



JON PLUMER

STATE REPRESENTATIVE • 42nd ASSEMBLY DISTRICT

Testimony **Assembly Bill 939** – Relating to various changes to the unemployment insurance law

Assembly Committee on Workforce Development **Tuesday February 8th, 2022**

Good Morning Chairman Petryk and Committee members. Thank you for holding a hearing and offering me the opportunity to testify in support of Assembly Bill 939, which makes necessary changes to unemployment insurance laws.

The unemployment insurance program, overseen by the Department of Workforce Development, is designed to provide temporary assistance while an individual searches for new employment. Currently, individuals on unemployment must make four work search actions each week. These actions can include submitting a resume for an available job, networking, completing an online work search profile, and emailing a prospective employer.

The work search requirement was reinstated this past summer, and more individuals are submitting resumes for available jobs. Along with this uptick in work searches, we have unfortunately seen an increase of “ghosting”, a practice in which an employer will contact a prospective employee for an interview, only to have that individual either not reply or not show up for the interview. This has made it extremely difficult for employers to find capable workers, and has wasted business’ valuable time and resources.

To help remedy this issue, Assembly Bill 939 will create a process for employers to report to the Department instances in which an individual declines an interview or job offer, an individual fails to respond to an interview request or job offer, an individual fails to attend a job interview without rescheduling, or a former employee is not available to return to work. DWD would be required to investigate this claim to determine whether or not it has merit. If a report is found to be credible, an individual on unemployment would be ineligible for unemployment benefits for the given week. This bill does not penalize the first such verified claim.

AB 939 would also require DWD to maintain an online portal for employers to file these claims, and must submit to the legislature a report that would include information on investigations and actions taken.

I am grateful to the Senate author, Sen. Felzkowski, for her assistance with this legislation. Thank you for your time today, and thank you for your consideration of this bill.



MARY FELZKOWSKI

STATE SENATOR • 12TH SENATE DISTRICT

Testimony for AB 939

Senator Mary Felzkowski

Assembly Committee on Workforce Development

February 8, 2022

Good afternoon Chairman Petryk and Committee Members,

Thank you for the opportunity to offer testimony on Assembly Bill 939, which makes necessary changes to unemployment insurance laws.

Many citizens of Wisconsin at one time or another have unfortunately experienced unemployment, whether it be through layoffs due to cutbacks, companies going out of business, or as we have recently seen, state-enforced shutdowns. No matter the reason, the loss of a job can be demoralizing and have a tragic impact on an individual's life. It's in moments like these that the unemployment program in Wisconsin plays a pivotal role, providing temporary financial assistance for workers as they begin their search for new employment.

While there are a number of steps that must be taken for an individual to receive unemployment assistance, one of the most important is that of the weekly work search requirement. Unless someone receives a special waiver, a person must make four 'work search actions' per week, including the submission of resumes for open positions, networking, completing an online work search profile, and contacting perspective employers. The ultimate purpose of this requirement is to encourage folks to seek out new employment and get back into the workforce, as unemployment assistance is only a temporary stop-gap measure. Unfortunately, there have been instances in which an individual on unemployment has chosen, without good cause, to decline a job interview, to not respond to a job interview invitation, or simply has not shown up for a scheduled interview. This practice is known as "ghosting."

Assembly Bill 939 makes several changes to current unemployment laws to prevent ghosting, and ensure that no one is cheating the system. This bill will allow employers to report to the Department of Workforce Development any instances where an individual declines or fails to respond to a job interview or job offer, fails to attend a scheduled job interview without attempting to reschedule, or a UI claimant is unavailable or unable to perform available work. In instances where one or more credible reports are provided by employers for a given week, a claimant will not be eligible for benefits that week. This bill does allow the first such instance to be disregarded, as extraneous circumstances do occur in life.

AB 939 also requires DWD to recover overpayments in instances when a claimant fails to comply with work search requirements, or when an individual attempts to claim benefits in the name of another person. DWD will also be required to annually supply the legislature with a report summarizing activities of unemployment insurance fraud detection and prosecution over the last year.

I am grateful to my Assembly author, Rep. Plumer, for his assistance with this legislation. Thank you for your time today, and thank you for your consideration of this bill. Please feel free to reach out to my office at any time if you have questions.

February 8, 2022

To The Assembly Committee on Workforce Development:

In a highly competitive talent landscape with attractive unemployment benefits, AriensCo has been impacted by candidates “ghosting” our career opportunities. This consistently occurs for candidates for both professional and production positions.

On the production side within the past year, we have had 53 candidates in 2021 not show up for work on their first day and requiring us to rescind their offers of employment. Additionally, 140 candidates did not show up for interviews in 2021, and there were 401 candidates that applied for positions with AriensCo in 2021 that we could not contact/did not respond to us after applying.

While we have been accustomed to candidates for our entry-level/weekly-paid positions ghosting us, the problem is expanding to the pool of professional/salaried level candidates and is becoming more common place. This even extends to candidates for Human Resources positions, which is a population that directly knows the impact of ghostings to organizations. For example, within the past few weeks we have a candidate for an HR Manager position ghost us for a scheduled interview, and we had a Recruiter ghost us after being extended an offer.

Furthermore, once candidates are hired, we have employees ghost us when they leave our organization. Within the past calendar year, job abandonment remains our top voluntary termination reason with 35% (338 employees). In a recent follow-up survey to reach out to former employees who have left us due to job abandonment, we received less than a 10% response rate from this group.

When ghosting occurs, our standard practice is to contact the candidate or employee – we make at least 2 documented attempts to reach out to the individual through 2 different forms of communication - written communication (email or text) and through phone calls and leave a message. We seldom receive a response from the candidate or employee.



Steve Servais
EVP Administration



Assembly Bill 939

Wisconsin State Assembly Committee on Workforce Development

February 8, 2022

Chase Martin
Visiting Fellow

Opportunity Solutions Project

Chairman Petryk and members of the committee,

My name is Chase Martin, and I am a visiting fellow at Opportunity Solutions Project (OSP). OSP is a non-profit, nonpartisan advocacy organization dedicated to advancing policies that reduce barriers to work and protect state benefits for the truly needy.

Thank you for hearing this legislation before your committee. I am submitting this testimony in support of Assembly Bill 939.

Wisconsin, like a lot of states across the nation, is in desperate need of getting its able-bodied workers off the sideline and back into the workforce. With Wisconsin employers eager to hire, it is more important than ever that the Wisconsin legislature update its unemployment system to help address this unprecedented challenge. Wisconsin businesses, temporarily unemployed citizens, and their families are counting on the legislature to do this important work.

The central focus of Wisconsin's unemployment system must be reemployment, helping those who've lost their jobs due to no fault of their own to find new ones as quickly as possible so that they may rapidly regain the power to support themselves and their families, and the self-respect that comes along with it. This bill supports the realignment of program focus from unemployment support to reemployment support through several critical policy changes.

First, this bill requires an employer that is notified of a claim for unemployment insurance (UI) benefits to share with the Department of Workforce Development (DWD) any eligibility question that may be at issue with respect to the claim, whether or not the employer objects to the claim. Under current law, an employer is only required to provide such information if the employer objects to the claim. Obviously, we want to stop UI fraud even in those cases where an employer has no objections to the fraud, or doesn't, for whatever reason, wish to report information to DWD that would stop the fraud. UI program integrity cannot be achieved by DWD alone, it is only possible with at least some cooperation from employers. The benefits of requiring employers who have information they could share with DWD to help protect the integrity of the Wisconsin's UI system to simply do so, is obvious. This bill would ensure that happens.

Second, this bill creates important new mechanisms for ensuring claimants are actively seeking reemployment. The bill provides that an employer may report to DWD whenever an individual declines or fails to respond to a job interview or job offer, fails to attend a scheduled job interview without attempting to reschedule, or whenever a claimant is unavailable for, or unable to perform, available work within a given week, including under certain circumstances when the employer recalls a former employee receiving UI benefits who fails to return to work. The bill also provides that a claimant will fail to meet the work if an employer provides information related to the above that is credible or confirmed to be true by DWD through its own investigation.

Notably, baked into the bill are exceptions that would give DWD some flexibility when enforcing this requirement if the claimant is able to show good cause for the failure. The added requirement for a UI fraud report that must be submitted annually to the legislature to help evaluate and measure DWD's enforcement of the new program integrity requirements, helps alleviate the enforcement concerns that might arise from this good cause exception. Regardless, the legislature should keep an eye on it and strengthen this requirement next session if warranted to based upon its findings over the next year, as well as the findings of the annual UI fraud report.

Altogether, though, these reforms are strong when it comes to gently nudging UI claimants back toward reemployment while holding them accountable if they fail to meet the work search and other requirements of the program.

Third, this bill would now require, instead of allow, DWD to act to recover overpayments in certain circumstances and requires overpayments to be repaid in cases where an individual lies to obtain benefits in the name of another person. Requiring DWD to recover fraudulent unemployment payments to the fullest extent under the law is important not only for recovering and returning money to the program otherwise stolen through fraud, but also as an important enforcement mechanism to ensure that those that take advantage of the program comply with the rules governing it.

For all these reasons, I strongly urge you to vote in favor of Assembly Bill 939.

Thank you for your time.

Chase Martin
Visiting Fellow
Opportunity Solutions Project (OSP)

LEGAL ACTION OF WISCONSIN

Providing free legal services to low-income Wisconsin clients since 1968 • Proporcionando servicios legales gratuitos a clientes de bajos ingresos en Wisconsin desde 1968

TO: Assembly Committee on Workforce Development
FROM: Abby Bar-Lev Wiley, Legislative Director, Legal Action of Wisconsin
RE: Impact of AB 939/SB 911 on Legal Action's Clients
DATE: February 8, 2022

Thank you for the opportunity to provide comments on AB 939/SB 911. Legal Action of Wisconsin (LAW) is the largest non-profit law firm providing high-quality, free civil legal aid to low-income people in 39 of Wisconsin's southern counties. Our broad reach and expertise means that we see what poverty looks like over a wide swath of the state, from urban and rural areas, from farmworkers to construction workers. One of our priority areas focuses on helping clients secure and maintain the government benefits necessary to meet their most basic needs including food, shelter, health, and income. Legal Action has serious concerns about how AB 939/SB 911 would impact our low-income clients.

AB 939/SB 911's Punitive Approach Would Harm Legal Action's Clients and Does Nothing to Promote Rejoining the Workforce

AB 939/SB 911 would needlessly take away critical benefits that people need to survive, punishing them for experiencing unexpected events. Under this bill, an individual could lose her unemployment insurance benefits—benefits often necessary to economic survival—not because she committed fraud or tried to cheat the system, but simply because she missed a job interview. At Legal Action, we deal with many clients who are applying for or rely on unemployment benefits—urban and rural, old and young, a variety of ethnic and racial backgrounds. We know that no one decides to miss a job interview so that they can remain on unemployment benefits. When someone loses employment through no fault of their own, they face a bewildering and glacial bureaucracy. They must satisfy onerous and confusing work search requirements. The system works slowly, and benefits are often delayed. Given a choice between a decent job and unemployment benefits, our clients would choose work every time. This bill is not solving a real problem. If someone misses a job interview or fails to respond to an offer, there is almost always good reason for it. The bill is punitive and does nothing to help people rejoin the workforce.

Unfortunately, people living with low incomes often face multiple stressors. Legal Action clients have woken up to find their car was repossessed overnight. Clients have received an eviction notice, or got a knock on the door from a sheriff looking to execute an eviction when the tenant thought they had more time. Clients who are victims of domestic violence and are being coerced or worse by their abuser. Grandparent clients who are suddenly responsible for their grandchildren when parents need childcare after an unanticipated COVID-19 school quarantine. Many of our clients are transitory, and so miss critical communications that were sent to their old addresses, or many clients' phone service gets cut off from not being able to pay the phone bill. For people with low incomes, these kinds of unanticipated events arise frequently. Under this bill, hardworking Wisconsinites could have their benefits taken away, throwing them deeper into crisis.

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Legal Action is likewise concerned about the bill's provision to withdraw benefits from someone who fails to return to work after being recalled by an employing unit. In our experience, this provision would be harmful to our farmworker clients. Wisconsin's agricultural economy depends on the seasonal flow of migrant farmworkers into the state, often from south Texas. These workers expect to be recalled, but sometimes get recalled earlier with little advance notice. For farmworkers who must travel to Wisconsin to work, they must often secure safe transportation, arrange for childcare—either in Wisconsin or in the community of origin, finish their leases or close up permanent housing, confirm new housing in Wisconsin, etc and they may not be able to immediately do all this in order to meet the new recall date. Under the bill, if employers do not set clear expectations, if a migrant farmworker is mistaken about the employer's expectations, or if the employer decides for whatever reason that they want employees back sooner, that farmworker could see his economic survival collapse with the withdrawal of unemployment benefits.

“Good Cause” Provision is Insufficient to Resolve the Burdens on Low-Income Wisconsinites

The bill's “good cause” provision does little to resolve the bill's flaws. “Good cause” is a subjective standard, the determination of which is open to bias and presumptions. Moreover, even if a claimant can show “good cause” and DWD agrees, the bureaucratic process to resolve this is slow. Unemployment benefits are already often delayed for eligible individuals. The bill lacks any cap on how much time may pass before a “good cause” determination must be made, and so it would be unsurprising for the process to take months. In that time, even if it is just a matter of weeks, the delay in receiving unemployment benefits could be life-altering. Delays in receiving critical benefits place people's housing at risk, puts at risk their health and food security. As people search for family-sustaining employment, their unemployment insurance benefits are often the sole reason they can keep the lights on, the heat running, the rent paid, and buy new socks or shoes or clothes for growing children.

AB 939/SB 911 Does Not Help People Find Jobs and Would Increase Reliance on State Benefits

Unemployment insurance is a critical safety net that allows people to make ends meet while they are searching for a job that they lost through no fault of their own. AB 939/SB 911 does nothing to help create better-paying jobs. Instead, it punishes people for events that may be out of their control. It may also increase dependence on public benefits as people lose unemployment insurance benefits before they are able to obtain family-sustaining employment. At Legal Action, we know that people desperately prefer to find good jobs than stay on unemployment.

Unfortunately, AB 939/SB 911 is a solution in search of a problem, while making lives harder for Wisconsinites who have fallen on hard times.

Thank you for your consideration.

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**THE LEADING VOICE
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AND INDEPENDENT BUSINESSES**

February 8, 2022

**TO: Members
Assembly Committee on Workforce Development**

**FR: Brian Dake
President
Wisconsin Independent Businesses**

RE: 2021 Assembly Bill (AB) 939 relating to: various changes to the unemployment insurance law.

Chairman Petryk and committee members, my name is Brian Dake, President of Wisconsin Independent Businesses. Thank you for the opportunity to testify in support of 2021 Assembly Bill (AB) 939.

By way of background, Wisconsin Independent Businesses (WIB) was formed in 1977 to provide small, independent business owners with an effective voice in the legislative and regulatory activities of state government. Today, we proudly represent more than 2,000 small business owners throughout Wisconsin. Most of our members (approximately 85%) own and operate businesses that fit within the legal definition of a small business – fewer than 25 employees and annual gross revenues of less than \$5 million.

Wisconsin's unemployment insurance (UI) law imposes specific duties and obligations on employers and UI claimants. Employers must:

- maintain employment records to accurately determine their state UI tax liability;
- file quarterly wage reports and report new hires; and
- pay state UI taxes on the first \$14,000 in wages to each employee in a calendar year.

If an employer becomes delinquent in paying their state UI taxes, the Wisconsin Department of Workforce Development (DWD) is authorized to take legal actions including:

- seizure of the employer's bank accounts, property, inventory, accounts receivable, and/or any other asset;

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- issue a civil warrant which becomes a judgment lien against real estate and other property; and
- revoke professional or business licenses issued by the State of Wisconsin.

State law requires a UI claimant to register for work; post their current resume on the Job Center of Wisconsin website; be able to work; be available for work; and conduct at least four weekly work search actions. Failure to fulfill these legal obligations may render the claimant ineligible for UI benefits and subject to civil penalties.

Employers and UI claimants must follow the law and should be held accountable when they fail to do so. Unfortunately, for far too many UI claimants, the weekly work search requirement has become nothing more than a check-the-box exercise and instances of “ghosting” are on the rise.

On March 11, 2021, the Assembly Committee on Small Business Development held an Informational Hearing at which invited speakers provided input on how the COVID-19 pandemic has impacted small businesses across various industries in Wisconsin.

One of our members – Gary Fahey, President of Appleton Stainless - recounted his difficulty filling vacant positions. He had twelve job resumes on file and all the prospective employees met the job qualifications. Letters were mailed, emails were sent, and phone calls were placed to the prospective employees. They were asked to come in for an interview. None of them responded to any of the company’s inquiries.

The number of prospective employees who were UI claimants simply filing a resume to fulfill a weekly work search requirement will never be known. It should be, and that is why WIB supports AB 939.

If a UI claimant files a resume or job application with a prospective employer who has a job opening the claimant should expect that the employer may call him\her in for an interview or offer him\her a job. From our perspective, if a job interview is requested or a job offer is made by an employer, the claimant should be obligated to respond and there should be consequences for claimants who simply file resumes or job applications to fulfill a weekly work search requirement.

AB 939 sets forth a process whereby a Wisconsin employer may report a potential instance of “ghosting” to DWD for further investigation. If the Department determines a UI claimant was engaged in “ghosting,” he\she would be subject to the current law penalties that apply to UI claimants who fail to fulfill the weekly work search requirements.

We respectfully ask for your support of AB 939.

Thank you in advance for your consideration.

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Tony Evers, Governor
Amy Pechacek, Secretary-designee

Date: Wednesday, February 9, 2022

To: Chair Petryk, Vice-Chair Dittrich, and Members of the Assembly Committee on Workforce Development

From: Department of Workforce Development Secretary-designee Amy Pechacek

Informational Memo Regarding AB 937, AB 938, and AB 939

Chair Petryk, Vice-Chair Dittrich, and Committee Members, thank you for the opportunity to provide information regarding AB 937, AB 938, and AB 939, three bills under your consideration that propose significant changes to unemployment insurance (UI) law and Wisconsin's UI program. It is my understanding that from questions brought up at yesterday's hearing, clarifying information from the Department of Workforce Development about the impact of the bills would be helpful in advance of tomorrow's executive session.

With more than 130 years of experience analyzing labor market data for employers, policymakers, educational institutions, and job seekers, the Wisconsin Department of Workforce Development is focused on creating and sustaining a thriving economy. Through the leadership of Governor Evers, resilience of state employers, and dedication of Wisconsin's workforce, the state has bounced back from the economic downturn caused by the COVID-19 pandemic and is now stronger than ever. Given our state's current economic conditions and the lessons learned during the pandemic, the Department does not believe the bills before you today would strengthen the workforce, nor create lasting benefits for employers, job seekers, or current employees.

The preliminary December 2021 jobs report showed a record-low unemployment rate of 2.8% and the number of people counted as unemployed dropped to 86,200—the lowest number of unemployed Wisconsinites in state history. Meanwhile, the 66.4 percent labor force participation rate, which is a measure of the population actively working or seeking work, remains 4.5 percentage points above the national rate and is among the best in the nation.

Yet with this record-breaking recovery has come a labor market quantity challenge, driven by demographic trends that have been building for decades:

- An aging workforce and the volume of Baby Boomers retiring;
- Lower birth rates in the younger generations means there is not an equal workforce replacement rate; and
- Net zero immigration and migration into Wisconsin.

It is important to note that Wisconsin is not alone in facing the worker quantity challenge. It affects the U.S. as a whole and many other industrialized nations. The challenge is particularly acute here in the Midwest, which consistently posts the highest regional labor force participation rate in the nation.

Wisconsin's efforts to effectively address the labor quantity challenge build on DWD's historic success and partnerships with new "talent traction" strategies to remove barriers to employment and bring existing underutilized talent pools fully into the workforce. Key among these efforts is Governor Evers' \$130 million

commitment to invest in solutions to address the workforce challenges we face as a state. These investments build on regional partnerships across the state and include an innovative combination of providing job training, equipment, educational opportunities, affordable childcare for working parents, and mentoring to produce tailored and strategic workforce development solutions.

At the same time, DWD is undertaking comprehensive modernization efforts to improve external customer service access, unemployment insurance infrastructure, fraud prevention, and accounting controls and tools that match job seekers with employers. Challenges highlighted during the pandemic and recovery, which AB 937, AB 938, and AB 939 propose to address, are being remedied through DWD's modernization efforts, including a responsive call center, better usability for job seeker and employer reporting, and verification for UI claims processing. These unprecedented modernization efforts, combined with the administration's workforce development strategies, are producing results that include greater equity and economic opportunity for the people of Wisconsin.

AB 937, AB 938, and AB 939 do not account for the data-driven economic realities of Wisconsin's labor market and the trends that have been decades in the making, including regional economic differences. Further, the bills would add costly and confusing reporting burdens for employers.

Finally, the bills, which include unnecessarily punitive measures would reverse recent progress in bringing harder-to-employ populations into the labor force while not addressing the barriers to employment that disproportionately affect veterans, people of color, individuals who were justice-involved, and individuals with disabilities. AB 937, AB 938, and AB 939 undermine partnerships that have been developed over multiple administrations, diminish efforts to train and connect workers with employers, and impose burdens on business and government that would set back customer-service-driven modernization efforts.

AB 937

This bill would change the maximum number of weeks that a regular UI claimant who lost their job through no fault of their own could receive benefits. The bill creates a formula for determining the number weeks a claimant may be eligible for UI benefits depending on the seasonally adjusted statewide average unemployment rate of the first or third calendar quarter preceding the start of the claimant's benefit year depending on when they file their initial claim. This means that for claimants who start their benefit year on or after January 1, the number of weeks that they would be eligible for UI benefits would be determined on the average unemployment rate of July, August, and September of the previous year. Claimants who start their benefit year on or after July 1 would be eligible for the number of weeks as determined by the average unemployment rate of January, February, and March of that year.

This method of calculating maximum UI benefit duration is concerning in that the unemployment rate is volatile and can rise very quickly. During a recession it can easily increase multiple percentage points month to month. The bill mechanisms will not be responsive to, or reflective of, current economic situations as it looks back to a previous economic situation to determine benefits.

For example, in March 2020, the unemployment rate was 3.2 percent and the April 2020 unemployment rate was 14.8 percent. Had the bill been in effect at the start of the COVID-19 pandemic, individuals filing for UI in April 2020 would have had their maximum number of benefit weeks calculated based on the average unemployment rate for third quarter 2019 (3.1 percent). Under this hypothetical scenario, individuals that lost their job through no fault of their own in April 2020 would have been eligible for only 14 weeks of UI benefits. In July 2020 (14 weeks from April 2020), the unemployment rate was still at 7 percent. Although many workers had been able to return to work within that time, the public health risks facing certain industries did not allow them to recover as quickly, meaning their workers with certain skills and experience remained out of work through no fault of their own. As evident by our state's labor force participation rate, Wisconsinites are hard workers. However, the unemployment rate did not recover to pre-pandemic levels until October 2021. Fourteen weeks of UI would not have been long enough for individuals to weather the economic recovery and the recovery of jobs.

In addition, AB 937 is not sensitive to local employment rates. A brief look at county-by-county unemployment rates shows that unemployment is higher in the northern part of the state and lower in and around Dane County. The bill could disadvantage individuals in rural areas with fewer local job opportunities by reducing the number of benefit weeks to claimants with eligible employment. The bill is also not sensitive to unemployment rates by industry sector. Re-entering the job market may be easier in some sectors (and in certain times of the year) than others. Because the benefit durations for partial claims are determined the same as regular claims, the impact on claimants filing for partial claims would be the same.

DWD estimates that over one third of claimants would be affected by the proposed change. For example, for benefit years beginning in 2018 (covering payments in 2018 and 2019), 35 percent of claimants (36,513) would have been affected, experiencing an UI benefit decrease of \$84.4 million. And, for benefit years beginning in 2019 (covering payments made in 2019 and 2020), 38 percent of claimants would have been affected (43,610), experiencing an UI benefit decrease of \$102.3 million. In addition, the proposed changes would have sizable and negative impact on short and medium run economic activity in Wisconsin. It is estimated that for each dollar paid in UI benefits there is a \$1.70 increase in economic activity. So, using the example of 2018 and 2019 benefit years, this would relate to a reduction of \$143.48 million and \$173.74 million in economic activity in Wisconsin respectively. Given carryover pandemic claims, it is difficult to estimate who in the current claiming population would be impacted.

AB 938

The bill proposes that UI benefit augmentations, such as the federal programs that provided critical supports for Wisconsinites during the pandemic, will require review by the Joint Committee on Finance (JFC). If federal programs and extended benefits are needed at future date, this proposed change could delay benefits to Wisconsin citizens, negatively affecting Wisconsin's economy by withholding funding that could be used by claimants for good and services.

Additionally, depending on how the federal programs are structured, there is the potential for the state of Wisconsin to lose benefits and administrative funding should participation in those federal programs be delayed, like Wisconsin experienced early in the pandemic when legislative delay on the waiting week waiver cost Wisconsin hundreds of millions of dollars in federal reimbursement of those funds. If such a review had been required when DWD was implementing the Federal Pandemic Unemployment Compensation (FPUC) program, just a two-week delay for JFC review of the administration of FPUC funding would have resulted in \$362 million of lost funds.

The other proposed changes in AB 938 are, in many ways, already current DWD practices or would have little of the intended effect on the UI program, such as:

- Regarding the proposal that all out-of-state claimants register with a job center, this is UI's current practice. UI already requires out-of-state claimants to register with a job center.
- The changes to the misconduct and absenteeism under UI law would only result in a minor reduction in UI operation costs (for claims adjudication). In addition, the change would not have much effect in finding individuals ineligible for UI as the change in policy would not add reasons for ineligibility, it would simply shift claim denials from "substantial fault" to "misconduct."
- Identity Proofing - UI already performs substantial identity verification. If the identity proofing measures require uploading of identifying documents, this would be a barrier to users, and additional staff time could be needed to help claimants with additional technological requirements. An initial estimate is that the proposed identity proofing standards would require a significant cost investment in annual vendor costs and technology development costs. Current UI processes use targeted identification logic. If extended to every claimant, vendor costs would be increased significantly.
- Work Search Audits - UI currently uses a targeted approach to work search audits. UI has balanced the efficacy of assuring work searches are audited with the available staff time.
 - In addition, work search audits are labor intensive. Every additional audit of two claimant work searches requires 45 minutes of staff time. The proposed requirement would require a substantial investment. Also, additional denials of claims will result in additional appeals.
 - The bill does not allocate any funding to cover the likely significant costs to increasing staff to conduct such extensive auditing, as well as the cost of appeals.

- Regarding the training requirements proposed in AB 938, UI already has external training and training videos in place.
- This provision regarding claimant data matching with death, incarceration, and other databases is unnecessary as UI already matches to three of the four databases mentioned in the bill, with the fourth in the process of being implemented. While UI would not have barriers to complying with the proposed language now, codifying the names of the databases creates a future problem as database types and technology changes.
- Regarding the bill's proposed Legislative Audit Bureau's (LAB) audit of DWD's UI fraud detection and prevention efforts, LAB has conducted extensive audits of all of DWD's UI functions, including fraud detection and prevention efforts. It is unnecessary to legislate the need for an audit. Audits can be accomplished within existing authorities. For example, see LAB Reports 21-11 and 21-9.
- Transfer of staff to DWD to assist UI Operations - Staff transfers can be accomplished, and have been accomplished, within existing authorities. In addition, such mandatory transfers of staff can have a negative impact on the operations of other critical programs. During the height of the COVID-19 pandemic, the administration was able to work with the current flexibilities to strategically transfer staff to assist UI operations while ensuring other critical functions remained online.

Lastly, the bill proposes expanding UI call center operations during a declared state of emergency. As demonstrated throughout the course of the COVID-19 pandemic when DWD did expand the hours of the call center, this is a function the Department has done and is able to do at any time based on the need of the people of Wisconsin. However, DWD was limited by the antiquated IT system that required the mainframe to be unavailable during certain times of day. That is why the Evers Administration's efforts to modernize our UI system continue to be a key solution in ensuring folks are able to get connected and receive support in a timely fashion. Examples of how the antiquated system affected the call center hours are available below:

- UI uses a COBOL Mainframe to process UI claims. The Mainframe is unavailable during certain periods to allow for batch processing and maintenance.
- The required overnight "batch" processing must occur for UI payments to be made.
- Batch processing is required to calculate, process and record payment amounts for claims and generate files for bank processing so that the payments can be deposited into claimants' bank accounts or issued to debit cards.
- When the batch process is running each night, the online mainframe application is not available for making adjustments/corrections to the claims.
- Currently the Mainframe is available for staff to use during the hours of 6:00AM and 6:00PM, Monday through Friday, and from 6:00AM to 3:00PM on Saturday.
- Staff do not process claims on Sundays as that day is reserved mainly for weekly claim taking and preparing files for processing for payment.
- Weekend and evening hours would require staff costs of 40-45 people plus overtime costs. IT changes would be needed for the batch cycle and maintenance windows, and staffing would need to be added for IT and other areas that support the call center for weekend hours.

In addition, the proposed requirement to maintain a call center as well as have extended call center hours during a statewide emergency and/or a 300 percent increase in calls compared to the prior year does not take into consideration increasing use of other technologies to apply for UI and receive help on a claim, such as an improved online filing process and DWD's newly implemented artificially intelligent (AI) chat bot. DWD has made tremendous strides over the past year with the modernization of its call center, including contracting with Nice CXone, a cloud-based Customer Contact Center, to provide call center services. By partnering with this vendor, DWD has been working to implement a call center that offers a way to efficiently track and manage customer contacts while adding additional channels for communication.

To date, DWD has transitioned one third of the UI call center phone numbers to this new solution, which provides increased mechanisms for communicating with claimants and provides an opportunity for the integration of an AI chatbot. The CXone platform provides a sound, proven platform that is engineered to meet DWD's capacity needs as DWD's weekly call volume can be as low as 12,000 calls per week to over 6 million calls per week (experienced at the start of the pandemic). The new call center platform monitors

capacity regularly and has an architecture that allows for a capacity increase to meet DWD's needs at all hours and without having to expand traditional "call center" hours.

AB 939

There are already requirements in place to address to the possibility that job seekers are committing the types of UI fraud that AB 939 proposes to combat. Further, some proposed reporting requirements may not be permissible under federal law. Pursuant to Wis. Stats. s. 108.04(2), UI claimants must be able and available for work, register for work (registration is through the Job Center of Wisconsin), and conduct at least four allowable work search actions per week, among other criteria. All individuals receiving UI must file weekly claims certifications that require claimants to answer several questions, such as whether they are able and available for work, whether they have refused any job offers or referrals to a job, and whether they are actively looking for work. Claimants are responsible for any inaccurate or incomplete information that they provide. Failure to correctly report all work, earnings, or other eligibility requirements could result in overpayments and penalties.

In addition, the required four work search actions each week must be valid, and any required documentation must be provided. Weekly claims certifications that raise any eligibility issues, such as able and available issues, are investigated by DWD's claim specialists. UI laws and policies, including those listed above, are in place to help address the concerns that are the basis of the bill.

Regarding the bill's proposed increase to employer reporting requirements, employers are currently able to report suspected claimant fraud, including fraud related to work search activities such as attending interviews, turning down job offers, and failing to return to employment or turning down employment offers. DWD already relies on employers to verify information provided by claimants and to bring other eligibility issues to our attention. They may call or write to DWD at any time to raise an eligibility issue, using Employer Assistance Line and the online Help Center. Any employer that suspects that someone on UI is committing fraud can also report it on DWD's website. DWD investigates all reports and fraud referrals.

Regarding the job refusal reporting requirement proposed in the bill, employers may already report a job refusal (such as a quit due to "no show") to DWD. When an eligibility issue is raised, a fact-finding investigation is conducted, and the claimant is always given an opportunity to give a statement about the issue. After DWD receives all the information about the job refusal, and if the individual is receiving UI benefits, DWD would adjudicate the issue and determine whether benefits should be denied. A claimant's failure to correctly report work, which includes a new job or job quit, may result in penalties. The claimant could appeal that determination.

The bill's proposed reporting requirements will create unnecessary administrative burdens on employers in Wisconsin. As it is likely that reporting employers would not have the personal identifying information for job applicants that do not attend interviews to effectively allow DWD to match UI records accurately. It is unclear in the bill to what extent employers will submit information on individuals' interest in job opportunities. Employers would not know the job applicant's UI status in some situations covered under the proposed language and reporting individuals' lack of interest in an opportunity may not be an employer's priority for their administrative staff time. In addition, there are confidentiality requirements in both state and federal law which restrict information about "actions taken" and their effect on claimants' eligibility. The proposed language in AB 939 requiring information being reported related to actions may not be permissible under federal law.

Thank you for the opportunity to provide this information.



MEMO

TO: Assembly Committee on Workforce Development

FROM: Chris Reader, Executive Vice President of IRG Action Fund

DATE: February 8, 2022

RE: Support for AB 937, AB 938, AB 939 related to improving the UI System

Chairman Petryk and members of the Committee,

Thank you for holding this hearing today on these Unemployment Insurance (UI) reform proposals. My name is Chris Reader, and I'm the Executive Vice President for IRG Action Fund. IRG Action Fund is the advocacy and lobbying partner to the Institute for Reforming Government, a Wisconsin based think tank.

I come before you today to speak in favor of Assembly Bills 937, 938, and 939. These bills collectively will help fix a broken Unemployment Insurance system. While many of the issues addressed in these bills have been around for years in Wisconsin, the COVID-19 pandemic has put a bright spotlight on the UI system and the pressing need to fix what is broken.

Unemployment Insurance is vital for those who face tough times. The program offers a lifeline as the claimants seek new employment after the emotional, often unexpected, loss of a job. But to be around to help those who need it most, you as policymakers must be ever mindful of ways to adjust the system, protecting its integrity and ensuring funds are available for those who are out of work due to no fault of their own. By protecting the integrity of the UI fund and ensuring funds are rightfully delivered, these bills will also help ensure the state maintains a healthy UI Fund balance, which is necessary to keep Wisconsin employers in the lowest possible UI tax bracket. For those reasons, we support these bills and applaud the authors for bringing them forward.

Assembly Bill (AB) 937 creates a sliding scale for UI benefits. The current UI system doesn't account for changing market dynamics as it should. The available number of jobs is not static, and connected services like UI benefits should also not be static. Today there is a set number of weekly benefits available to claimants, 26, regardless of the current job marketplace. AB 937 brings real world conditions into the UI system, helping ensure that funds continue to be available for those that need them most. It is common sense that the amount of benefits available should adapt to the current market needs. In times of high unemployment, when jobs are scarce, additional weeks of benefits may be needed for individuals seeking their next job opportunity.

But when jobs are plentiful, as they are now with an unemployment rate under 3% and over 130,000 jobs available on the Jobs Center of Wisconsin website, it makes sense to lower the number of weeks of

UI benefits available. The goal is not to force people off of benefits, but rather it is a recognition that there are jobs available right now for those claimants to go after. In the bill, the minimum amount of benefits is 14 weeks. 14 weeks to find a job in what is often described as a worker's marketplace, where employers are desperate for workers and "help wanted" signs, many offering hiring bonuses, are literally in store fronts all over the state. Workers are quitting their jobs left and right today in what has been named "the great resignation" because jobs are plentiful, and job seekers are able to command higher pay and better benefits in today's marketplace. UI should recognize this reality.

Assembly Bill 938 is an omnibus bill that touches on a number of items within the UI system in order to ensure funds are there for those that need them most, as well as make sure the system is working properly for those in desperate need of help. We witnessed way too many cases during the first wave of COVID-19 of individuals not being able to obtain help submitting claims, leaving our fellow Wisconsinites without benefits when they needed it most. To that end, AB 938 requires DWD to operate a call center during times of high demand like what we had from the initial claims stemming from COVID-19 shutdowns, while also allowing the state to transfer employees from other agencies to help with the call center volume.

The bill also protects the integrity of UI by upgrading the definition of misconduct, requiring the Department of Workforce Development to audit at least 50% of work search actions, requiring an upgrade in identity matching for new claimants, and requiring DWD to provide updated training materials, including videos, for employers and claimant. It also directs DWD to compare claimants to databases that track death, employment, and prison records to search for fraud or erroneous payments, gives authority to approve future federal enhanced benefits to the Joint Committee on Finance, and requires the Legislative Audit Bureau to conduct an audit of DWD's efforts to detect and prevent fraud as well as recover fraud related overpayments. These are all common sense ideas to make sure funds are available for those that need them when they lose their job at no fault of their own.

Finally, but certainly not least, before you today is Assembly Bill 939, legislation that cracks down on "ghosting" while still receiving UI benefits. This bill addresses a growing concern that we hear about from employers all over the state, regardless of industry or size. It certainly existed prior to the COVID-19 pandemic, but, like so many other related items, "ghosting" had a bright spotlight put on it during the pandemic. "Ghosting" in this context is when an individual doesn't show up for an interview or new job offer, yet still counts that scheduled interview or job offer as a job search to maintain benefit eligibility.

Here is what we heard from one employer, AriensCo. from Brillion, on this issue and their experience with "ghosting" by job candidates (letter attached):

In a highly competitive talent landscape with attractive unemployment benefits, AriensCo has been impacted by candidates "ghosting" our career opportunities. This consistently occurs for candidates for both professional and production positions.

On the production side within the past year, we have had 53 candidates in 2021 not show up for work on their first day and requiring us to rescind their offers of employment. Additionally, 140 candidates did not show up for interviews in 2021, and there were 401 candidates that applied for positions with AriensCo in 2021 that we could not contact/did not respond to us after applying.



**Statement Before the
Assembly Committee on Workforce Development**

By

**Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin**

Tuesday, February 8, 2022

Assembly Bills 937, 938, 939

Chair Petryk, Vice Chair Dittrich, and members of the Committee, my name is Bill G. Smith, State Director for the National Federation of Independent Business (NFIB), and I appear today on behalf of nearly 10,000 Wisconsin member firms. Many of these small businesses continue to struggle with a full menu of economic challenges:

- Labor issues
- Supply shortages
- Inflation
- COVID regulations

Since 1974, NFIB's Research Foundation has collected Small Business Economic Trends data with a quarterly survey of our members, and since 1986, these quarterly snapshots of the small business economy have been done on a monthly basis.

The January jobs report was recently released, and I would like to share a few highlights with the Committee. According to the small business monthly Jobs Report by NFIB's Research Center, a historic number of small businesses are struggling to increase their workforce. A net 50 percent (seasonally adjusted) reported raising compensation, up two points from December and a 48 year record high reading.

NFIB's Chief Economist said, "Historically large numbers of small businesses are struggling to increase their workforce ... the staffing shortage continues to hold back the small business economy as owners try to retain their current employees and attract applicants for open positions, still at record high levels."

**National Federation of Independent Business in Wisconsin
10 East Doty Street, Suite 519 – Madison, WI 53703 - 608/255-6083 – www.nfib.com/wi**

**Statement Before the Assembly Committee on Workforce Development
Tuesday, February 8, 2022**

A few more statistics from the Report:

- 23 percent said labor quality was their top business problem
- 11 percent cited labor costs as their top business problem
- 47 percent (seasonally adjusted) reported job openings they could not fill, and although down two points from December, the number of unfilled job openings still far exceeds the 48 year average of 23 percent.

Overall, Mr. Chair, 59 percent of small employers reported hiring or trying to hire in January – and 93 percent of those hiring or trying to hire reported few or no applicants for the positions they were trying to fill. 29 percent said there were few qualified applicants for their open positions, 26 percent reported none.

The bills before the Committee today for your consideration, would help provide unemployed individuals with incentives and encouragement to join or return to the workforce, while also responding to the current worker shortage crisis challenging our small business employers.

Assembly Bill 937 would create a linkage between unemployment and insurance benefits and current economic conditions.

Assembly 938 includes several key reforms that would protect the integrity of the UI Trust Fund, improve the efficiency of the administration of benefits, and help promote a UI system that is accountable and fairer to all who access the program.

Assembly Bill 939 preserves the intent of the UI system to provide temporary financial assistance while an individual seeks employment.

Mr. Chair, no one has greater responsibility or ability to lead the economic recovery than Wisconsin's small business owners.

The Legislature has a special obligation, we believe, to ensure that public policies help promote and encourage the creation and growth of small business, and also to sustain the small business community throughout our state.

I hope you found the economic data – specific to small business – that I shared with you to be helpful as you consider this legislation and public policies that impact our state's vital small business community.

Thank you.