

STATEMENT OF SCOPE

Department of Workforce Development

Rule No: DWD 102

Relating to: Employer contribution rates for 2022

Rule Type: Emergency

Finding/nature of emergency:

By Executive Order 72, the Governor declared a public health emergency to protect the health and well-being 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 and 2021 Wisconsin Act 4, which created and then amended s. 108.07 (5) (bm), 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 March 13, 2021.

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 s. 108.07 (5) (bm), Stats., requires the Department to 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. Given the high volume of claims being filed during the pandemic, the work to complete the charging changes will not be completed by June 30, 2021.

Under sections 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 is not able to complete the benefit charging changes required by Acts 185 and 4 by June 30, employers' contribution rates for 2022 may be based, in part, on benefit charges that should have been charged to the balancing account instead of the employers' accounts. If contribution rates are set before recharging, the result for most employers subject to contribution financing would be higher contribution rates for 2022 than they should be.

An emergency rule is needed to prevent employers from being subject to 2022 rates that are higher than they should be under Acts 185 and 4. Without a rule, employers may not see the

benefit of charging relief under Acts 185 and 4 until rates are set for 2023 after recharging is completed.

The Department does not contemplate promulgating a permanent rule because the recharging will be accomplished to set appropriate rates that only apply for a limited time. This emergency rule will meet the policy goals of Acts 185 and 4 to address the public health emergency and protect the welfare of the economy through charging relief for contribution employers.

Description of the objective of the proposed rule:

This emergency rule will provide that, to achieve the policy goals of Acts 185 and 4, 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 2022 rates, the Department shall assume that all benefit charges and adjustments for the period of March 15, 2020 through March 13, 2021 are related to the public health emergency declared by Executive Order 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 2022.

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 considers 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 meet the policy goals of Acts 185 and 4. Contribution rates for 2023 will be calculated after all recharging is complete.

Similarly, on June 27, 2020, the Department promulgated EmR2018 to ensure 2021 contribution rates would not be higher than they should have been under Act 185 because the Department was unable to complete recharging by June 30, 2020. At the time, the Department anticipated that it would have recharging complete by June 30, 2021, to set the 2022 rates. However, since then, additional state and federal law changes have altered the requirements for recharging and have created new and modified benefit programs that caused a delay in the IT programming necessary to implement recharging.

To correctly set contribution rates, recharging work must consider applicability of federal programs that reduce the benefit charges to employers in addition to the recharging relief provided by Acts 185 and 4. Federal law changes provide federal funding (in whole or in part) that affects recharging in the following programs: waiver of waiting week; work share; and regular unemployment for reimbursable employers.

Moreover, under state law, Act 4 extended the period of charging relief for contribution employers from December 31, 2020 to March 14, 2021, and created a presumption of relief for employment separations unless certain exemptions apply.

These federal and state law changes must be taken into account to correctly perform the recharging to ensure the correct tax rate for employers. It is not possible to simply "recharge" the regular unemployment benefits covered by Acts 185 and 4 and accurately determine the tax rate for employers. This emergency rule will ensure when recharging is completed for all employers, their tax rates will be accurate.

Moreover, the new federal benefits programs under the Coronavirus Aid, Relief, and Economic Security Act, Continued Assistance Act, and the America Rescue Plan Act created new and modified benefit programs that placed demands on the Department's computer programming and staff resources. The Department prioritized programming of those benefit programs over the recharging efforts given this rule can ensure that employers are not subject to a higher contribution rate than they should receive, while ensuring workers receive timely benefits.

The policy alternative is to do nothing, which would negatively impact most employers subject to contribution financing because their contribution rates will be higher for 2022 than they should be. For most employers subject to contribution financing, this would result in higher contribution rates for 2022, which would not be in accordance with the legislative intent of Acts 185 and 4.

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 conform to and substantially comply with federal regulations. *See* 20 C.F.R. § 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 Acts 185 and 4.

Contact Person: Janell Knutson, Director, Bureau of Legal Affairs, Unemployment Insurance Division, at (608) 266-1639 or janell.knutson@dwd.wisconsin.gov.

Approval of the agency head or authorized individual: