



AB553
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Date: October 10, 2001

To: Members of the Senate Committee on Labor & Agriculture
Senator David Hansen, Chair

Members of the Assembly Committee on Labor & Workforce Development
Representative Jean Hundertmark, Chair

From: Edward J. Lump, President and CEO
Wisconsin Restaurant Association

Re: Wisconsin Restaurant Association support for LRB-3682, the Unemployment Insurance (UI) Bill

The Wisconsin Restaurant Association, which represents approximately 7,000 foodservice outlets in the state, supports LRB-3682. The Unemployment Insurance Advisory Council (UIAC) arrived at this comprehensive bill through extensive deliberation over a period of two years. Restaurateur Alfred Peck (Alfred's Supper Club, Green Lake) serves on the Council representing small business and the restaurant industry. Mr. Peck voted for the negotiated package.

WRA has particular interest in the following items included in the bill:

- Excludes F, J, M, and Q Visa holders from the definition of employment. Many restaurants, hotels and attractions employ foreign students. The wages of these employees are exempt from Federal UI taxes (FUTA) and cannot collect benefits. **This change makes Wisconsin law consistent with federal law.**
- The Social Security offset is repealed over two years. This allows seniors to collect benefits without SS penalty. This may encourage more seniors to work to supplement their SS income.
- Administrative rules will be developed to create a disqualification for repeated tardiness and absences.
- Directs the UI Division to conduct verification of claimants required work search efforts and to issue an annual Benefit Fraud Report outlining the Division's activities in detecting and prosecuting fraud.
- Permits employers to pay UI taxes more uniformly throughout the four calendar quarters. This will be very helpful to the tourism industry because it will help them to survive a poor first quarter by deferring part of their UI taxes to the other three quarters.

As a result of the negotiations that included the above items, WRA is able to support the benefit increases and the provision extending benefits to some part-time workers.

Thank you for your consideration.

Before the Joint Senate and Labor Committee Hearing
Unemployment Insurance – LRB 3682
Wednesday, October 10, 2001, 10 A.M.
State Capitol, Room 225 Northwest

Bruce C. Hagen, Administrator
Unemployment Insurance Division
Wisconsin Department of Workforce Development

I. Introductory Remarks

- ◆ Introduce self as Bruce Hagen, Administrator of the Unemployment Insurance or "UI" Division
- ◆ Express thanks to Labor Committee Chairpersons

- Rep. Jean Hundertmark (R.)
- Sen. Dave Hansen (D.)

=> for having this joint hearing on the UI bill

- ◆ Introduce Greg Frigo, Chairperson of the Unemployment Insurance Advisory Council, as well as Director of the Bureau of Legal Affairs within the UI Division

II. General Comments About the Unemployment Insurance Advisory Council

- ◆ Composition of Wisconsin's UI Advisory Council ensures that all parties with an interest in unemployment insurance law are fairly represented.
- ◆ By state statute, the Council is comprised of 5 members representing labor and 5 members representing management.
- ◆ The chairperson of the Council is Mr. Frigo, who represents the state administrative agency -- Department of Workforce Development.
- ◆ Wisconsin's UI Advisory Council is nationally recognized and widely held as an example of how the "system" can work.

- ◆ The 10 voting labor and management members must negotiate and mutually compromise to arrive at an agreed-upon UI bill. Such a bill is before you now.

III. General Comments About the 2001 UI Bill

- ◆ The 2001 UI Bill contains both benefits and tax changes.
- ◆ These changes have been calculated to hold the UI reserve fund at appropriate levels. We currently have about \$1.7 billion in our Unemployment Trust Fund. It is one of the healthiest trust funds in the country.
- ◆ The UI Bill before you
 - represents 2 years of the Council's efforts.
 - is in final form, after considerable debate and compromise by Council members.
 - was created with direct input from our customers -- notably, employers, employees, organizations, and legislators.

IV. Key UI Changes in the 2001 UI bill

- I will not attempt to elaborate on each and every one of the other changes in the recommended bill.
- However, I will highlight some major changes to the program:
- ◆ **INCREASE THE MAXIMUM WEEKLY BENEFIT RATE.**

The Council recommends that the maximum weekly benefit rate that a claimant can receive be increased by \$11 in 2002 and by \$5 in 2003, to keep up with increases in the cost of living.

◆ **REDUCTION AND SUBSEQUENT ELIMINATION OF THE SOCIAL SECURITY OFFSET.**

The bill would reduce the current 50% offset of weekly social security benefits to 25% in 2002 and eliminate the offset thereafter.

◆ **BENEFITS TO PART-TIME WORKERS.**

Currently, claimants must be available for at least 35 hours per week. The bill would allow benefits to claimants who are available for at least 32 hours per week.

◆ **EXTENSION OF THE TIME PERIOD FOR FILING AN INITIAL CLAIM.**

Currently, a claimant must file his or her initial claim for benefits no later than the close of the week in which the claimant seeks benefits. The bill would extend the time period for filing an initial claim by seven days.

◆ **ABSENTEEISM AND TARDINESS.**

The bill requires the Department to create a rule that specifies the level of repeated absenteeism and repeated tardiness that will be considered misconduct for UI purposes.

◆ **COVERAGE EXCLUSION FOR SERVICES TO CERTAIN MEDICAID RECIPIENTS.**

The bill would exclude from covered employment the services of DHFS-certified independent nurses and respiratory therapists so certain Medicaid recipients would not have to pay unemployment tax on those services.

◆ **TAX EXCLUSION FOR CERTAIN NON-IMMIGRANT VISA HOLDERS.**

The bill would make Wisconsin's UI law consistent with the federal law so that employers do not have to pay tax on the wages of F1, J1, M1, or Q class visa workers who are ineligible for benefits due to visa restrictions.

◆ **TAX PAYMENT DEFERRAL PROGRAM.**

The bill permits certain employers with large first quarter UI tax liabilities the option to reduce the first quarter liability so that it is spread throughout the year.

◆ **MANDATORY COVERAGE OF INDIAN TRIBES.**

The bill conforms state UI law to federal law with regard to UI tax payments by tribes.

-- **Planning for the future**

◆ **HIRING RETIRED ALJS.**

The bill would permit the department to hire retired administrative law judges when caseload requires. Currently, all ALJs must be permanent employees.

◆ **AUTHORITY TO HIRE 15 PROJECT STAFF.**

The bill would permit the department to hire 15 two-year project positions to fill in for regular staff temporarily assigned to UI system redesign. These positions will be federally funded and thus will not require any state funds.

V. Concluding Remarks

- These are just some of the highlights of this session's agreed-upon, recommended UI bill.

- [A plain language summary of all the proposed changes in the 2001 UI Bill is attached to this outline.]

- As in the past, the 2001 UI Bill represents a balance of employer and employee interests and also reflects the input of employers, employees, the public and the legislature.

- Are there any questions that Mr. Frigo or I can answer for you?

- Thank you.

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SUMMARY OF THE 2001 UI BILL

Law Changes Agreed Upon by UI Advisory Council

Benefits Changes

- 108.05(7)(f) Reduction and Subsequent Elimination of the Social Security Offset.** Current UI law requires that 50% of weekly social security benefits be deducted from the amount of unemployment insurance (UI) benefits received. The bill would reduce the amount deducted to 25% in 2002 and eliminates the offset thereafter.
- 108.05(1) Increase in the Benefit Rate.** The bill would increase weekly benefit rate by \$11 in 2002 and by \$5 in 2003.
- 108.14(19) Benefit Fraud Report.** Department of Workforce Development (Department) would issue an annual Benefit Fraud Report outlining the Department's activities in detecting and prosecuting claimant fraud.
- 108.04(2)3. Extend requirement for two work searches through 2003.**
and Current law requires two work searches through the end of 2001.
Nonstatutory The bill would extend the requirement for two work searches
Text through 2003 and also provide that the Department would create a rule determining the number of work searches thereafter.
- 108.04(7)(h) Charge Balancing Account for Quits to Enter TAA or WIA Training.** The bill would charge the Reserve Fund's balancing account for UI benefits rather than employer accounts when claimants terminate employment considered substandard under the federal program to enter training approved by them.
- 108.04(8)(c) Charge to Balancing Account when Employee Fails to Receive Notice of Recall.** The bill would charge the balancing account for benefits when an employer's proper notice of recall to work is not received by a claimant and the claimant later requalifies for benefits.
- Nonstatutory** **Verification of Work Search.** Department would increase the
Text number of eligibility reviews performed by UI staff. Accordingly, the Department would refocus current staff to check that claimants are actively searching for work.

Nonstatutory **Administrative Rulemaking**
Text

1. **Absenteeism and Tardiness.** Department would adopt a rule to create a specific disqualification linked to repeated employee absences. Also, Department would adopt a rule to create a specific disqualification linked to repeated employee tardiness.
2. **Benefits to Part-time Workers.** Currently, claimants must be available for at least 35 hours per week. Department would adopt a rule to allow benefits to be paid to claimants who are available for at least 32 hours per week. Agency guidelines would be developed in quits, job refusals, work available, labor standards, etc., to assure that labor markets continue to function smoothly but would not disqualify workers with good prospects of obtaining more than the minimum number of hours required.
3. **Extension of the Time Period for Filing an Initial Claim.** Currently, a claimant must file his or her initial claim for benefits no later than the close of the week in which the claimant intends the claim to start. For example, a claimant who files two weeks late cannot obtain unemployment benefits retroactively unless exceptional circumstances delayed the claimant's filing. The bill would extend the time period for filing an initial claim by seven days beyond the end of the week that the claimant expects to get the benefits.
4. **Labor Disputes.** Department would codify current case law for determining what employers are considered separate establishments for purposes of granting or denying benefits during a labor dispute.

Tax Changes

108.17(2c) Tax Payment Deferral Program. Under current law, the first \$10,500 in wages paid to each employee in the calendar year is taxed. Under the bill, an employer that has a first quarter tax liability of \$5,000 or more and is not delinquent in making its contribution payments or paying any interest, penalties or fees assessed for UI purposes would have the option to reduce the first quarter liability so that it is spread throughout the year.

108.16(8)(L) Creation of a Professional Employer Organization Definition.
108.065 The bill would create a definition for "professional employer
108.067 organization" or "PEO" (PEOs have also been described as
"leasing companies"). The definition would provide that leased
employees are the employees of the PEO. The corporate officers
of a PEO would be included as its employees, as would employees

whose direction and control may be shared or concurrent with another employer besides the PEO.

108.16(8) **Elimination of Partial Successorship.** The bill would provide that the transfer of a business's reserve fund balance can occur only when 100% of the business is transferred to a single transferee or new owner/operator. Department would no longer transfer only part of a business's reserve fund balance if a part of a business is sold, except when the transfer is mandatory and the transferor has a negative balance account.

108.02(15)(j)6. **Tax Exclusion for Certain Non-Immigrant Visa Holders.** Under the Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA), services performed for any employer by a non-resident alien temporarily in the United States under an F1, J1, M1, or Q visa are excluded from the definition of "employment" and therefore are not taxable. Under the bill, Wisconsin's UI tax law would be consistent with federal law.

108.17(2) **Requirement That Service Companies File Electronic Reports.**
108.205(3) The bill would require agents who file quarterly contribution and
108.22(ad) wage reports for 25 or more employers to file tax and wage
108.22(am) information electronically.

108.02(15)(k)20. **Coverage Exclusion for Services to Certain Medicaid Recipients.** The bill would exclude from the definition of "employment" nursing and respiratory care services to medicaid recipients by individuals certified by the Department of Health and Family Services as medicaid providers in independent practice.

Tax and Benefits Changes

108.14(2e) **Expand Department Use of Electronic Interchange.** Upon request, the Department would authorize the use of electronic means (e.g., e-mail and fax) to send and receive UI documents and other communications to conduct business.

108.152 **Mandatory Coverage of Indian Tribes.** Amendments to the Federal Unemployment Tax Act require all states to cover service for Indian tribes and offer a reimbursement financing option to the tribes. The bill would bring Wisconsin into conformity with the federal law.

Administrative Changes

108.14(2) Extension of Administrative Fee for Automation. Current law assessing an administrative fee for the UI tax and accounting technology system "sunsets" at the end of 2001. The bill would extend the assessment for two additional years. The bill would also broaden the use of the assessment to include other UI technology projects for those two years.

108.09(3) Hiring Retired ALJs. Current law permits the department to appoint only permanent employees as administrative law judges (ALJs). The bill would permit the Department to secure the services of retired ALJs to serve as reserve administrative law judges.

Nonstatutory Text Authority to Hire 15 Project Staff. The bill would permit 15 two year project positions to fill in temporarily for staff encumbered by UI system redesign. These positions are federally funded and will not require state funds.

Nonstatutory Text Appropriation for Disallowed Costs of Employment Services. The bill would authorize appropriating up to \$250,000 in interest and penalty funds to pay for the disallowance of costs by the Department of Labor for employment services.

Other

Collections Proposals. The bill would expand the tools by which the Department can collect unpaid funds that are due:

- 108.22(1m)** As part of the normal collection process to obtain unpaid funds from taxable employers, the Department can file a lien with the circuit court to place an encumbrance on property. The bill would extend this practice to collect unpaid funds from reimbursable employers and those penalized for aiding and abetting fraud as well.
- 108.225** Current UI law does not provide the authority for the Department to impose a levy on the assets of delinquent reimbursable employers or employers who have aided and abetted claimants in committing fraud. The bill would permit the Department to impose a levy in these situations.
- 108.225(1) (b) & (c)** The bill would permit the Department to place a levy on the assets of a third party who has not responded to a levy.



Wisconsin State AFL-CIO

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(414) 771-0700 FAX (414) 771-1715



Wisconsin Manufacturers & Commerce

P.O. Box 352 Madison, WI 53701-0352
(608) 258-3400 FAX (608) 258-3413

TO: Members of Senate Labor and Agriculture Committee and the Assembly Labor and Workforce Development Committee

FROM: Phil Neuenfeldt, Secretary-Treasurer, Wisconsin State AFL-CIO
James A. Buchen, Vice President, Government Relations, WMC

DATE: October 10, 2001

RE: Support for 2001 Unemployment Insurance Advisory Council Proposed Reforms

The Wisconsin Unemployment Insurance Advisory Council (UIAC) recommended the following amendments to the Wisconsin Unemployment Insurance Act. The Wisconsin Manufacturers & Commerce, and the Wisconsin State AFL-CIO strongly support this reform package and urge passage of the bill.

Statutory Changes

Taxes

Tax Payment Deferral Program. Under current law, the first \$10,500 in wages paid to each employee in the calendar year is taxed for purposes of funding UI benefits. The Council agreed that employers will have the option to reduce the first quarter tax liability so that tax payments are spread more uniformly throughout the year. If an employer becomes delinquent in any payment, however, the entire payment would become due immediately.

Tax Exclusion for Certain Non-Immigrant Visa Holders. Under the Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA), services performed for any employer by a non-resident alien temporarily in the United States under an F1, J1, M1, or Q visa --generally seasonal workers -- are excluded from the definition of "employment" and therefore are not to be taxable. The Council agreed to make Wisconsin's UI tax law consistent with federal law.

Tax Collections Proposals. The Council agreed to expand the legal procedures by which the Division collects unpaid UI taxes that are due, in the following ways:

- ◆ *Tax Liens Against Reimbursable Employers and Those Involved in Claimant Fraud.* As part of the normal collection process to obtain unpaid taxes from taxable employers, the Division can file a lien with the circuit court to place an encumbrance on property. The Council agreed to extend this practice to collect unpaid taxes from reimbursable employers and those penalized for aiding and abetting fraud.
- ◆ *Tax Levy Against Reimbursable Employers and Those Involved in Claimant Fraud.* Currently, UI law does not provide the authority for the Division to impose a levy on the assets of delinquent reimbursable employers or employers who have aided and abetted claimants in committing fraud. The Council agreed to permit the Department to impose a levy in these situations.
- ◆ *Levy on Third Party Assets.* The Council agreed to authorize the Division to place a levy on the assets of a third party who has not responded to a levy.

Elimination of Partial Successorship. The Council agreed that the transfer of a business's reserve fund balance can occur only when 100% of the business is transferred to a single transferee or new owner/operator. The Department will no longer transfer only part of a business's reserve fund balance if a part of a business is sold, except when the transferor has a negative balance account.

Benefits

Increase the Maximum Weekly Benefit Rate. Increase the maximum weekly benefit rate by \$11 from \$313 to \$324 in 2002, and by \$5 to \$329 in 2003. This two-step increase represents approximately a 5% increase over the two-year period.

Reduction and Subsequent Elimination of the Social Security Offset. Current law requires that 50% of an individual's own weekly social security benefits be offset or deducted from the amount of unemployment insurance (UI) benefits received. The Council agreed to reduce the amount deducted to 25% in 2002, and eliminate the offset in 2003 and thereafter.

Benefit Fraud Report. The Unemployment Insurance Division will issue an annual Benefit Fraud Report outlining the Division's activities in detecting and prosecuting claimant fraud.

Employee Quits to Enter TAA or EDWAA Training. The Council agreed to relieve the employer of specified charges for benefits when the claimant terminates certain employment to enter or continue approved training. Benefits will be charged to the balancing account.

Employee Fails to Receive Employer Notice of Recall. The Council agreed to relieve the employer of the charges for benefits when an employer's proper notice of recall to work is not received by a claimant. Benefits will be charged to the balancing account.

Administration

Verification of Work Search. The Council agreed that the Unemployment Insurance Division would increase the number of eligibility reviews performed by UI staff. Accordingly, the Division will refocus current staff to check that claimants are actively searching for work.

Create Definitions of a Professional Employer Organization. The Council agreed to create a definition for "professional employer organization" (PEO). PEOs are also described as "leasing companies." The definition would provide that leased employees are the employees of the PEO. The corporate officers of a PEO will be included as its employees, as will employees whose direction and control may be shared or concurrent with another employer besides the PEO.

Extension of Administrative Fee for Automation. The current law assessing an administrative fee for the UI tax and accounting technology system redesign "sunset" at the end of 2001. The Council agreed to extend the administrative fee assessment for two additional years. The Council also agreed to broaden the use of the assessment to include other UI technology projects for those two years.

Require Service Companies to File Electronic Reports. The Council agreed to require agents who file quarterly contribution and wage reports for employers with 25 or more covered employees, to file tax and wage information electronically.

Expand Division Use of E-Services. The Council agreed that upon the request of individual customers, the Division would be authorized to use electronic mail, send UI documents and use other digital methods of communication to conduct business.

Mandatory Coverage of Indian Tribes. Amendments to the Federal Unemployment Tax Act (FUTA) require all states to cover service for Indian tribes, and that the states must offer a reimbursement financing option to the tribes. Wisconsin must amend its UI law to be in conformity with FUTA.

Authority to Hire 15 Project Staff. The Council agreed to 15 two-year project staff positions to fill in temporarily for staff encumbered by the Division's tax system redesign. These positions are federally funded and will not require state funds.

Hiring Retired ALJs. Current law permits the Division to appoint only permanent employees as administrative law judges (ALJs). The Council agreed to permit the Division to secure the services of retired ALJs to serve as reserve administrative law judges.

Appropriation for Disallowed Costs of Employment Services. The Council authorized an appropriation of up to \$250,000 in interest and penalty funds to pay for the disallowance of costs by the U.S. Department of Labor of employment services to UI claimants.

Administrative Rule Changes

The Council agreed to address several issues through administrative rules. The following administrative rules will be developed in the next year, subject to review by both the Unemployment Insurance Advisory Council and the Legislature.

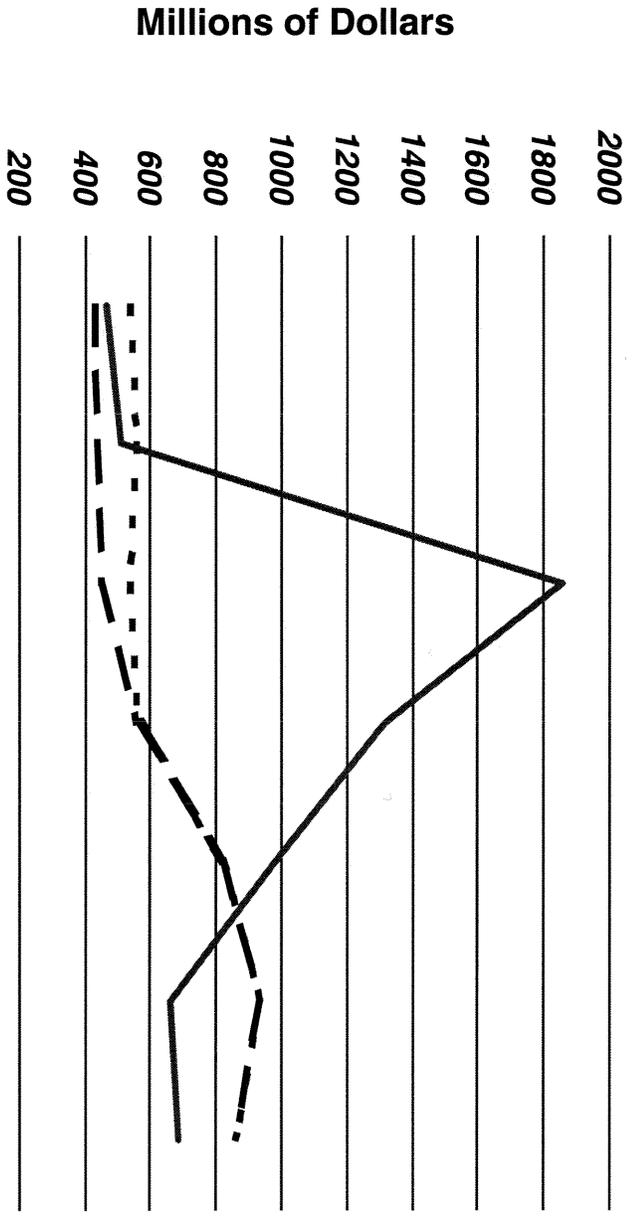
Absenteeism and Tardiness. The Council agreed to adopt a rule creating a specific disqualification linked to repeated employee absences. The Council also agreed to adopt a rule creating a specific disqualification linked to repeated employee tardiness.

Benefits to Part-time Workers. Currently, claimants must be available for at least 35 hours per week to qualify for UI benefits. The Council agreed to adopt a rule that will allow benefits to be paid to claimants who are available for at least 32 hours of work per week.

Extension of the Time Period for Filing an Initial Claim. Currently, a claimant must file his or her initial claim for benefits during the week in which the claimant intends the claim to start. For example, a claimant who files two weeks late cannot obtain unemployment benefits retroactively, unless exceptional circumstances delayed the claimant's filing. The Council agreed to extend the time period for filing an initial claim by seven days beyond the end of the week that the claimant expects to get the benefits.

Labor Disputes. The Council agreed to codify current case law for determining which employers are considered separate establishments for purposes of granting or denying benefits during a labor dispute.

Actuarial Recession UI Taxes & Benefits



	1999	2000	2001	2002	2003	2004	2005
Taxes	431	442	451	557	827	936	863
Taxes and Interest Earned	544	560	542	564	827	936	866
Benefits	466	508	1857	1315	984	659	683