 108.07 (5) (bm), Stats., requires Department personnel to manually change the benefit charges from the employer's account to the balancing account of the Trust Fund after any federal funds have been appropriately applied. The Department estimates that this manual process will take approximately 15 minutes for each weekly claim. Given the high volume of claims being filed during the pandemic, the Department expects that the thousands of hours of manual work to complete the charging changes will not be completed by June 30, 2020 — and likely will not be completed by the end of 2020.

Under ss. 108.02(8), 108.02(22), and 108.18(4), Stats., "an employer's contribution rate on the employer's payroll for a given calendar year shall be based on the reserve percentage of the employer's account as of the applicable computation date," s. 108.18(4), Stats., which is June 30 of each year. Section 108.02(22), Stats., requires the Department to determine the status of an employer's account when setting the reserve percentage for contribution purposes as of the computation date.

Because the Department will not be able to complete the manual charging changes required by 2019 Wisconsin Act 185 by June 30, 2020, most employers' contribution rates for 2021 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2021 that are higher than they should be.

Higher contribution rates for employers could impede Wisconsin's economic recovery from the pandemic.

**Description of the objective of the proposed rule:**

This emergency rule will provide that, to achieve the policy goals of 2019 Wisconsin Act 185, s. 50, and the plain language of ss. 108.02 (8), (22) and 108.18 (4), Stats., in calculating an employer's net reserve as of the computation date for 2021 rates, the Department shall assume that all benefit charges for the period of March 15, 2020 through June 30, 2020 are related to the public health emergency declared by Executive Order No. 72 so that all employer accounts are credited with those benefits under s. 108.07(5) (bm), Stats. The Department shall apply the credit as if the noncharging provisions have been implemented when calculating rates for 2021.

**Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

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

The new policy to be included in this rule will ensure that employers' contribution rates are calculated as of June 30, 2021 and meeting the policy goals of 2019 Wisconsin Act 185. Contribution rates for 2022 will be calculated after all recharging is complete.

The policy alternative is to do nothing, which would either negatively impact most employers subject to contribution financing because their contribution rates will be higher for 2021 than they should be, or delay payments to claimants of unemployment compensations for federal programs under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act. For most employers subject to contribution financing, this would result in higher contribution rates for 2021, which would not be in accordance with the legislative intent of 2019 Wisconsin Act 185. If no action was taken and the charging went forward, DWD would be required to halt programming changes that get payments to claimants in the federal programs (e.g, Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Extended Benefits (EB)) and reassign and train staff currently processing those claims to assist with the manual recharging efforts in an attempt to meet the June 30, 2020 deadline for calculating 2021 tax rates. This alternative is unreasonable and unacceptable given that there is a way to protect claimants who need these payments *and* protect employers from unnecessarily high contribution rates.

**Statutory authority for the rule, including the statutory citation and language:**

The Department has statutory authority for the proposed rule.

“The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.” Section 108.14(2), Stats..

**Estimate of the amount of time that state employees will spend developing the rule and other resources necessary to develop the rule:**

The estimated time is 80 hours.

**Description of all entities that may be affected by the proposed rule:**

Employers subject to contribution financing for unemployment insurance.

**Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

State law must to conform to and substantially comply with federal regulations. *See* 20 CFR 601.5.

**Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):**

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

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**Approval of the agency head or authorized individual:**

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**Pamela R. McGillivray, Chief Legal Counsel**

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**Date Submitted**