LRB-3682

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters: **kenneda**

Subject: **Unemployment Compensation**

Extra Copies:

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to: **tom.smith@dwd.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

See Attached

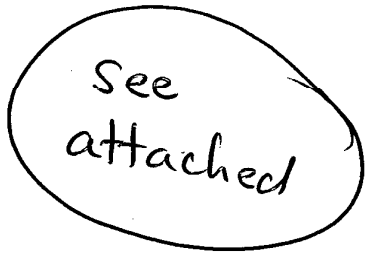
Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc 08/28/2001			_____ _____			S&L
/P1			pgreensl 08/28/2001	_____ _____	lrb_docadmin 08/28/2001		S&L
/P2	kuesejt	gilfokm	jfrantze	_____	lrb_docadmin		S&L

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	09/14/2001	09/14/2001	09/14/2001	_____	09/14/2001		
/P3	kuesejt 09/18/2001	gilfokm 09/18/2001	pgreensl 09/20/2001	_____ _____	lrb_docadmin 09/20/2001		S&L
/P4	kuesejt 09/26/2001	gilfokm 09/26/2001	jfrantze 09/27/2001	_____ _____	gretskl 09/27/2001		S&L
/P5	kuesejt 10/01/2001	gilfokm 10/01/2001	haugeca 10/01/2001	_____ _____	lrb_docadmin 10/01/2001		S&L
/1	kuesejt 10/05/2001	gilfokm 10/05/2001	pgreensl 10/05/2001	_____ _____ _____ _____	lrb_docadmin 10/05/2001	lrb_docadmin 10/08/2001 ~~lrb_docadmin~~ ~~10/08/2001~~	

FE Sent For: **10/05/2001, 10/05/2001.**

<END>



2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters: **kenneda**

Subject: **Unemployment Compensation**

Extra Copies:

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to: **tom.smith@dwd.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc 08/28/2001			_____ _____			S&L
/P1			pgreensl 08/28/2001	_____ _____	lrb_docadmin 08/28/2001		S&L
/P2	kuesejt	gilfokm	jfrantze	_____	lrb_docadmin		S&L

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	09/14/2001	09/14/2001	09/14/2001	_____	09/14/2001		
/P3	kuesejt 09/18/2001	gilfokm 09/18/2001	pgreensl 09/20/2001	_____ _____	lrb_docadmin 09/20/2001		S&L
/P4	kuesejt 09/26/2001	gilfokm 09/26/2001	jfrantze 09/27/2001	_____ _____	gretskl 09/27/2001		S&L
/P5	kuesejt 10/01/2001	gilfokm 10/01/2001	haugeca 10/01/2001	_____ _____	lrb_docadmin 10/01/2001		S&L
/1	kuesejt 10/05/2001	gilfokm 10/05/2001	pgreensl 10/05/2001	_____ _____	lrb_docadmin 10/05/2001		

FE Sent For:

"/1" 10/5/01

<END>

LRB-3682

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters: **kenneda**

Subject: **Unemployment Compensation**

Extra Copies:

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to: **tom.smith@dwd.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc 08/28/2001						S&L
/P1			pgreensl 08/28/2001	10/5	lrb_docadmin 08/28/2001		S&L
/P2	kuesejt 09/14/2001	gilfokm 09/14/2001	jfrantze 09/14/2001	10/5	lrb_docadmin 09/14/2001		S&L
/P3	kuesejt	gilfokm 10/5	pgreensl 10/5		lrb_docadmin		S&L

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	09/18/2001	09/18/2001	09/20/2001	_____	09/20/2001		
/P4	kuesejt 09/26/2001	gilfokm 09/26/2001	jfrantze 09/27/2001	_____ _____	gretskl 09/27/2001		S&L
/P5	kuesejt 10/01/2001	gilfokm 10/01/2001	haugeca 10/01/2001	_____ _____	lrb_docadmin 10/01/2001		

FE Sent For:

<END>

LRB-3682

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Unemployment Compensation**

Extra Copies:

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to: **tom.smith@dwd.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc 08/28/2001			_____ _____			S&L
/P1			pgreensl 08/28/2001	_____ _____	lrb_docadmin 08/28/2001		S&L
/P2	kuesejt	gilfokm	jfrantze	_____	lrb_docadmin		S&L

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	09/14/2001	09/14/2001	09/14/2001	_____	09/14/2001		
/P3	kuesejt 09/18/2001	gilfokm 09/18/2001	pgreensl 09/20/2001	_____ _____	lrb_docadmin 09/20/2001		S&L
/P4	kuesejt 09/26/2001	gilfokm 09/26/2001	jfrantze 09/27/2001	_____ _____	gretskl 09/27/2001		S&L
/P5	kuesejt 10/01/2001	gilfokm 10/01/2001	haugeca 10/01/2001	_____ _____	lrb_docadmin 10/01/2001		

FE Sent For:

<END>

LRB-3682

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Unemployment Compensation**

Extra Copies: KMG

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc 08/28/2001						S&L
/P1			pgreensl 08/28/2001		lrb_docadmin 08/28/2001		S&L
/P2	kuesejt 09/14/2001	gilfokm 09/14/2001	jfrantze 09/14/2001		lrb_docadmin 09/14/2001		S&L
/P3	kuesejt 09/18/2001	gilfokm 09/18/2001	pgreensl 09/20/2001		lrb_docadmin 09/20/2001		S&L
/P4	kuesejt 09/26/2001	gilfokm 09/26/2001	jfrantze 09/27/2001	CH 10-01-01 PS 10-01-01	gretskl 09/27/2001		

FE Sent For: /P5 - 10/1 - KMG CH 10-01-01

LRB-3682

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Unemployment Compensation**

Extra Copies: KMG

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc 08/28/2001	/P1 9/26 KMG/kmg previous versions not edited					S&L
/P1			pgreensl 08/28/2001		lrb_docadmin 08/28/2001		S&L
/P2	kuesejt	gilfokm	jfrantze		lrb_docadmin		S&L

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	09/14/2001	09/14/2001	09/14/2001	_____	09/14/2001		
/P3	kuesejt 09/18/2001	gilfokm 09/18/2001	pgreensl 09/20/2001	_____ _____	lrb_docadmin 09/20/2001		

FE Sent For:

<END>

LRB-3682

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Unemployment Compensation**

Extra Copies: KMG

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

called to let her know "/P3" was ready for pick-up (left message on v-mail) (e-mail down)

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc 08/28/2001			9/20			S&L
/P1			pgreensl 08/28/2001	P8	lrb_docadmin 08/28/2001		S&L
/P2	kuesejt 09/14/2001	gilfokm 09/14/2001	jfrantze 09/14/2001	KP	lrb_docadmin 09/14/2001		

9/18/19 pb

FE Sent For:

<END>

LRB-3682

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Unemployment Compensation**

Extra Copies:

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc 08/28/2001						S&L
/P1			pgreensl 08/28/2001		lrb_docadmin 08/28/2001		

9/14 9/14

FE Sent For:

<END>

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Unemployment Compensation**

Extra Copies:

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	traderc		8/28 PS	8/28 PS 11/9 Z			

FE Sent For:

<END>

LRB-3540

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Unemployment Compensation**

Extra Copies:

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

Per attached instructions.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kuesejt 07/31/2001	gilfokm 08/02/2001					S&L
/P1			rschluet 08/02/2001		gretskl 08/02/2001		

FE Sent For:

<END>

DN 0125

LRB-3540

2001 DRAFTING REQUEST

Bill

Received: **07/10/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 6-6684**

By/Representing: **Michelle Kho**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Addl. Drafters:

Subject: **Unemployment Compensation**

Extra Copies:

Submit via email: **YES**

Requester's email: **michelle.kho@dwd.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Unemployment insurance - various changes

Instructions:

Per attached instructions.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kuesejt	/p1 - 8/tmg 8-01					

FE Sent For:

<END>

Dept. #5
March 31, 2000
Proposed by: Department
Prepared by: Tom Smith

AMENDED* ANALYSIS OF PROPOSED UI LAW CHANGE

EXCLUSION OF CERTAIN NONIMMIGRANT VISA HOLDERS

* Additional information added in the Fiscal portion under Effects of the Proposed Change

1. Description of Proposed Change.

To exclude from the definition of employment, service performed for any employer by a non-resident alien who is temporarily in the United States under a visa known as class "F1", "J1" "M1", or "Q".

2. Proposed Statutory Language.

108.02(15)(j)6.:

> By a nonresident alien individual for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M) or (Q)), and which services are performed to carry out the purpose specified in subparagraph (F), (J), (M) or (Q), as the case may be, provided however, that this provision shall apply to services performed by the spouse or minor child of such an alien only if the spouse or minor child was also admitted to the United States for the purpose specified in subparagraph (F), (J), (M) or (Q).

3. Proposer's Reason for the Change.

Some Wisconsin employers, such as restaurants, have recently found it necessary to hire certain nonimmigrant aliens to fill job openings. These workers are primarily university students participating in the U.S. Information Agency's summer work/travel exchange program. As such, they hold "J" class visas which permit them to work in the U.S. in accordance with governing federal laws and regulations.

The Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA) contain an exclusion from the definition of employment for service performed by a nonresident alien who is in the U. S. by virtue of holding a nonimmigrant visa under classifications F, J, M or Q of the U.S. Immigration law. Persons who hold such visas are permitted to work in the U.S. under specified circumstances during the time their visas are valid. The Wisconsin UI law has no such exclusion. As a result, Wisconsin businesses using such workers are required to pay UI contributions (taxes) on their wages. In addition, the federal limitations on employment and visa validity for these primary classifications make it highly unlikely that any individual worker would be able to demonstrate availability for work under Wisconsin law to qualify for benefits .

In addition, however, federal immigration regulations create subclassifications for many visa categories, including F1, F2, J1, J2, M1 and M2. The "1" subclassification designates the primary visa holder, while the "2" subclass designates the spouse and minor children of the primary visa holder. Spouses and minor children of F, J, and M visa holders are generally admitted to the U.S. for family unity reasons where the primary visa holder will be in this country for an extended period.. The rules for permission to work are much less restrictive for spouses and minor children than for these primary visa holders. To mirror this policy the regulations for FICA, which also apply to FUTA, provide that services by spouses and minor children are not excluded employment unless the spouse or minor child was also admitted to the U.S. under a primary or "1" class visa.

The purpose of the proposed change is to match the federal law exclusion from covered employment for services by F1, J1, M1 & Q visa holders while matching the retention of coverage on the services of F2, J2 and M2 spouses and minor children.

4. Brief History and Background of the Current Provision.

None. This is new.

5. Effects of the Proposed Change.

a. Policy. This change will eliminate a Wisconsin UI employer tax on a narrow class of service which is also excluded under federal law. The exclusion is based on the policy considerations of the federal immigration laws for these types of workers. This change will also eliminate coverage under Wisconsin law of the defined class of persons who, even without the exclusion, would in all likelihood be unable to qualify for state unemployment benefits because of the restrictions on their availability for work under immigration law. Under federal law these classifications are students and exchange visitors who are admitted to the U.S. for study, training or cultural exchange and who are required to have independent means of support as a condition of their obtaining visas. Federal law severely limits the amount and type of work such persons are allowed to perform. Primarily, in the absence of unforeseen hardship, they are allowed to perform services only related to their specific visa program and under the supervision of the agency or entity administering that program.

b. Administrative impact. This change will decrease paperwork and administrative costs for both employers and the department. It will eliminate an unexpected tax liability for employers who mistakenly believe that the federal exclusion is matched in Wisconsin law. The change will harmonize federal and Wisconsin law and remove a source of conflict between the department and the employer community.

c. Equitable. As noted, there will likely be no effect on employees as those in the class affected would not be able to qualify for benefits anyway because of availability issues.

d. Fiscal. There will be no significant fiscal effect if this change is adopted.
   - Holders of F1 visas are students of institutions of higher education except technical colleges whose foreign students authorized to work are holders of M1 visas. A survey of these institutions indicated that all consider it their responsibility to employ students who hold these visas and seek work and that the students are not permitted to work for other employers. As student employes of educational institutions, F1 and M1 visa holders are already excluded from coverage by the UI program.
   - Holders of Q visas work as part of cultural exchange programs and are not authorized to perform work other than that for which they were admitted; hence, they are not available on the general labor market. There is a LIRC decision denying benefits to one such worker seeking work other than that for which he was admitted. He was denied UI benefits because his visa did not allow him to perform other work; hence, he was not available. The same principle would apply to other Q visa holders.
   - Holders of J1 visas are admitted under programs of the United States Information Agency (USIA). While they may perform a wider range of duties that Q visa holders, their work experience is limited to the period during which they are participating in the USIA program. When their work or the work component of that program ends, they are not permitted to perform other work and like Q visa holders would be found unavailable for work and disqualified from receiving UI benefits.

6. State and Federal Issues.

   a. Chapter 108. There are no issues involving other provisions of the UI law.

   b. Rules. No administrative rules will be necessary if the exception for spouses and minor children is included in the statute.

   c. Conformity. There are no conformity issues related to this change.

7. Proposal Effective/Applicability Date. To be determined.

8. Department Recommendation to the UIAC.

The Department recommends adoption of the proposed change.

Approved 12/04/01

Dept. #1
Bureau of Tax & Accounting

ANALYSIS OF PROPOSED LAW CHANGE
ELECTRONIC FILING OF QUARTERLY CONTRIBUTION AND WAGE INFORMATION BY EMPLOYER AGENTS

1. Description of Proposed Change

Most employer agents and fiscal agents who prepare and submit quarterly contribution/wage reports on behalf of employers subject to Wisconsin's unemployment insurance law, file the tax portion of the report on paper forms provided by the Department. This proposed change would require agents who file reports for 25 or more covered employers, to file both tax and wage information using some form of electronic media in a format prescribed by the Department. This proposed change would also penalize the agent for failure to comply with the electronic filing requirement.

2. Proposed Statutory Language

Create section 108.17(2?) (2r)
Employer agents and fiscal agents who file quarterly contribution reports on behalf of 25 or more employers who are subject to the provisions of the Unemployment Insurance law under section 108.02(13), shall file such contribution reports using an electronic medium and format approved by the department.

Amend 108.205(4) → (4)

Create section 108.205(3)
Employer agents and fiscal agents who file ~~quarterly wage reports~~ on behalf of 25 or more employers who are subject to the provisions of the Unemployment Insurance law under section 108.(13), shall file ~~such wage~~ reports using an electronic medium and format approved by the Department.

Create section 108.22(ad)
An employer agent who does not file quarterly contribution reports in accordance with s. 108.17(c?) or quarterly wage reports in accordance with s. 108.205(3) may be assessed a penalty of $25 for each employer whose information is not reported electronically in a format prescribed by the department.

Amend section 108.22(am)
The interest and the tardy filing fees levied under par. (a), (ac) and (ad) shall be paid to the department and credited to the administrative account.

3. Proposed Reason for Change

Currently about 20 employer agents voluntarily submit quarterly reports for their clients using some form of electronic media. These agents file reports each quarter for about 8,000 employers. We estimate there are an additional 150 agents who file paper reports for 25 or

more employers. We also estimate that these agents file reports for a total of 12,000 employers each quarter.

All the information contained on these reports has to be keypunched for input into the UI tax and accounting system The wage detail has to either be scanned or keypunched for input to the wage record system. This manual effort would not be necessary if the agents submitted the reports electronically. Since most of the reports are mailed directly to and processed by our bank, we are charged a fee for handling and keypunching each paper form. This cost would be eliminated if the agents reported electronically.

Errors that occur in keypunching or scanning the reports results in staff having to spend time making corrections. If the system edits can not identify the errors, the employers account is not accurately updated. This can effect an employer's tax rate and tax liability and often times results in employer inquiries. It can also result in erroneous benefit payments being made to claimants. The staff time spent dealing with these inquiries and correcting errors would not be necessary if the agents reported electronically.

4. Brief History and Background of Current Provision

There currently is no requirement that employer agents report quarterly contribution of wage information electronically. A recent law change was enacted requiring all employers who have more than 100 employees to report their quarterly wage detail information electronically. That change is scheduled to go into effect with the first quarter 2001 report due April 30, 2001. This proposed change will affect only employer agents. Employers who continue to report on their own without the use of an agent, will still be able to report their contribution report information on paper.

5. Effects of the Proposed Change

a. Policy: There is no UI Division Policy regarding employer agent reporting of contribution or wage information. Agents are encouraged to report electronically but it is not required.
b. Administrative Impact: There will be a staff savings resulting from handling and keypunching 12,000 less paper contribution reports. These savings will be used on other high priority functions.
c. Equitable: No effect.
d. Fiscal: We estimate that bank service charges will be reduced by $17,000 annually.

6. State and Federal Issues

a. Chapter 108: There are no other provisions of Chapter 108 affected by this proposed law change.
b. Administrative Rules: No rule needs to be changed or created to accommodate this proposed law change.

7. **Proposed Effective Date**

This proposal will take effect 2 reporting quarters after the date of publication of the act. The employer agents should be given 2 quarters to convert their reporting method to electronic reporting. For example, if enacted during June of 2001, the change would become effective with the fourth quarter 2001 reports due Jan. 31, 2002.

s:\bola\01 law change drafts\benefits\dept1.electronic reporting.doc

Approved
12/04/00

Dept. #2
Proposed by Bureau of Benefits

Analysis of Proposed Law Change

Non-charge for Quits to enter TAA or EDWAA Training

1. Description of Proposed Law Change

Amend Section 108.04(7)(h) to add language to include charging the fund's balancing account for voluntary terminations under 108.04(16)(b&c).

Under current policy, if a claimant terminates his or her employment to enter or continue approved training which is funded through TAA, the Trade Act of 1974, 19 USC 2296, employers are relieved of charges for unemployment benefits if the employment the claimant quit is unsuitable to the employee. "Unsuitable" is defined as work that is at a substantially lower skill level and is at less than 80% of the claimant's average weekly wage when compared to the work the claimant performed for the adversely affected employer (i.e., the employer they were terminated from that qualified them for the TAA program). There is no wording in the current law directly addressing the ability to relieve the employer of charges in this type of situation. There is also no provision to relieve the employer of charges for unemployment benefits if the claimant terminates his or her employment to enter or continue training funded through EDWAA under 29 USC 1661. Current policy creates an inequity in how employers are treated when employees terminate their employment to enter training in these two programs.

This proposal would give statutory authority to relieve the employer of charges for benefits when the claimant terminates employment to enter or continue approved training under 19 USC 2296 (TAA) if the employment terminated is found to be unsuitable. It also gives authority to relieve the employer of charges when the claimant terminates employment to enter or continue training approved under 29 USC 1661 (EDWAA).

2. Proposed Statutory Language

108.04(7)(h) The department shall charge to the fund's balancing account benefits paid to an employe that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the employe voluntarily terminates employment with that employer and par. (a), (c), (d), (e), (k), (L), (o), (p), ~~or~~ (q), or 108.04(16)(b) applies.

108.04(16)(b) The requalifying employment requirement under subs. (7) and (8) and the general qualifying requirements under sub. (2) do not apply to an individual as a result of the individual's enrollment in training or leaving

unsuitable work to enter or continue training under 19 USC 2296 or 29 USC 1661.

3. Proposer's Reason for the Change

The change is being proposed to give statutory authority to relieve employers of charges when an employee quits unsuitable employment to enter or continue training funded under 19 USC 2296 (TAA). This practice is a policy only at this time, not supported in the law. This proposal would also relieve employers of benefit charges if an employee quits unsuitable employment to enter or continue training funded under 29 USC 1661 (EDWAA), making it more equitable to employers in these situations.

An alternative to this proposal would be to remove the non-charge language from the benefits manual section that imposes the policy and have the employer be charged for benefits when the employee quits to attend TAA or EDWAA approved training.

4. Brief History and Background of Current Provision

The current policy of relieving the employer of charges when the employee quits to enter or continue approved training was instituted when a Disputed Claims staff person, in the course of rewriting the manual section on employee initiated separations, included the non-charge provision for this situation. It is unclear whether this was a policy decision, whether it was done out of a sense of equity or whether the staff person thought that the non-charge already was being applied in this situation. The manual section went through clearance and was approved with this provision intact.

5. Effects of Proposed Change

a. **Policy**. As 108.04(7)(h) currently stands, the subsections of 108.04(7) which apply the non-charge to the employer's account all address situations in which the employee quit due to a reason or circumstance over which the employer had no control or responsibility. Enacting this provision would be consistent with this intent.

b. **Administrative Feasibility**. There would be no workload increase or decrease associated with this proposal. Implementation would require less than four hours to adjust current computer programming.

c. **Equitable**. This proposal would have the most impact on employers. It makes the law more equitable to employers than the current policy. There would be no impact on claimants.

d. **Fiscal**.
(to be completed when Dick Tillema completes his research)

6. State and Federal Issues

a. **Chapter 108**. This provision will not have any impact on any other provisions of Chapter 108.

b. **Rules**. No administrative rules need to be promulgated as a result of this proposal.

c. **Conformity**.
(to be completed by Bureau of Legal Affairs)

7. Proposed Effective/Applicability Date

Effective with voluntary terminations occurring January 7, 2001 or after (week of issue 02/01 or later).

s:\bola\01 law change drafts\benefits\dept2.taanoncharge.doc

Approved
12/04/00

Dept #3
January 25, 1999
Proposed by Charles Schaefer,
Eau Claire Hearing Office

Analysis of Proposed UI Law Change
Non-charge provision and s.108.04 (8)(c)

1. Description of Proposed Law Change

Amend section 108.04 (8)(c) to provide that benefits paid to a claimant who fails, without good cause, to return to work for an employer for whom he/she last worked within 52 weeks will not be charged to that employer's reserve fund balance but to the fund's balancing account.

2. Proposed Statutory Language

108.04(8)(c)
If an employe fails, without good cause, to return to work with a former employer that recalls the employe within 52 weeks after the employe last worked for that employer, the employe is ineligible to receive benefits until 4 weeks have elapsed since the end of the week in which the failure occurs and the employe earns wages after the week in which the failure occurs equal to at least 4 times the employe'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 employe's weekly benefit rate shall be that rate which would have been paid had the failure not occurred. This paragraph does not preclude an employe from establishing a benefit year during a period in which the employe is ineligible to receive benefits under this paragraph if the employe 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 whenever an employe of that employer fails, without good cause, to return to suitable work with that employer. If an employe receives actual notice of a recall to work, par. (a) applies in lieu of this paragraph.

3. Proposer's Reason for Change

An employer for whom the employe had last worked within the previous 52 weeks from the week of the refused offer would most likely be liable for a portion or all of the

employe's benefits. The proposed change is necessary to make s. 108.04 (8)(c) as equitable for employers as is s. 108.04(8)(a) when an employe fails to accept work without good cause, regardless of whether the offer was or was not received.

4. Brief History and Background of Current Provision

S. 108.04(8)(af), predecessor to the current s. 108.04(8)(c), first appeared in the 1958-59 law text. To date, this section, under any of its various numerical changes since 1958, has never included a non-charge provision. The first time such a provision appeared on the books involving a refusal of work was when it was included in s. 108.04(8)(a) in the 1989-1990 law text.

5. Effects of the Proposed Change

a. Policy. This proposal adds to s. 108.04(8)(c) a provision allowing for the non-charging of benefits payable to an employe who has failed to accept, without good cause, an offer of recall to an employer for whom he/she had last worked within the previous 52 weeks. (This paragraph only applies when the employe did not actually receive the notice of recall. If notice of recall was received by the employe and was refused, then s. 108.04(8)(a) applies.) Those benefits that would otherwise be chargeable to that employer's reserve fund balance would be charged to the fund's balancing account, as they would if the employe failed to accept work under s. 108.04(8)(a).

b. Administrative Feasibility. This proposal would have minimal impact on workload. Programming estimates one half day or $240.00 for implementation. Systems and Processing estimates 1.5 hours for testing and LID changes for a total of $45.00. Printing of materials for UI Trans cover page and attached manual pages is estimated at $54.00. There would be no increase or decrease to workload for adjudication units as this provision would not change the elements currently required for a suitable work investigation.

c. Equitable. This proposal creates a more equitable use of the non-charge provision for all employers who have offered work that an employe has not accepted. This provision does not affect the payment of benefits to an employe who requalifies for benefits after such a suspension is imposed.

d. Fiscal. The proposal is not expected to have a significant fiscal impact, ssuming that it applies only to bona fide offers of work.

6. State and Federal Issues

a. Chapter 108. No other provision of Chapter 108 will be affected by this law change.

b. Rules. No administrative rules will need to be promulgated or changed as a result of this proposal.

c. Conformity. There are no conformity issues with respect to this proposal.

7. Proposed Effective/Applicability Date

This change will go into effect with decisions issued as of 04/02/00, week 15/00.

s:\bola\01 law change drafts\dept3.duerecall.doc

Dept. #10
Date of Draft: **May 1, 2001**
Proposed by: **Bureau of Legal Affairs**

ANALYSIS OF PROPOSED UI LAW CHANGE

AMENDMENT TO ALLOW THE DEPARTMENT TO REHIRE ADMINISTRATIVE LAW JUDGES (ALJs) WHO HAVE RETIRED.

1. **Description of Proposed Change**

The department proposes to amend section 108.09 (3) to permit the Department to rehire retired Administrative Law Judges (ALJs) as reserve administrative law judges.

2. **Proposed Statutory Language**

Amend section 108.09(3) to read as follows:

(3) APPEAL TRIBUNALS. (a) To hear and decide disputed claims, the department shall establish appeal tribunals, each of which shall consist of an individual who is a permanent employee of the department. The department may appoint an individual who is not a permanent employee of the department to serve as a temporary reserve appeal tribunal if the individual formerly served as an appeal tribunal while working for the department and retired from state service as a permanent employee. A temporary reserve appeal tribunal shall be paid on a per diem basis.

3. **Proposer's Reason for Change**

The current law only permits the department to appoint permanent employees as Administrative Law Judges (appeal tribunals) except when the case involves a situation where the department or an employee or former employee is an interested party. In the next ten years, the majority of our current ALJs will be retiring. Some of them have expressed an interest and a willingness to work for the department after they retire. Being able to temporarily hire experienced ALJs to handle the appeals workload will provide us with the opportunity to handle temporary increases in workload promptly and efficiently. In order to be able to rehire ALJs as temporary reserve ALJs (and not as permanent employees), we must change the law to permit the department to do so. We are modeling these positions after the law relating to "reserve judges" in section 753.075 of the statutes.

4. **Brief History and Background of Current Provision**

The law was amended in 1985 Wis. Act 17 to expressly state that the appeal tribunal must be a permanent employee of the department. This was not a significant policy change because the department had interpreted the previous laws to mean that only permanent employees could be hired as ALJs.

5. **Effects of the Proposed Change:**

a) Policy: The department will be able to rehire ALJs as temporary reserve ALJs after they retire from state service. Other individuals who want to serve as ALJs will have to be permanent employees of the department to be hired as ALJs.

b) Administrative Impact: The department will be able to use the talents of experienced productive ALJs to help handle fluctuations in the appeals workload. .

c) Equitable: None.

d) Fiscal: None.

6. **State and Federal Issues**

a) Conformity: None.

b) Chapter 108. There are no other provisions of Chapter 108 affected by this proposed law change.

c) Administrative Rules. No rule needs to be changed or created to accommodate this proposed law change.

7. **Proposed Effective Date**

This proposal will take effect on the generally applicable effective date of the legislative package in which it is contained.

s:\bola\01 law change drafts\bola\dept10.rehireALJs.doc

2001 **BILL**

Date (time) needed: DNOTE Due by Friday, Aug. 3

LRB – 3540, P1

JKR : kmg :

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] ***to repeal*** . . . ; ***to renumber*** . . . ; ***to consolidate and renumber*** . . . ; ***to renumber and amend*** . . . ; ***to consolidate, renumber and amend*** . . . ; ***to amend*** . . . ; ***to repeal and recreate*** . . . ; and ***to create*** . . . of the statutes; **relating to:** various changes in the unemployment insurance law.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:
For the main heading, execute: . . . . . **create → anal: → title: → head**
For the subheading, execute: . . . . . **create → anal: → title: → sub**
For the sub–subheading, execute: . . . . . **create → anal: → title: → sub–sub**
For the analysis text, in the component bar:
For the text paragraph, execute: . . . . . **create → anal: → text**

attached

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

SECTION #.

analysis

This bill makes various changes in the unemployment insurance law. Significant provisions include:

OTHER BENEFIT CHANGES

Charging of certain benefits

Currently, with certain exceptions, if an employee is unable to work or unavailable for work, has not registered for work, or is not seeking suitable work, or with certain exceptions, if an employee terminates his or her work with an employer or fails, without good cause, to accept suitable work when offered or to return to work when recalled by his or her employer, the employee is ineligible to receive benefits until the employee requalifies by working in certain employment for a specified period. One exception permits an employee to receive benefits without requalifying if the employee enrolls in or leaves work to participate in training approved under the federal trade readjustment act. Currently, the cost of benefits paid to an employee under this exception is generally charged to the employer or employers that employed the employe during his or her base period (recent work period during which benefit rights accrue). Under this bill, the cost of benefits is charged to the balancing account of the unemployment reserve fund, which is financed from contributions (taxes) of all employers that are subject to a requirement to pay contributions, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

Currently, if an employee fails, without good cause, to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for the employer, the employee is ineligible to receive benefits until the employee requalifies by working in certain employment for a specified period. Currently, the cost of benefits paid to an employee who fails, without good cause, to return to work with an employer after the employee requalifies is generally charged to the employer or employers that employed the employee during his or her base period. Under this bill, the cost of benefits is charged to the balancing account of the unemployment reserve fund, unless the employee's employer or employers do no pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

OTHER CHANGES

Coverage of certain nonresident aliens

Currently, the services of nonresident aliens who are lawfully admitted to the United States are potentially subject to contribution requirements (taxes) under the state unemployment insurance law and employees who are lawfully admitted nonresident aliens are potentially eligible to claim benefits. This bill eliminates coverage of services performed by certain kinds of nonresident aliens who are lawfully admitted to the United States under certain specified visas, thereby eliminating contribution requirements for services performed by these individuals and precluding these individuals from claiming benefits.

Contribution and wage report format

Currently, each employer that is subject to the unemployment insurance law must file with DWD periodic reports of contributions (taxes) and wages paid to each of its employees and certain other information. Employers of 100 or more employees must file the wage reports electronically. This bill provides that if an employer retains an agent to file contribution or wage reports and the agent files contribution or wage reports on behalf of 25 or more employers, the agent must file the contribution or wage reports electronically, regardless of the number of employees employed by an employer on behalf of which the agent files reports. Under the bill, employer agents that are subject to this requirement and that fail to file their reports electronically may be assessed a penalty of $25 for each employer whose report is not filed electronically.

Temporary reserve appeal tribunals

Currently, DWD employs individuals to serve as "appeal tribunals," who hear and decide appeals of initial determinations made by employees of DWD with respect to unemployment insurance matters. With limited exceptions, these individuals must be permanent employees of DWD. This bill permits DWD to employ an individual who formerly served as an appeal tribunal, and who retired from state service as a permanent employee, to serve as a temporary reserve appeal tribunal. Under the bill, these individuals are compensated on a per diem basis.

delete space

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

the department of workforce development

SECTION 1. 108.02 (15) (j) 4. and 5. of the statutes are amended to read:

108.02 **(15)** (j) 4. In the employ of a hospital by a patient of such hospital; ~~or~~

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83.

5. In any quarter in the employ of any organization exempt from federal income tax under section 501 (a) of the internal revenue code, other than an organization described in section 401 (a) or 501 (c) (3) of such code, or under section 521 of the internal revenue code, if the remuneration for such service is less than $50.~~;~~ or

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83.

SECTION 2. 108.02 (15) (j) 6. of the statutes is created to read:

108.02 **(15)** (j) 6. By a nonresident alien for the period that he or she is temporarily present in the United States as a nonimmigrant under 8 USC 1101 (a) (15) (F), (J), (M) or (Q), if the services are performed to carry out the purpose for which the alien is admitted to the United States, as provided in 8 USC 1101 (a) (15) (F), (J), (M) or (Q), or by the spouse or minor child of such an alien if the spouse or child was also admitted to the United States under 8 USC 1101 (a) (15) (F), (J), (M) or (Q) for the same purpose.

SECTION 3. 108.04 (7) (h) of the statutes is amended to read:

108.04 **(7)** (h) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the employee voluntarily terminates employment with that employer and par. (a), (c), (d), (e), (k), (L), (o), (p), (q) or (s) or sub. (16) (b) applies.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83.

SECTION 4. 108.04 (8) (c) of the statutes is amended to read:

108.04 **(8)** (c) If an employee fails, without good cause, to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer, the employee is ineligible to receive benefits until 4 weeks have elapsed since the end of the week in which the failure occurs and the employee earns wages after the week in which the failure occurs equal to at least 4 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 that rate which would have been paid had the failure not occurred. This paragraph does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under this 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 any employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee of that employer fails, without good cause, to return to suitable work with that employer. If an employee receives actual notice of a recall to work, par. (a) applies in lieu of this paragraph.

renumbered 108.09(3)(a) 1. and

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83.

Fix comp.

SECTION 5. 108.09 (3) (a) of the statutes is amended to read:

108.09 **(3)** (a) 1. To hear and decide disputed claims, the department shall establish appeal tribunals. Except as authorized in this paragraph, each ~~of which~~ tribunal shall consist of an individual who is a permanent employee of the department. 3. Upon request of a party to an appeal or upon its own motion, the department may appoint an individual who is not a permanent employee of the department to hear an appeal in which the department or an employee or former

employee of the department is an interested party. No individual may hear any appeal in which the individual is a directly interested party.

History: 1971 c. 147; 1973 c. 247; 1975 c. 343; 1977 c. 29, 418; 1979 c. 52, 221; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38 ss. 81 to 86, 136; 1989 a. 56 s. 259; 1989 a. 77; 1991 a. 89, 269; 1993 a. 373; 1995 a. 118; 1997 a. 35, 39; 1999 a. 15.

SECTION 6. 108.09 (3) (a) 2. of the statutes is created to read:

108.09 **(3)** (a) 2. The department may appoint an individual who is not a permanent employee of the department to serve as a temporary reserve appeal tribunal if the individual formerly served as an appeal tribunal while employed by the department and retired from state service as a permanent employee. A temporary reserve appeal tribunal shall be paid on a per diem basis.

SECTION 7. 108.17 (2e) of the statutes is created to read:

108.17 **(2e)** An employer agent that files reports under sub. (2) on behalf of 25 or more employers shall file those reports using an electronic medium and format approved by the department. An employer agent that becomes subject to the reporting requirement under this subsection shall file its initial report under this subsection for the 2nd reporting period beginning after the quarter in which the employer agent becomes subject to the reporting requirement. Once an employer agent becomes subject to the reporting requirement under this subsection, the employer agent shall continue to file its reports under this subsection unless that requirement is waived by the department.

SECTION 8. 108.20 (3) of the statutes is amended to read:

108.20 **(3)** There shall be included in the moneys governed by sub. (2m) any amounts collected by the department under ss. 108.04 (11) (c) and (cm) and 108.22 (1) (a) ~~and,~~ (ac), and (ad) as tardy filing fees, forfeitures, interest on delinquent payments or other penalties and any excess moneys collected under s. 108.19 (1m).

History: 1973 c. 90 s. 559; 1981 c. 36 ss. 38, 39, 45; 1983 a. 8, 388; 1985 a. 17, 29, 40; 1987 a. 27, 38, 403; 1989 a. 77; 1991 a. 89; 1997 a. 27, 39, 252; 1999 a. 15.

SECTION 9. 108.205 (2) of the statutes is amended to read:

108.205 **(2)** ~~All employers~~ An employer of 100 or more employees, as determined under s. 108.22 (1) (ae), shall file the quarterly report under sub. (1) using an electronic medium approved by the department ~~for such employers,~~ unless the employer retains an employer agent that is subject to the reporting requirement under sub. (3).

(4) An employer that becomes subject to the reporting requirement under ~~this subsection~~ sub. (2) shall file its initial report under ~~this~~ that subsection for the 4th quarter beginning after the quarter in which the employer becomes subject to the reporting requirement. An employer agent that becomes subject to the reporting requirement under sub. (3) shall file its initial report under that subsection for the 2nd quarter beginning after the quarter in which the employer agent becomes subject to the reporting requirement. Once an employer or employer agent becomes subject to ~~the~~ a reporting requirement under ~~this subsection~~ sub. (2) or (3), the employer or employer agent shall continue to file its quarterly reports under ~~this subsection~~ sub. (2) or (3) unless that requirement is waived by the department.

History: 1987 a. 38; 1991 a. 89; 1997 a. 39; 1999 a. 15.

SECTION 10. 108.205 (3) of the statutes is created to read:

108.205 **(3)** An employer agent that files reports under sub. (1) on behalf of 25 or more employers shall file those reports using an electronic medium and format approved by the department.

SECTION 11. 108.22 (1) (ad) of the statutes is created to read:

108.22 **(1)** (ad) An employer agent that is subject to the reporting requirements under ss. 108.17 (2e) and 108.205 (3) and that fails to file a contribution report in accordance with s. 108.17 (2e) or a wage report in accordance with s. 108.205 (3) may be assessed a penalty by the department in the amount of $25 for each employer

whose report is not filed using an electronic format and medium approved by the department.

SECTION 12. 108.22 (1) (am) of the statutes is amended to read:

108.22 **(1)** (am) The interest and the tardy filing fees levied under par. (a), (ac), and (ad) shall be paid to the department and credited to the administrative account.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15.

SECTION 13. Initial applicability.

(1) The treatment of section 108.02 (15) (j) 4., 5., and 6. of the statutes first applies to services performed after December 31, 2001.

(2) The treatment of section 108.04 (7) (h) of the statutes first applies with respect to terminations occurring on January 7, 2001.

(3) The treatment of section 108.04 (8) (c) of the statutes first applies with respect to determinations issued under section 108.10 of the statutes on April 2, 2000.

(4) The treatment of sections 108.17 (2e), 108.20 (3), 108.205 (2) and (3), and 108.22 (1) (ad) and (am) of the statutes first applies with respect to reports due for the reporting period or calendar quarter that includes March 31, 2002.

SECTION 14. Effective date. This act takes effect on the first Sunday after publication.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3540/P1dn
JTK...

Michelle Kho:

1. This draft includes the 5 changes you indicated that the council had approved or was considered likely to approve. I gathered that the treatment of "new work" was less definite at this point and I think we need to talk about exactly how we would structure the proposed audit exception and position provisions. We can try to flesh that out on the next draft.

2. Concerning the proposed changes to s. 108.04 (8) (c), stats., to require noncharging of certain benefits, the submitted language refers to failure to return to *suitable work*, whereas the current text refers to failure to return to *work*. If good cause is required for the failure, wouldn't that cover a situation in which an employee refused to return to work that was unsuitable?

3. It appears that 29 USC 1661 (approval of state plans under the Employment of Dislocated Workers Adjustment Act) was repealed effective July 1, 2000. Therefore, this draft does not incorporate reference to it in s. 108.04 (16) (b), stats. Please let me know if there is a substitute provision that needs to be referenced.

4. Concerning the proposed changes to s. 108.19 (3), stats., relating to temporary reserve ALJ's, while I adhered pretty closely to the submitted language, I'm not sure that the concept of per diem compensation gives with the classified attorney pay structure. Also, there might be some difficulty adhering to classified hiring procedures. It's possible that some statutes outside ch. 108 might need to be treated. I think we need to look at a) hiring on an LTE basis; b) declassifying these positions; or c) abandoning the per diem compensation structure and treating these people as permanent part–time employees. Each of these options probably has different consequences and advantages and disadvantages from the employer and employee perspective. Parenthetically, I know that DETF uses a part–time ALJ who, I believe, is an independent contractor. You may want to check with them to see how that relationship is structured. Also, you may want to consider what it means to be "retired". I imagine that if this proposal becomes law, some individuals may want to transition directly from full–time to reserve status without missing a day, so in their minds they have not yet "retired".

5. Concerning proposed ss. 108.17 (2e) and 108.205 (3), you may want to look at the enforcement provisions in s. 108.22, stats., to determine if you need to amend any of this

language to collect the penalties assessed under proposed s. 108.22 (1) (ad). Concerning the reference to "fiscal agents" in your submitted language, my assumption was that fiscal agents are a subcategory of employer agents and would be subsumed within that term. If not, I think we need to create a definition of "fiscal agent" and probably a definition of "employer agent" that excludes fiscal agents.

6. I amended s. 108.205 (2), stats., to clarify that reports of employer agents continue to be reports of employers, because they are so considered for other purposes currently.

7. The initial applicability provision for the proposed noncharge provision in s. 108.04 (8) (c), stats., is not consistent with the initial applicability for the proposed noncharge provision in s. 108.04 (7) (h), stats. (which is the same as used in 1999 Act 15), in that it is keyed to determinations rather than to events. You may wish to review.

8. Per your instructions, some of the initial applicability provisions are retroactive. I don't know if this was intentional or it merely results from the fact that the issue papers you sent over were prepared in anticipation of earlier enactment. You may wish to review.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266–6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3540/P1dn
JTK:kmg:rs

August 2, 2001

Michelle Kho:

1. This draft includes the 5 changes that you indicated the council had approved or was considered likely to approve. I gathered that the treatment of "new work" was less definite at this point and I think we need to talk about exactly how we would structure the proposed audit exception and position provisions. We can try to flesh that out on the next draft.

2. Concerning the proposed changes to s. 108.04 (8) (c), stats., to require noncharging of certain benefits, the submitted language refers to failure to return to *suitable work*, whereas the current text refers to failure to return to *work*. If good cause is required for the failure, wouldn't that cover a situation in which an employee refused to return to work that was unsuitable?

3. It appears that 29 USC 1661 (approval of state plans under the Employment of Dislocated Workers Adjustment Act) was repealed effective July 1, 2000. Therefore, this draft does not incorporate reference to it in s. 108.04 (16) (b), stats. Please let me know if there is a substitute provision that needs to be referenced.

4. Concerning the proposed changes to s. 108.19 (3), stats., relating to temporary reserve ALJ's, while I adhered pretty closely to the submitted language, I'm not sure that the concept of per diem compensation jibes with the classified attorney pay structure. Also, there might be some difficulty in adhering to classified hiring procedures. It's possible that some statutes outside ch. 108 might need to be treated. I think we need to look at: a) hiring on an LTE basis; b) declassifying these positions; or c) abandoning the per diem compensation structure and treating these people as permanent, part–time employees. Each of these options probably has different consequences and advantages and disadvantages from the employer and employee perspective. Parenthetically, I know that DETF uses a part–time ALJ who, I believe, is an independent contractor. You may want to check with them to see how that relationship is structured. Also, you may want to consider what it means to be "retired." I imagine that if this proposal becomes law some individuals may want to transition directly from full–time to reserve status without missing a day, so in their minds they have not yet "retired."

5. Concerning proposed ss. 108.17 (2e) and 108.205 (3), you may want to look at the enforcement provisions in s. 108.22, stats., to determine if you need to amend any of

this language to collect the penalties assessed under proposed s. 108.22 (1) (ad). Concerning the reference to "fiscal agents" in your submitted language, my assumption was that fiscal agents are a subcategory of employer agents and would be subsumed within that term. If not, I think we need to create a definition of "fiscal agent" and probably a definition of "employer agent" that excludes fiscal agents.

6. I amended s. 108.205 (2), stats., to clarify that reports of employer agents continue to be reports of employers, because they are so considered for other purposes currently.

7. The initial applicability provision for the proposed noncharge provision in s. 108.04 (8) (c), stats., is not consistent with the initial applicability for the proposed noncharge provision in s. 108.04 (7) (h), stats. (which is the same as was used in 1999 Wisconsin Act 15), in that it is keyed to determinations rather than to events. You may wish to review.

8. Per your instructions, some of the initial applicability provisions are retroactive. I don't know if this was intentional or if it merely results from the fact that the issue papers that you sent over were prepared in anticipation of earlier enactment. You may wish to review.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266–6778

Michelle Kho
August 8, 2001

Notes to Jeff Kuesel

- Jeff, I forgot to count the collections proposals, no. 7, as three proposals, so there are a few more than I stated earlier in the week.

- Included in this packet:

    - Draft of the UI Advisory Council's Agreement dated 8/8/01
    - 7. Collections Proposals (Dept. #6, 7, and 8)
    - 8. Elimination of Part. Successorship (Dept. #9)
    - 14. Extend Admin Fee Assessment for Technology (Dept. #14)

- As for number 2., Increase in Benefit Rate, I think you can do it without a proposal as usual. I will get you the benefit rate tables.

- I haven't gotten to your Drafter's Notes from the first draft, but I will work on them ASAP.

Thanks.

s:\bola\01 law change drafts\notes to jk.1

DEPT. #6
DATE OF THIS DRAFT: FEB. 2, 2001
PROPOSED BY: DEPARTMENT
ANALYSIS BY: Peter W. Zeeh

ANALYSIS OF PROPOSED UI LAW CHANGE

Amend §108.22(1m), Stats.

1. Description of the Proposed Change.

Section 108.22(1m), Stats. now provides if an employer owes unemployment taxes, interest, or fees to the department and fails to pay the amount owed; the department has a perfected lien on the employer's right, title, and interest in all of its real and personal property located in this state from the time the department issues an initial determination of the liability. It further provides that the lien continues in effect until it is fully paid. The proposed change would include not only unpaid taxes, interest, or fees, but also reimbursements in lieu of taxes and aiding and abetting forfeitures imposed under §108.04(11)(c), Stats.

2. Proposed Statutory Language.

> If an employer owes any contributions, reimbursements in lieu of contributions, ~~interest or fees, for~~ aiding and abetting forfeitures imposed under ~~§108.10(1)~~ and §108.04(11)(c), interest or fees to the department under this chapter and fails to pay the amount owed, the department has a perfected lien on the employer's right, title, and interest on all of its real and personal property located in this state in the amount finally determined to be owed plus costs.

3. Reasons for Change.

Liabilities for reimbursements in lieu of unemployment insurance taxes and for aiding and abetting forfeitures are also employer liabilities. For consistency and efficiency, the department believes that such liabilities should be treated in the same manner as unpaid unemployment insurance contributions. This is particularly true in the case of an aiding and abetting forfeiture which arises from an employer's participation in unemployment benefit fraud.

4. Brief History and Background of Current Provision.

The present §108.22(1m), Stats., was enacted during the 1991 legislative session to make it clear that the department lien arose not at the time of docketing, but at the time of the issuance of an initial determination, and that the lien continued in existence until the liability was fully paid. The change proposed here simply adds additional employer liabilities to this statute and treats them the same as unemployment insurance taxes.

5. Effects of the Proposed Change.

a. Policy. Over the last 10 years Unemployment Insurance Division debt collection statutes have been extensively revised to reduce the expense, in time and money, of debt collection both to the department and to debtors. Those prior changes significantly reduced the administrative burden of collection without sacrifice to the rights of debtors. This proposed change falls in line with that trend and makes collection of the additional liabilities simpler and less expensive.

b. Administrative Impact. This change will not increase the paperwork, administrative costs, or reporting requirements for employers. It is simply a means of collection from employers who already owe the department money based upon prior paperwork or information gathered by the department. Furthermore, since it is strictly directed at employers, it will not affect how claimants interact with the department.

The impacts on the department will be minimal. We estimate that this change would affect about 20 cases annually. Since DWD already issues the initial determinations for the liabilities in question, and the lien arises under this statute from the issuance of the initial determination, there is no additional impact in that regard.

The effects on the reserve fund in this case are probably negligible because the only possible reimbursement to the reserve fund would be coming from monies collected from a small number of reimbursable employers. The aiding and abetting forfeitures go to the administration fund.

6. State or Federal Issues.

There are no state or federal issues in this case with the possible exception, in terms of obtaining a lien, of sovereign immunity for governmental employers who reimburse for benefits. However, in view of their required coverage under the law and the fact they are subject to other collection procedures in §108.22(2), Stats., this is not a very big issue. Also, most of these reimbursements are collected otherwise. There are no conformity issues, and there is no effect on the administration of other provisions of Chapter 108. There is no reason for administrative rules to be promulgated as a result of this change, because there are virtually no administrative rules now regarding collection procedures. This change is merely to make two additional types of liability subject to this particular collection tool.

7. Proposed Effective Date.

These changes should be effective for any liability for which an initial determination under §108.10 was issued on or after the first Sunday after publication.

s:\bola\01 law change drafts\bola\dept6.doc

DEPT. #7
DATE OF THIS DRAFT: FEB. 2, 2001
PROPOSED BY: DEPARTMENT
ANALYSIS BY: Peter W. Zeeh

ANALYSIS OF PROPOSED UI LAW CHANGE

Amendment of §108.225, Stats.

1. Description of the Proposed Change.

Change the unemployment insurance levy law, to provide for collection of delinquent reimbursements in lieu of unemployment contributions and aiding and abetting forfeitures under §108.04(11)(c) through levy.

The statutory changes proposed change the present law, which now provides only that unemployment benefit overpayments and unemployment insurance taxes may be collected by levy, so that levy may be used to collect reimbursements in lieu of taxes and aiding and abetting forfeitures under §108.04(11)(c).

2. Proposed Statutory Language.

The proposed statutory language is below.

> §108.225(1)(a), Stats. "Contributions" includes reimbursements in lieu of contributions and interest for nontimely payment and any penalties assessed by the department under this chapter.
>
> §108.225(1)(b), Stats. Debt means delinquent contributions, delinquent reimbursements in lieu of contributions, benefit overpayments, forfeitures imposed upon an employing unit under §108.04(11)(c), Stats., or any liability of a third party under §108.225(3) and (4) for failure to surrender to the department property or rights subject to levy after proceedings under §§108.225(4) and 108.10 to determine the liability.
>
> §108.225(1)(c), Stats. Debtor means a person who owes the department delinquent contributions, reimbursements in lieu of contributions, benefit overpayments, forfeitures imposed upon an employing unit under §108.04(11)(c), Stats., or liabilities imposed under §108.225(4) for failure to surrender property or rights to property pursuant to a levy under §108.225.
>
> §108.225(16), Stats. In the case of benefit overpayments and forfeitures imposed upon an employing unit under §108.04(11)(c), Stats., an individual debtor is entitled to an exemption from levy from the greater of the following . . .

3. Reasons for the Proposed Change.

Debts for unpaid reimbursements in lieu of contributions and debts for aiding and abetting forfeitures are liabilities of employing units or employers. For consistency and efficiency, the department believes that the same collection procedures should apply to these two types of debts as are used for collecting unpaid unemployment taxes and benefit overpayments. Using the same collection procedure would simplify collection efforts and allow more rational and efficient use of collection resources.

4. History and Background of Current Provision.

The current levy law came into effect in approximately 1989 and greatly simplified collection procedures for collecting delinquent taxes and benefit overpayments. Previously, the department was required to use the circuit court garnishment procedure. This is a cumbersome, time consuming and expensive process, both for the department and the debtors. Furthermore, it frequently requires repeated garnishments rather than one continuous proceeding. Going to the levy procedure has greatly simplified collection and made it much less expensive. For

consistency, economy and efficiency, the department believes that the same collection process should be used for these additional types of employer liabilities.

5. Effect of the Proposed Change.

The change is consistent with the policy of this department to make collection procedures as efficient and as rational as possible while at the same time making sure there are adequate provisions for due process of law to be afforded to debtors.

This change in procedure does not affect claimants whatsoever. The effect on most employers will be minimal, unless employers other than original debtors are a levy target because of being a person or entity who owes money to a debtor or has money of a debtor on deposit. While these employers will have to deal with the levy procedure, it is certainly simpler to do that than to deal with a garnishment procedure which now is the only alternative for collection.

This change of procedure minimally affects the department. We estimate there will be 15 to 20 cases per year affected by this change. The initiation cost for a levy is about $3.50 plus $5 for mailing. Filing and sheriff's fees are many times that to begin a garnishment and department attorney time is required as well. Of course, there could be some additional expenses if there is a problem or a dispute about the levy. These kinds of problems could also occur under a garnishment procedure and are probably reduced somewhat by using the levy procedure.

The procedural change is equitable. It results in no gain or loss for benefit claimants and merely subjects additional types of employer liability to the same collection procedures used for unemployment insurance taxes. There should be minimal effect on the reserve fund as a result of this.

6. State and Federal Issues.

No conformity issue arises from these changes. Furthermore, there will not be any need for administrative rules as a result of these changes because the changes are so detailed and technical as not to require further clarification by rule. The only bureau in the Unemployment Insurance Division to be affected by this is the Bureau of Tax and Accounting in the person of the collection section. Because of the small number of debts to which the change applies, the effect will be minimal.

7. Proposed Effective Date.

The changes provided by these amendments to the statute shall be effective for debts or for reimbursements in lieu of contributions and aiding and abetting forfeitures under §108.04(11)(c) determined on or after the existence on or after the first Monday after publication.

s:\bola\01 law change drafts\bola\dept7.doc

DEPT #8
DATE OF THIS DRAFT: FEB. 2, 2001
PROPOSED BY: DEPARTMENT
ANALYSIS BY: Peter W. Zeeh

ANALYSIS OF PROPOSED UI LAW CHANGE

Amendment of Sections 108.225(1)(b) and (c)

1. Description of the Proposed Change.

Amendment of §§108.225(1)(b) and (c) to allow collection by levy from third parties who do not respond to levies after proper procedures under §§108.225(4)(b) and 108.10, Stats.

2. Proposed Statutory Language. (This language also includes changes under another proposal that is separately analyzed.)

Change §108.225(1)(b), Stats., to read:

> "Debt" means any delinquent contributions, delinquent reimbursements in lieu of contributions, benefit overpayments, forfeitures imposed upon an employing unit under §108.04(11)(c), or any liability of a third party for failure to surrender property or rights subject to levy after proceedings under §108.225(4)(b) and 108.10 to determine the amount of liability.

Change §108.225(1)(c), Stats., to read:

> "Debtor" means a person who owes the department delinquent contributions, delinquent reimbursements in lieu of contributions, benefit overpayments, forfeitures imposed upon an employer for aiding and abetting benefit fraud under ~~within the meaning of~~ §108.04(11)(c), Stats., or any liability of a third party established under §§108.225(4)(b) and 108.10, Stats.

3. Reason for the Change.

A levy is an administrative action to collect a debt owed to the department by seeking money or property of the debtor which is in the hands of a third party. Current law provides that if the third party fails to surrender the property, the department may demand that the third party surrender the property. If the third party does not, it is liable to the department for no more than 25 percent of the original debt and is subject to having a determination issued against it under §108.10 to surrender the property. However, there is no enforcement mechanism for collecting this amount. In such cases the department believes that using the levy procedure itself would be the best way to collect the liability.

4. History and Background of Current Provision.

The current provision came into the statutes during the 1987 or 1989 Legislature. It is believed the reason there was not a procedure put in the statutes to collect the third party liability was simple inadvertence.

5. Effects of the Proposed Change.

There should be no real change in the impact of the levy law upon employers or claimants. The only exception to this might be if the levy was on wages, and the employer refused to comply with the levy. In that case, the employer might be subject to some additional paperwork, though very little more than would be required now. The change furthers the trend in our law to rationalize, streamline, and make more efficient UI collection procedures. There will be little or no cost to implement. There may be some additional administrative costs in terms of pursuing the remedy provided by the change, but that is offset by the fact the department now has no means of enforcing the levy.

The procedure does not directly affect employers and employees in terms of costs or other items. There is no significant effect on the reserve fund.

6. State and Federal Issues.

No other aspects of Ch. 108 will be affected, and there should be no need for administrative rules concerning this provision. Finally, there are no conformity issues.

6. Proposed Effective Date.

The changes provided by these amendments should be effective for third party liabilities determined under §§108.225(4)(b) and 108.10 on or after the first Monday after publication.

s:\bola\01 law change drafts\bola\dept8.doc

Dept #9
Revised June 20, 2001

PROPOSED STATUTORY CHANGE
ELIMINATE PARTIAL SUCCESSORSHIP

DESCRIPTION OF PROPOSED CHANGE.

Revise 108.16(8) to provide that successorship will only occur when 100% of the business is transferred to a single transferee or new owner/operator. Currently partial transfers are processed from 00.01 to 99.99% for mandatory successessorship (related owners), and 25.00 to 99.99% for optional (unrelated owners) successorship. Mandatory and optional total successorship would continue with this change.

PROPOSED STATUTORY LANGUAGE.

Delete current 108.16(8)(b)(2).
Add new 108.16(8)(b)(2).
The transferor has transferred 100% of the business on that date to a single transferee.

Add new 108.16(8)(c)(4).
The transferor has transferred 100% of the business on that date to a single transferee.

Add new 108.16(8)(e)(4).
The transferor has transferred 100% of the business on that date to a single transferee, or the transferor has transferred less than 100% of the business on that date and the reserve fund balance of the transferor's account is overdrawn as of the transfer date.

Amend 108.16(8)(f)
The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its experience under this chapter. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor to the fund and to the administrative account at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.

REASON FOR CHANGE.

SIMPLICITY. The overriding reason for this law change is to simplify the business transfer regulations for the department and for employers. Partial transfers, while occurring relatively infrequently compared to total transfers, are very complex to investigate, process and understand. The computation of the partial transfer percentage and determination of benefits chargeable to either the transferor or transferee is a major challenge internally for both tax and benefits staff, and is often too complicated for employers and their representatives to comprehend. The elimination of partial successorship will simplify forms, computer programs,

manuals and publications. This change would improve customer service and increase administrative efficiency. (see EFFECTS OF CHANGE).

The computer program for partial successors is quite extensive, particularly in view of the small number that are processed each year. Some partial transfer situations have never been automated and must be done manually, and there are other partial transfers that run incorrectly and must be manually corrected. It will not be cost effective to automate the partial successor process in the redesign of the tax and accounting system that is ongoing. Thus, partial successors will have to be done manually when the new tax system is operational.

HISTORY & BACKGROUND.

Every successor transaction involves the transfer from one account to another of + or – reserve fund balance, rate experience factors, future benefit liability and possibly the unpaid tax liability of the former owner/operator. With a **total successor**, the investigation and processing is relatively simple and straight forward because 100% of everything is transferred to the successor. It's fairly easy to recognize total successors and understand the impacts of the transfer for tax and benefit issues. Partial transfers and resulting **partial successors**, on the other hand, are often fraught with complications, delays and misunderstandings throughout the investigation and processing stages, and also after the fact. The computation of partial transfer % and determination of whether the predecessor or successor is chargeable for benefits can be a very frustrating and time consuming process. Partial successorship causes numerous claimant and benefit problems.

In the 12 month period of 3/1/00—2/28/01 there were **356 partials** in which the new owner/operator became a successor. Two-thirds of these were mandatory (related owners) and one-third were optional (unrelated owners).

The purpose of mandatory successorship is to prevent an employer who has an overdrawn RFB and high tax rates and/or unpaid tax liabilities from reorganizing merely for the purpose of getting a new a new UI account and avoiding their tax liabilities. The review of the 240 mandatory partials shows that only 3 transferors had a an overdrawn RFB transferred to the partial successor and there no transferors with a substantial UI tax liability at the time of the transfer. It would appear that the likelyhood of any employer manipulation to avoid a bad UI experience in a partial transfer situation is highly unlikely and not worth being concerned about.

EFFECTS OF PROPOSED CHANGE.

CUSTOMER SERVICE.

With no partial successorship, it will be substantially easier for all concerned to understand the successorship process, there would be improved turnaround in investigations, fewer and simpler questions to answer and forms to complete, and fewer benefit claim problems.

RATE and/or RESERVE FUND BALANCE IMPACTS.

The analysis of the 356 partial transfers shows that the average rate for the first year for a partial successor (not previously subject) was 1.65% compared to the 3.05% for a new employer. A few partial successors actually received a higher rate than the 3.05% new employer rate. About 20% of partial successors were already subject and had a rate assigned for the transfer year and these rates would not be changed by the partial successor.

In evaluating the effects of processing or not processing partial transfers, it's crucial to remember that the transferor remains in business and often has more substantial business operations than the new owner/operator who acquired part of the business. Thus, whatever benefits (positive RFB and lower rates) the new owner/operator gains as a successor is mostly offset by what the transferor will lose in RFB and future rate savings. It is not a total offset because the transferor may have a low enough rate that they would not realize much future rate savings by retaining all the RFB.

An argument for not transferring any RFB from the original account to a partial successor is that many employers feel that it is their tax dollars in their account and it is unfair to give them to another employer who happened to purchase part of their business. We have had transferors who have appealed our determinations to give part of their RFB to a partial successor, because they know they will get lower rates in the future if they keep their entire RFB. In total transfers, the transferors don't care about the RFB because it either gets transferred to the total successor or it gets put into the balancing account.

STAFF SAVINGS.

It is estimated that the Bureau of Tax & Accounting will save $42,000 per year in labor costs and that the Bureau of Benefits will save $6,000 by the elimination of partial transfers. The total savings of $50,000 is the equivalent of about 1.0 to 1.25 UI positions.

It is estimated that employers spend a total of 950 hours on these partial transfers. Besides the actual labor costs associated with the 950 hours, partial transfers are difficult for many employers to understand, so there would be a non-monetary customer service gain in not having to investigate partial transfers.

STATE AND FEDERAL ISSUES.

This change does not raise any state/federal issues, and there is no conformity issue.

PROPOSED EFFECTIVE DATE.

We recommend this proposed change go into effect for all partial transfers which occur after December 31, 2001, and for all transfers which occurred prior to January 1, 2002 if the original notice to the department is received, i.e. postmarked, after January 31, 2002.

Dept # 14
July 24, 2001
Proposed by: Bureau of Legal Affairs

ANALYSIS OF PROPOSED UNEMPLOYMENT INSURANCE LAW CHANGE

AMENDMENT TO EXTEND ADMINISTRATIVE FEE ASSESSMENT FOR TECHNOLOGY

1. Description of Proposed Change

Amend the law to extend administrative fee assessment for two additional years. The current law "sunsets" at the end of 2001. Also, amend the law to provide that the fee could be used for other unemployment insurance (UI) technology projects.

The fee proceeds will be used to continue renovation and modernization of the core UI tax and accounting system (including the reengineering of all automated and manual business processes performed by the current system and tax staff), as well as other UI technology projects.

A .01% administrative fee will continue to be assessed on payroll paid from 1/1/2002-12/31/2003, which will be offset by subtracting .01% from each employer's solvency tax rate (for example .02% will become .01%).

2. Proposed Statutory Language

Section 20.445(1)(nb) will need review.

Amend pars. 108.19(1e) (a) and (d) to read:

> **(1e)**(a) Except as provided in par. (b), each employer, other than an employer ~~which~~ that finances benefits under s. 108.15 or 108.151 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment to the administrative account for each year prior to the year ~~2002~~ 2004 equal to the lesser of 0.01% of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18(9) for that year.
>
> . . .
>
> **(d)** The department may expend the moneys received from assessments levied under this subsection for the renovation and modernization of the unemployment insurance tax and accounting system, including development and implementation of a new system and reengineering of automated processes and manual business functions, as well as other UI technology projects.

3. Proposer's Reason for Change

The only changes are to extend the department's authorization to continue the assessment for the renovation of the UI tax and accounting system project (which is currently underway), as well to include that the assessment could be used for other UI technology projects.

Our current UI computer systems are antiquated and increasingly inadequate. Federal administrative funding for computer systems development is insufficient and continues to shrink. Funding sources for large information technology development (as opposed to maintenance of current systems) is scarce. This time-limited assessment will allow development of all major but essential UI projects.

4. Brief History and Background of Current Provision

Section 108.19 (1e) was enacted to supersede a department rule (DWD § 150.03, Wis. Adm. Code) that suspended the operation of § 108.19 as of July 31, 1938. Rather than surreptitiously resurrect the assessment by repealing the rule, the department included this as a law change. Section 108.19 (1e) was last amended in 1999 to extend the expiration date of the assessment by two years, that is, through the end of year 2003.

5. Effects of the Proposed Change:

a) Policy: Continue current policy.

b) Administrative Impact: None.

c) Equitable: None.

d) Fiscal: It is estimated that the assessment would result in revenue of $2.4 million in 2002 and $2.5 million in 2003.

6. State and Federal Issues

a) Conformity: None.

b) Chapter 108: None.

c) Administrative Rules: None.

7. Proposed Effective Date

On the generally applicable effective date of the Act incorporating this provision.

s:\bola\01 law change drafts\bola\Dept14.extend adm fee proposal.rev2.doc

Dept. #11
June 18, 2001
Proposed by: Department
Prepared by: Tom Smith

ANALYSIS OF PROPOSED UI LAW CHANGE

EXPAND DEPARTMENT USE OF E-SERVICES

1. Description of Proposed Change.

To permit the UI Division to use electronic mail and other digital methods of communication as an alternative means of conducting business with customers.

2. Proposed Statutory Language.

108.14(2c) The department may establish a secure means of electronic interchange between itself and employing units, benefit claimants and other customers which, upon request of a customer, may be used for the transmission and submission of all documents used in the administration of this chapter in lieu of any other means of transmission or submission specified elsewhere in this chapter.

3. Proposer's Reason for the Change.

The department has been receiving an increasing number of requests from employers to permit them to receive and file UI documents by electronic means. The UI Division currently allows electronic filing of new hire reports and quarterly wage and tax reports. The UI Division also supports the Wisconsin Employer Registration (WISER) system which allows new employers to electronically initiate registration with the UI Division.

Based on customer demand, the UI Division wishes to expand the scope of "e-services" to include such items as initial determinations sent to employers, certified mail to employers, corporate officer exclusion elections from employers and business transfer reports from employers. Law changes are necessary to permit use of electronic transmittal of documents and communication in these cases.

4. Brief History and Background of the Current Provision.

In some cases, such as initial determinations, current law requires the department to mail the document to the last known address of the recipient. In other cases, the law is silent or unclear as to the method of communication or document transmittal. These laws were created prior to the time of e-mail and other forms of computer based electronic communication and require amendment to permit the electronic option.

5. Effects of the Proposed Change.

The expansion of e-services will provide better customer service and satisfaction. Reduction of paper handling will increase efficiency and reduce costs.

6. State and Federal Issues.

   a. Chapter 108. No effects beyond the changes proposed.

   b. Rules. As e-services expand and the department gains experience in the area, a need for administrative rules may develop.

   c. Conformity. There are no conformity issues related to this change.

7. Proposal Effective/Applicability Date.

To be determined.

8. Department Recommendation to the UIAC.

The department recommends adoption of the proposed change.

Dept. #4
Date: July 12, 2000
Proposed by: Department
Prepared by: C. Matzat

Analysis of Proposed UC Law Change

1. Description of the Proposed Change.

Amend S.108.05(7)(f) to eliminate the reduction of UI benefits due to the receipt of social security benefits.

2. Proposed Statutory Language.

(f) ***Partial or total employe funding.*** If any portion of a pension payment actually or constructively received by a claimant under this subsection is funded by the claimant's contributions, the department shall compute the benefits payable for a week of partial or total unemployment as follows:

1. If the pension payment is received under the social security act (42 USC 301 et seq.) ~~or railroad retirement act (45 USC 231 et seq.)~~, the department shall not reduce the weekly benefits payable for a week of partial or total unemployment ~~by 50% of the weekly pension amount~~.

2. If the pension payment is received under the ~~social security act (42 USC 301 et seq.) or~~ railroad retirement act (45 USC 231 et seq.), the department shall reduce the weekly benefits payable for a week of partial or total unemployment by 50% of the weekly pension amount.

~~2~~3. If the pension payment is received under another retirement system, the claimant has base period wages from the employer from which the pension payment is received, the claimant has performed work for that employer since the start of the claimant's base period, and that work or remuneration for that work affirmatively affected the claimant's eligibility for or increased the amount of the pension payment, the department shall reduce the weekly benefits payable for a week of partial or total unemployment by 50% of the weekly pension amount, or by the percentage of the employer's contribution if acceptable evidence of a contribution by the employer other than 50% is furnished to the department.

3. Proposer's Reason for the Change.

UI benefits are reduced for claimants who are also receiving pension payments, including social security benefits, but only if those benefits are paid from a pension plan which was contributed to by a base period employer. Many states have eliminated the pension reduction based on social security benefits because the claimant has made significant contributions to those benefits. Wisconsin should follow suit.

Social security benefits are funded by both claimant and employer contributions. They are based on required contributions made over the entire work life of the claimant, frequently, over a period of more than 40 years. Unless the claimant worked for a base period employer throughout that time, the contributions made by that employer to the social security program would be significantly less than those made by the claimant.

In addition, many of these claimants are drawing UI benefits based on work they obtained after they started getting social security benefits. In such cases, their social security entitlement was established before their most recent employer had made any contributions to that fund.

Claimants feel these social security benefits are monies they are entitled to based on a lifetime of employment. For many claimants, these benefits are the only pension payments they receive. Because these benefits are not enough to live on, these claimants have to work to support themselves. It is often difficult for them to find employment and frequently, the wages they receive are not very high. Their weekly UI benefit rate based on such work is correspondingly low. When social security reduces their UI benefits (in some cases, no UI benefits are payable), they feel they are being penalized unfairly.

4. Brief History and Background of Current Provision.

Section 3304(a)(15), FUTA, required states to reduce UI benefits on a dollar for dollar basis for claimants who receive retirement income, including social security. Enacted in 1976 and effective April 1, 1980, this provision was a conformity requirement. It was a 100% offset.

Congress amended this provision September 26, 1980 to provide some flexibility to the amount of the offset. The 1980 amendment provided that states could only impose the reduction if a base period employer contributed to the fund from which the retirement benefits were paid. It also gave states the option of reducing the amount offset when the employee had also made contributions to the pension fund.

The pension reduction provision was added to the Wisconsin statutes in 1981, applying just to periodic payments. 1991 Wisconsin Act 89 added a provision which applied to the treatment of lump sum distributions. That provision was subsequently restructured and rewritten for greater clarity.

5. Effects of the Proposed Change.

a. Policy. Current policy reduces the UI benefits of any individual receiving social security benefits based on his/her own work by 50% of the prorated weekly pension amount. The pension reduction amount is not treated as wages but requires a dollar for dollar reduction in the UI benefits paid.

The source of this policy was to prevent "double-dipping." Pension programs are established to provide claimants with an income after they retired. Many pension plans are funded 100% by employers; in other plans, both the employer and the claimant make the contributions. The UI program was designed to protect claimants when the employer had no work for them. Receipt of benefits from both programs concurrently was considered "double-dipping" because employers paid both the taxes used to pay UI benefits and contributions to the various pension programs.

This change would eliminate the reduction to UI benefits based on the receipt of social security benefits. Claimants could receive the UI benefits they would have received if their benefits had not been reduced due to the receipt of social security benefits.

b. Administrative Feasibility. It will ease administration by eliminating the need to adjudicate the pension reduction for claimants who receive primary social security benefits.

There will be an initial administrative cost commitment to amend the decisions for claimants who have active claims and received decisions reducing the amount of benefits payable due to the receipt of social security benefits. The cost would primarily include programming to enable the automated issuance of amended determinations. The department currently issues automated amended decisions each January to reflect the increase to social security benefits resulting from a cost of living adjustment. It is quite possible that that programming could be adjusted to reflect the exclusion of social security benefits as part of the pension reduction. If that is the case, the programming costs would be significantly less than it would be if new programming were required.

Some claimants receive not only social security benefits but other pension payments as well. Separate decision formats would have to be developed to cover both those cases where social security is the only pension payment and those where the claimant receives more than one pension payment.

There would be mailing costs as well, the amount dependant upon the number of decisions that would need to be issued. In 1998 (for example), 6,102 pension reduction decisions were issued. This figure does not include the amended decisions issued in January. While some of these decisions reflected pension payments that did not include social security benefits, the majority of them would have included such benefits. In many cases, social security is the only pension payment claimants are receiving. Investigating, resolving and implementing these decisions takes about 45 minutes. If 4,000 of the pension reduction decisions were eliminated by this change, it would reduce the time spent on these decisions by 3,000 minutes or 50 hours.

c. Equitable. Claimants often feel their social security benefits are the result of the work and contributions they earned by a lifetime of work. It is difficult for them

to understand why it should have any bearing on the amount of UI benefits they receive. To compound this confusion, many pension payment plans initially base the payments on the claimants' contributions so that such monies are not included in the claimants' taxable income. Claimants feel social security benefits should be treated the same way.

Many individuals continue working even though they are receiving social security benefits. It is not uncommon that those who get only social security benefits have to work to cover their basic living expenses. The employers they work for are frequently not the employers they worked for prior to receiving social security benefits and would have contributed very little if anything at all to the social security benefits the claimants are currently receiving. It would certainly amount to significantly less than the 50% amount treated as the employer's contribution when calculating the UI pension reduction.

Currently, younger employees laid off by the same employer get higher UI benefits because the pension reduction does not apply to them.

d. Fiscal. It is estimated that an additional $11.5 million would be paid in Unemployment Insurance benefits in a year late in the business cycle as a result of changing UI law to disregard Social Security retirement benefits countable under current law when calculating weekly UI benefit payments. The estimate includes benefits paid to approximately 3,200 individuals who currently apply for benefits plus 2,000 individuals who may be induced to apply for UI benefits when it is clear that receipt of social security retirement benefits no longer reduces weekly UI payments.

6. State and Federal Issues.

None. In UIPL 22-87, the DOL stated in reference to employee contributions:

"Under subparagraph (B) in Section 3304 (a) (15), FUTA, States have very broad latitude in reducing the amount of any offset in order to take account of employee contributions. But it must be set forth in State law that the offset is reduced because of employee contributions to the retirement program or plan. If a State elects to exercise this option under subparagraph (B), there is no requirement that the amount of employee contributions taken into account not exceed the proportions of an employee's contribution to the retirement plan or program.

"Any retirement plan or program to which a claimant has made contributions may be included in the subparagraph (B) reduction in offset, regardless of the relative proportions of employee and employer contributions, and, similarly, the broad discretion of the State law may permit any reduction in the offset (from 1 percent to 100 percent), regardless of the relative proportions of employee and employer contributions. Similarly, States have broad latitude in determining which types of retirement plans or programs to include or exclude from the subparagraph (B)

reduction. Specifically, it is not required that public and private plans be treated identically or even similarly."

7. Proposed Effective/Applicability Date. December 30, 2001.

Each January, pension decisions that include social security are amended to reflect an increase due to the cost of living adjustment. It should be relatively easy to adjust that program to amend those decisions to delete the social security benefits.

s:\bola\01 law change drafts\benefits\dept4.ssoffset.doc

Complete text of present S.108.05 (7) - PENSION PAYMENTS.

(a) ***Definitions.*** In this subsection:

1. "Pension payment" means a pension, retirement, annuity or other similar payment made to a claimant, based on the previous work of that claimant, whether or not payable on a periodic basis, from a governmental or other retirement system maintained or contributed to by an employer from which that claimant has base period wages.

2. "Rollover" means the transfer of all or part of a pension payment from one retirement plan or account to another retirement plan or account, whether the transfer occurs directly between plan or account trustees, or from the trustee of a plan or account to an individual payee and from that payee to the trustee of another plan or account, regardless of whether the plans or accounts are considered qualified trusts under 26 USC 401.

(b) ***Pension payment information.*** Any claimant who receives, is entitled to receive or has applied for a pension payment, and any employer by which the claimant was employed in his or her base period, shall furnish the department with such information relating to the payment as the department may request. Upon request of the department, the governmental or other retirement system responsible for making the payment shall report the information concerning the claimant's eligibility for and receipt of payments under that system to the department.

(c) ***Required benefit reduction.*** If a claimant actually or constructively receives a pension payment, the department shall reduce benefits otherwise payable to the claimant for a week of partial or total unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

(d) ***Allocation.***

1. If a pension payment is not paid on a weekly basis, the department shall allocate and attribute the payment to specific weeks if:

   a. The payment is actually or constructively received on a periodic basis; or

   b. The payment is actually or constructively received on other than a periodic basis and it has become definitely allocated and payable to the claimant by the close of each such week, and the department has provided due notice to the claimant that the payment will be allocated in accordance with subd. 2. b.

2. The department shall allocate a pension payment as follows:

   a. If the payment is actually or constructively received on a periodic basis, the amount allocated to each week is the fraction of the payment attributable to that week.

   b. If the payment is actually or constructively received on other than a periodic basis, the department shall make the allocation at not less than the claimant's most recent full weekly wage rate, unless the department determines that another basis for the allocation is more reasonable under the circumstances.

(e) ***Total employer funding.*** If no portion of a pension payment actually or constructively received by a claimant under this subsection is funded by the claimant's contributions, the

department shall reduce the weekly benefits payable for a week of partial or total unemployment by an amount equal to the weekly pension amount if:

1. The claimant has base period wages from the employer from which the pension payment is received; and

2. The claimant has performed work for that employer since the start of the claimant's base period and that work or remuneration for that work affirmatively affected the claimant's eligibility for or increased the amount of the pension payment.

(f) ***Partial or total employe funding.*** If any portion of a pension payment actually or constructively received by a claimant under this subsection is funded by the claimant's contributions, the department shall compute the benefits payable for a week of partial or total unemployment as follows:

1. If the pension payment is received under the social security act (42 USC 301 et seq.) or railroad retirement act (45 USC 231 et seq.), the department shall reduce the weekly benefits payable for a week of partial or total unemployment by 50% of the weekly pension amount.

2. If the pension payment is received under another retirement system, the claimant has base period wages from the employer from which the pension payment is received, the claimant has performed work for that employer since the start of the claimant's base period, and that work or remuneration for that work affirmatively affected the claimant's eligibility for or increased the amount of the pension payment, the department shall reduce the weekly benefits payable for a week of partial or total unemployment by 50% of the weekly pension amount, or by the percentage of the employer's contribution if acceptable evidence of a contribution by the employer other than 50% is furnished the department.

(g) ***Constructive receipt.*** A claimant constructively receives a pension payment under this subsection only for weeks occurring after:

1. An application for a pension payment has been filed by or on behalf of the claimant; and

2. The claimant has been afforded due notice from his or her retirement system of his or her entitlement to a pension payment and the amount of the pension payment to which he or she is entitled.

(h) ***Rollovers.*** If a pension payment is received by a claimant on other than a periodic basis and a rollover of the pension payment, or any portion thereof, occurs by the end of the 60th day following receipt of the payment by the claimant, the payment or any portion thereof affected by the rollover is not actually or constructively received by the claimant. If a portion of a pension payment received on other than a periodic basis is affected by a rollover, the remaining portion is subject to allocation under par. (d).

Text of Federal Provisions Related to Pension Payments

26 USCS @ 3304 (1997) - FEDERAL UNEMPLOYMENT TAX ACT

@ 3304. Approval of State laws.

(a) Requirements. The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that--

(15) the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week except that --

(A) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or similar periodic payment only if--

(i) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(ii) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(B) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;

Information about some of the states which do not reduce UI benefits due to social security

Some states

Idaho: Statutes refer to rule. Rule states, in part:

"The dollar amount of the weekly pension shall be deducted from the claimant's weekly benefit amount unless the claimant has made contributions toward the pension. If the claimant has made contributions toward the pension, the pension offset shall be reduced 100 percent, and no deduction for the pension shall be made from the claimant's weekly benefit amount."

Illinois: Statutes contains a qualifier:

"This paragraph hall be in effect only if it is required as a condition for full tax credit against the tax imposed by Federal Unemployment Tax Act."

Kentucky: Per current IB Handbook:

"Social security benefits are 0% deductible."

Massachusetts: Per information sent in 1994, Massachusetts had a limiter on the pension reduction (see below). Per the current IB handbook, this is no longer part of their statutes and a pension reduction applies to 50% of the social security benefits no matter when the original date of entitlement occurred. The earlier wording may have put them out of conformity, but I don't have that information.

Per their earlier statute:

"... in order for a pension to be deductible, the date of entitlement for the pension *must* occur during the base period or benefit year of the claim."

Michigan: Statutes contains a qualifier:

"Notwithstanding any other provision of this subsection, for any week ... with respect to which an individual is receiving a governmental or other pension and claimant unemployment compensation, the weekly benefit amount payable to the individual for those weeks shall be reduced ... . This reduction shall be made only if it is required as a condition for full tax credit again the tax imposed ... " etc.

The provisions in effect prior to their conversion had some other qualifiers:

"If the unemployment benefit payable under this act is computed on the basis of multiemployer credit weeks and a portion of the benefit is allocable ... to an employer who has contributed to ... a retirement plan ... , the adjustments required ... apply only to that portion of the weekly benefit rate that would otherwise be allocable and chargeable to the employer."

The following qualifier was in the statutes applicable prior to the conversion. It is still included in the current IB handbook.

"If a benefit as described ... is payable or paid to the individual under a plan to which the individual has contributed: ... less than half of the cost of the benefit, then only half of the benefit shall be treated as a retirement benefit ... half or more of the cost of the benefit, then none of the benefit shall be treated as a retirement benefit."

Nevada: Statute states, in part:

"For any week in which a claimant receives any pension ... benefit payments must: ... not be reduced by the amount of the pension or other payment if the claimant made any contribution to the pension or retirement plan ... ."

New Mexico: Statute states, in part:

"If payments referred to in this section are being received by any individual under the federal Social Security Act, the division shall take into account the individual's contribution and make no reduction in the weekly benefit amount."

Tennessee: Statute states, in part:

"The weekly benefit amount payable to such claimant for such week shall be reduced ... by no part of the pension if any contributions to the plan were provided by such claimant during the claimant's base period."

Texas: Per current IB Handbook:

"Effective June 16, 1995, social security (old age benefits) and railroad retirement will longer be deductible."

Vermont: Statute states:

"The week benefit amount payable to such individual for such week shall be reduced ... by no part of the pension if the entire contributions to
the plan were provided by such individual, or by the individual and an employer ... ."

Washington: Statute states (with a subsequent FUTA qualifier):

"No deduction shall be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program."