WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2005-06
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Insurance (AC-In)

(Form Updated: 11/20/2008)

COMMITTEE NOTICES ...

➢ *Committee Reports* ... *CR*
**

➢ *Executive Sessions* ... *ES*
**

➢ *Public Hearings* ... *PH*
**

➢ *Record of Comm. Proceedings* ... *RCP*
**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL ...

➢ *Appointments* ... *Appt*
**

Name:

➢ *Clearinghouse Rules* ... *CRule*
**

➢ *Hearing Records* ... *HR* *(bills and resolutions)*

05hr_ab0867_AC-In_pt01

(companion bill: SB 426)

➢ *Miscellaneous* ... *Misc*
**

Vote Record
Committee on Insurance

Date: _____

Moved by: _____ Seconded by: _____

AB 867 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

AR _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

☐ Passage ☐ Adoption ☐ Confirmation ☐ Concurrence ☐ Indefinite Postponement

☐ Introduction ☐ Rejection ☐ Tabling ☐ Nonconcurrence

Committee Member	Aye	No	Absent	Not Voting
Representative Ann Nischke, Chair	☐	☐	☐	☐
Representative Steve Wieckert	☐	☐	☐	☐
Representative Gregg Underheim	☐	☐	☐	☐
Representative Phil Montgomery	☐	☐	☐	☐
Representative Terri McCormick	☐	☐	☐	☐
Representative Curtis Gielow	☐	☐	☐	☐
Representative Karl Van Roy	☐	☐	☐	☐
Representative Joan Ballweg	☐	☐	☐	☐
Representative Terry Moulton	☐	☐	☐	☐
Representative David Cullen	☐	☐	☐	☐
Representative John Lehman	☐	☐	☐	☐
Representative Tony Staskunas	☒	☐	☐	☐
Representative Terese Berceau	☐	☐	☐	☐
Representative Thomas Nelson	☐	☐	☐	☐
Representative Michael Sheridan	☐	☐	☐	☐
Totals:	____	____	____	____

☐ Motion Carried ☐ Motion Failed

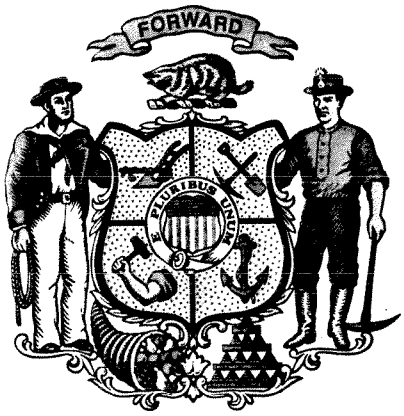
Starkunas

votes

yes

on

AB 907 / SB 426


FORWARD
E PLURIBUS UNUM

Assembly

Record of Committee Proceedings

Committee on Insurance

Assembly Bill 867

Relating to: various changes in the unemployment insurance law, authorized positions for the department of justice, making appropriations, and providing penalties.

By Representatives Wieckert, Nischke and Underheim; cosponsored by Senator Zien.

December 09, 2005 Referred to Committee on Insurance.

December 13, 2005 **PUBLIC HEARING HELD**

Present: (0) None.
Absent: (0) None.

Appearances For

- Steve Wieckert — Representative, Wisconsin State Assembly
- James Buchen, Madison — Wisconsin Manufacurers & Commerce
- Phil Neuenfeldt — Mr., Wisconsin AFL-CIO

Appearances Against

- Peter Isberg — Mr., Association of Unemployment Tax Organizations

Appearances for Information Only

- None.

Registrations For

- Janet Swandby — Ms., Outdoor Advertising Association of Wisconsin
- Andrew Franken — Mr., Wisconsin Association of Convention & Visitors Bureaus
- Kathi Kilgore — Ms., Wisconsin Innkeepers Association
- Bill G. Smith, Madison — Mr., National Federation of Independent Business (NFIB)
- Brandon Schultz — Mr., Wisconsin Grocers Association
- Linda Kleinschmidt — Ms., Wisconsin Council on Children & Families
- Doug Johnson - WI Merchants Federation

Registrations Against

- None.

Assembly

Record of Committee Proceedings

Committee on Insurance

Senate Bill 426

Relating to: various changes in the unemployment insurance law, authorized positions for the department of justice, making appropriations, and providing penalties.

By Senator Zien.

December 08, 2005 Referred to Committee on Insurance.

December 13, 2005 **PUBLIC HEARING HELD**

Present: (0) None.
Absent: (0) None.

Appearances For

- James Buchen, Madison — Wisconsin Manufacurers & Commerce
- Andrew Franken — Mr., Wisconsin Association of Convention & Visitors Bureaus
- Bill G. Smith, Madison — Mr., National Federation of Independent Business (NFIB)
- Brandon Schultz — Mr., Wisconsin Grocers Association
- Linda Kleinschmidt — Ms., Wisconsin Council on Children & Families

Appearances Against

- Peter Isberg — Mr., Association of Unemployment Tax Organizations

MARK BEIHL — WI COUNCIL OF CARPENTERS

Appearances for Information Only

- None.

Registrations For

- Janet Swandby — Ms., Outdoor Advertising Association of Wisconsin
- Kathi Kilgore — Ms., Wisconsin Innkeepers Association

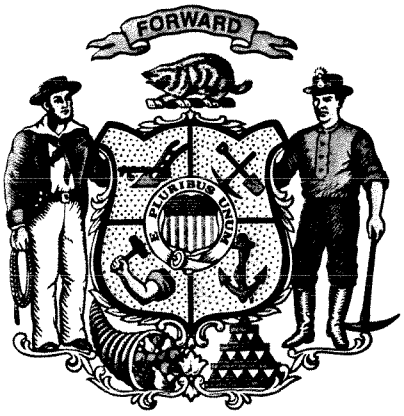
DOUG JOHNSON — WI MERCHANTS FEDERATION

Registrations Against

- None.

December 13, 2005 **EXECUTIVE SESSION HELD**

DANIEL LAROCQUE, DWD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E PLURIBUS UNUM

Hearing and Executive Session Procedures
Committee on Insurance
December 13, 2005

Call to Order:

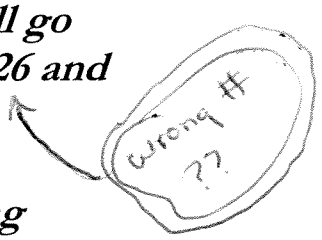
> ***"Assembly Committee on Insurance will come to order. Will members and visitors please take their seats?"*** [Use gavel, if necessary]

Call of the Roll:

> ***"The clerk will call the roll."***
>
> [Clerk calls the roll.]
>
> ***"We will hold the roll open for members that may be joining us later."***

Welcome:

> ***"Welcome and thank you for being here. Today we are holding a public hearing on Assembly Bill 867 and Senate Bill 426.***
>
> ***At the end of the public hearing the committee will go into executive session to consider Assembly Bill 826 and Senate Bill 426.***
>
> ***Your office should have received a memo regarding Clearinghouse Rule 05-099, please contact the committee clerk if you have any questions or concerns about the rule."***



Committee Operations:

"If you are here to testify before the committee, please fill out a hearing slip and return it to a messenger. If you do not want to speak, but want to register your position, you may do so on the same slips. Anyone with time constraints should indicate that on the hearing slips. We will do our best to accommodate you.

Written testimony is highly encouraged. Please give it to the messenger when you are called to speak.

Speakers are encouraged to summarize their remarks rather than reading verbatim, and avoid repeating previous speakers. Questions from members will follow testimony.

To the extent possible, we will alternate between speakers with different points of view on the subjects before the committee.

It is our hope that we will be able to adjourn at a reasonable hour so your brevity is appreciated.

Audio links and committee documents and written testimony can be found online at (www.RepNischke.com).

Are there any questions from members?"

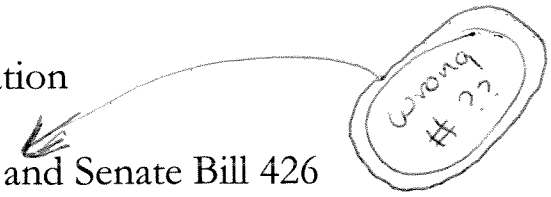
Next to last person to testify:

"This is the last person to register on this topic. If anyone else wants to speak, please complete a hearing slip and give it to the messenger at this time."

Executive Session

"With public testimony concluded, the public hearing is adjourned. At this time, I call the executive session of the Assembly Committee on Insurance to order and if there is no objection ask that roll taken for the public hearing apply to the executive session."

Consideration of Legislation



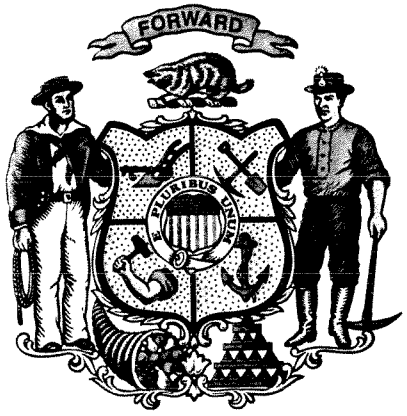
Assembly Bill 862 and Senate Bill 426

1. Explanation of both ***bills*** by Legislative Council (if needed).
2. Consideration of any amendments.
3. Consideration of Assembly Bill 862 [as amended].
4. Unanimous consent that the roll for Assembly Bill 862 apply to Senate Bill 426.

Adjournment:

"Thank you everyone who came today and sharing us with your perspective. I will remind those present that committee documents are available online at (www.RepNischke.com).

With no other business before the committees, this meeting is adjourned."


FORWARD
E PLURIBUS UNUM

November 15, 2005

To: Hal Bergan
Administrator, Unemployment Insurance Division
James Buchen
Member, Unemployment Insurance Advisory Council

From: Dan LaRocque
Director, Bureau of Legal Affairs
Unemployment Insurance Division

RE: Legal analysis of certain provisions in SB 426 relating to disqualification for unemployment insurance benefits

This memo is intended to respond to certain questions about the proposed legislative amendment to Wis. Stat. §108.04 (5) and creation of §108.04 (5g). Copies of these sections of the Bill are found at the bottom of this memo.

The Bill would add a new disqualification for repeated failure of the employee to notify the employer of absence (5 instances) or tardiness (6 instances). The misconduct provision and the standard for determining misconduct remain available to disqualify benefit claims in absence/tardiness cases.

Issues and Brief Answers

1. In cases of discharge of an employee for absence or tardiness without notice to the employer, will the new provision, §108.04 (5g) (the "notice/absenteeism" provision), supplant the existing disqualification for misconduct?

No. The misconduct disqualification remains available in cases in which the circumstances of the employee's conduct and discharge fail to meet the notice/absenteeism standard under §108.04 (5g), provided that the circumstances support a finding of misconduct.

2. Do the amendments change existing law concerning the standards by which misconduct is to be determined in any cases?

No. The amendments leave intact the current standards for judging misconduct.

3. Do the amendments require that employers adopt an attendance policy?

No. The UI law does not require an attendance policy. The amendment, sub.(5g), "requires" a particular policy for attendance -- but only as a condition of the disqualification under sub.(5g) for failure to notify of absence and tardiness. An attendance policy that is more stringent than that required under (5g) is permissible and may be used to deny benefits on either notice/absence or misconduct.

Discussion and Opinion

Issue No. 1
The Bill simply adds a new disqualification for UI benefits. In contrast to the existing (and surviving) misconduct disqualification, the new provision requires no "willfulness" and makes no exception for an employee's good cause failure to notify the employer of absence or tardiness. The disqualification is "no-fault" in that sense.

The new provision is not the *exclusive* means of disqualification in attendance cases. (*See* bill draft §108.04 (5) below, which provides that the misconduct provision may disqualify a claim "[u]nless [the disqualification for failure to notify of absence under] sub.(5g) applies . . ." In other words, if the notice/absenteeism disqualification is not satisfied in a case -- because, for example, the number of instances of absenteeism or tardiness is fewer than the applicable thresholds (5 absences / 6 tardies) under (5g) -- the benefit claim may nevertheless be disqualified by satisfying the misconduct provision.

Issue No. 2
The bill contains no language that would alter the present test for misconduct disqualification. *See* bill draft §108.04 (5) below.

Issue No. 3
The amendment requires a policy for attendance that contains three specific elements – but only as a condition of the disqualification *under sub.(5g)* for failure to notify of absence and tardiness. The required elements of the policy say nothing about the threshold numbers of absences or tardies for discharge.

The Bill provides that 5 absences and 6 tardies are excessive and grounds for disqualification. An attendance policy with *more* stringent absence/tardy thresholds than that required under (5g) is not only permitted but can be relied upon to obtain the benefit of the new notice/absence rule. For example, where the employer's *policy* allows discharge for *lower* thresholds for absences and tardies than 5 and 6, the employer may in selected cases refrain from discharge until the 5/6 thresholds have been satisfied.

Neither the statute nor rulings in misconduct cases specify a particular attendance policy. In fact, misconduct has been found in cases of absenteeism or tardiness even where the employer has no attendance policy whatsoever.

The freedom employers have had under existing UI to set policy on attendance (or set no policy) remains unchanged.

Proposed amendments to Wis. Stat. §108.04 (5) and §108.04 (5g) in SB 426 and companion Assembly bill:

SECTION 20. 108.04 (5) of the statutes is amended to read:

108.04 **(5)** DISCHARGE FOR MISCONDUCT. ~~An~~ Unless sub. (5g) applies, an employee whose work is terminated by an employing unit for misconduct connected with the employee's work is ineligible to receive benefits until 7 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 14 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 discharge not occurred. The wages paid to an employee by an employer which terminates employment of the employee for misconduct connected with the employee's employment shall be excluded from the employee's base period wages under s. 108.06 (1) for purposes of benefit entitlement. This subsection does not preclude an employee who has employment with an employer other than the employer which terminated the employee for misconduct from establishing a benefit year using the base period wages excluded under this subsection 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 an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 from which base period wages are excluded under this subsection.

SECTION 21. 108.04 (5g) of the statutes is created to read:

108.04 **(5g)** DISCHARGE FOR FAILURE TO NOTIFY EMPLOYER OF ABSENTEEISM OR TARDINESS. (a) If an employee is discharged for failing to notify his or her employer of absenteeism or tardiness that becomes excessive, and the employer has complied with the requirements of par. (d) with respect to that employee, the employee is ineligible to receive benefits until 6 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 6 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 the rate that would have been paid had the discharge not occurred.

(b) For purposes of this subsection, tardiness becomes excessive if an employee is late for 6 or more scheduled workdays in the 12–month period preceding the date of the discharge without providing adequate notice to his or her employer.

(c) For purposes of this subsection, absenteeism becomes excessive if an employee is absent for 5 or more scheduled workdays in the 12–month period preceding the date of the discharge without providing adequate notice to his or her employer.

(d) 1. The requalifying requirements under par. (a) apply only if the employer has a written policy on notification of tardiness or absences that:

a. Defines what constitutes a single occurrence of tardiness or absenteeism;

b. Describes the process for providing adequate notice of tardiness or absence; and

c. Notifies the employee that failure to provide adequate notice of an absence or tardiness may lead to discharge.

2. The employer shall provide a copy of the written policy under subd. 1. to each employee and shall have written evidence that the employee received a copy of that policy.

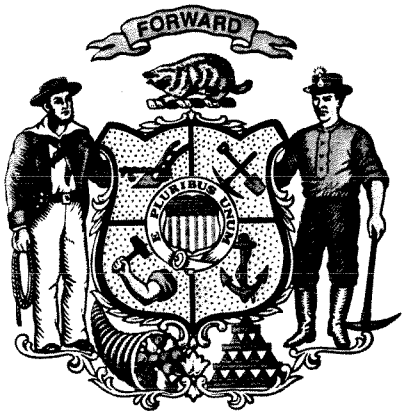
3. The employer must have given the employee at least one warning concerning the employee's violation of the employer's written policy under subd. 1. within the 12–month period preceding the date of the discharge.

4. The employer must apply the written policy under subd. 1. uniformly to all employees of the employer.

(e) The department shall charge to the fund's balancing account the cost of any benefits paid to an employee that are otherwise chargeable to the account of an

employer that is subject to the contribution requirements under ss. 108.17 and 108.18 if the employee is discharged by that employer and par. (a) applies.

(f) This subsection applies only to discharges occurring during the period beginning on the first Sunday that follows the 90th day beginning after the effective date of this paragraph .... [revisor inserts date], and ending on the last day of the 4–year period that begins on that Sunday.


FORWARD
E PLURIBUS UNUM

ANN
Nischke
www.RepNischke.com

TO: MEMBERS
ASSEMBLY COMMITTEE ON INSURANCE

From: Representative Ann Nischke, Chair
Committee on Insurance

Date: December 7, 2005

RE: Public Hearing and Executive Session December 13, 2005, 9 AM

The Assembly Insurance Committee may hold a public hearing and executive session on **Tuesday, December 13, 2005 at 9 AM.** Please see the appropriate meeting notices when they are published for greater detail.

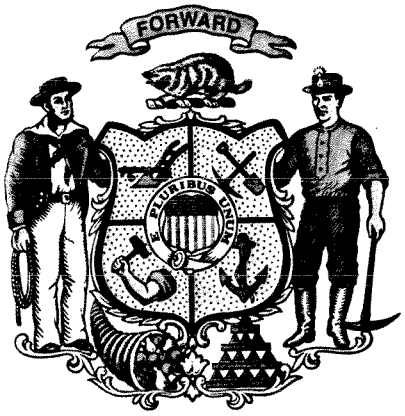
At those meetings of the committee, please plan on hearing and considering the 2005 Unemployment Insurance Advisory Council reform bill. This bill has been introduced by Senator Dave Zien as 2005 SB 426.

As you may be aware, a number of committees are meeting that morning. Every effort will be made to hold the roll open to accommodate members. Thank you in advance for your flexibility.

If you have any questions, please feel free to contact the committee clerk, Adam Peer, with any questions or concerns.

AMN:asp

State Capitol, Room 8 North, PO Box 8953, Madison, WI 53705-8953
Capitol: 608-266-8580, Fax 608-282-3697


FORWARD
E PLURIBUS UNUM

REPRESENTING WISCONSIN BUSINESS

Wisconsin Manufacturers & Commerce

Memo

TO: Members of the Wisconsin State Assembly Insurance Committee

FROM: James A. Buchen, Vice President, Government Relations

DATE: December 12, 2005

RE: **Support SB 426/AB 867** – Unemployment Insurance Reform Legislation

The Wisconsin Unemployment Insurance Advisory Council (UIAC) recently proposed SB 426/AB 867, legislation making various modifications to Wisconsin's unemployment insurance program under Chapter 108 of the Wisconsin statutes. Wisconsin Manufacturers & Commerce strongly supports the package of reforms recommended by the UIAC embodied in Senate Bill 426 and Assembly Bill 867.

Background on the UIAC

The proposed legislation was developed over the last 18 months by the UIAC. The Council has 10 members, 5 representing large and small employers, and 5 representing labor. The Council was created in 1932 when Wisconsin first established an unemployment insurance system. The idea underlying the UIAC is to have the parties directly affected – employees who may be eligible to receive UI benefits, and employers who pay UI taxes – develop jointly any proposed reforms to the Wisconsin UI program. Over the last 70 years, the Legislature has adopted the recommendations of the Council without substantive amendment, recognizing that the bill is the product of a great deal of research, analysis, negotiation and compromise.

We strongly believe that over the long term, this Council has proven to be a very successful method of public policy making in the complex area of unemployment insurance. The program has avoided wide policy swings that result in other states from the changing political make-up of the Legislature or the Governor's office. The predictable and stable policy making environment within the UIAC has produced one of the most efficient and effective unemployment insurance programs in the country – one that is widely regarded as a model for the nation.

SIGNIFICANT PROVISIONS IN SB 426/AB 867

1. Absenteeism Disqualification

At the Council's hearings preceding the development of SB 426/AB 867, no topic generated more public comment than that of attendance. We heard from many employers – large and small – regarding the importance of strengthening the Wisconsin unemployment insurance law as it relates to "no call, no show" attendance and tardiness.

Therefore, the employer representatives on the Council worked hard to develop and include a "bright line" test under the unemployment law that employers can apply to deny unemployment insurance benefits after a person has been discharged for repeated absences or tardiness without notice. This new approach to disqualifying a claimant from benefits for absenteeism will

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www.wmc.org

now be available to employers in addition to the existing penalty based upon employee misconduct.

2. **Benefit Rate Increase**

The bill provides for two increases in the maximum weekly benefit rate. The first increase beginning January 1, 2006, is $12 from the current $329 to $341. The second increase beginning January 1, 2007, will be $14, from $341 to $355.

The most recent increase in the maximum weekly benefit rate occurred in 2000. Therefore, Labor Representatives on the UIAC strongly advocated for the increases recommended in this legislation.

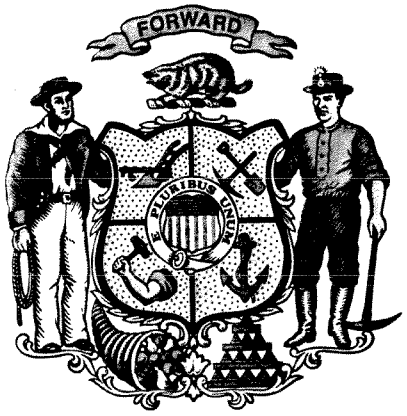
3. **SUTA Dumping**

Congress passed and the President signed the Federal State Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004. Under this legislation, all states are required to amend their UI laws to remain in compliance with federal law. SUTA dumping is defined as manipulation of business transfers to obtain artificially low UI tax rates.

This federal law requires that state laws mandate the transfer of UI account experience when the seller and buyer of a business are owned, controlled or managed by the same interests. It also requires that states prohibit transfer of account experience to a new business where the primary purpose of the purchase is to obtain a lower rate than would otherwise apply. Criminal penalties for violations of these provisions are required by federal law. The department will have the authority to undo a transfer of UI account experience under certain other circumstances which evince a primary purpose to obtain a lower tax rate.

Wisconsin Manufacturers & Commerce Strongly Supports the UIAC Process on SB 426/AB 867

Wisconsin Manufacturers & Commerce strongly supports the UIAC process as well as the package of changes recommended by the UIAC embodied in Senate Bill 426 and Assembly Bill 867.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Comments:
Bill Lueer, Vorous

December 12, 2005

To: Representative Steve Nass

From: Hal Bergan, Administrator
Unemployment Insurance Division
Department of Workforce Development

This memo is written in response to some of the issues you raised in your letter of December 9 to Speaker John Gard. I understand you have concerns regarding the absenteeism/tardiness provisions of SB 426, but I do not share them. I believe the employer members of the UI Advisory Council did a good job of addressing absenteeism/tardiness issue. With that in mind, I would like to discuss some of the specific issues you raised in your letter to Speaker Gard.

Misconduct: Currently, absenteeism and tardiness are usually addressed through the misconduct provision of the UI law. Disqualification for benefits because of misconduct requires that an employee's behavior demonstrate a "willful and wanton disregard" of an employer's interests. This can be a difficult standard to meet. At the adjudication level, employers are successful in denying benefits based on misconduct in about 30 per cent of the claims in which it is alleged. They tend to be successful when absence policies are well documented and the absences clearly do harm to the employer.

In the remaining 70 per cent of the cases, benefits are allowed. In those cases, adjudicators often must decide whether or not the underlying reasons for the absences or tardiness are valid. In a typical case of this kind, absences are for a mix of valid and invalid reasons. In other instances, employers fail to give notice to the employee of absence/tardiness policies. SB 426 provides a "no-fault" system for denying benefits in the event of 5 absences or 6 instances of tardiness. "Valid reasons" are not an issue, since the policy sets a no-fault standard for absences or tardiness without notice. This is a substantive improvement in the law that reflects the real world experience of employers in the adjudication process.

Your statement that, "...any employee dismissed solely for absenteeism (no call-no show) of less than six tardies or five absences over a 12-month period will most assuredly receive unemployment insurance benefits" is not accurate. The new provisions do **not** affect the existing misconduct standard. Rather, they add an additional, no-fault test that claimants must pass in order to receive benefits.

Benefits: Your letter to Speaker Gard also asserts: "Yes, an employer can technically still dismiss an employee for a lower number of tardies or absences, but the employer will be assessed the cost of those benefits through the UI system." There are many instances of employers dismissing employees for

fewer than 5 absences or 6 tardies and prevailing at the adjudication or appeal stage under the misconduct language of the law. When employers do not succeed it usually relates to "valid reasons" for absence, a test that no longer applies under the no-fault provisions of SB 426.

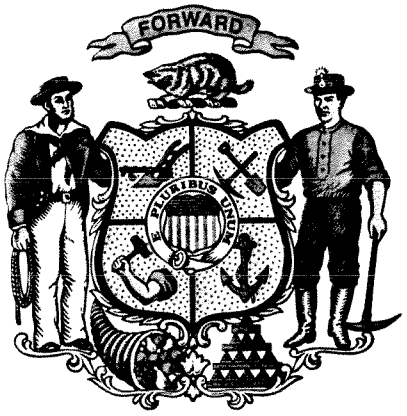
"Bureaucratic Requirements": Your letter refers to four "bureaucratic requirements" of the absenteeism/tardiness provisions. You describe them as:

1) A specific written policy that defines a tardy or absence
2) The employer must have verification that every employee has received the written policy. (*More importantly, the claimant has to have seen the written policy. Usually employers simply have their employees sign a form saying they have read and understand the policy.)*
3) The employer must provide one warning for violation of the policy (*If an employee is going to be discharged for violation of the attendance policy, he or she must be warned in advance of discharge that their absenteeism or tardiness has placed him or her in jeopardy.)*
4) The ability to prove that the employer's policy has been uniformly applied to every employee. (*This is nothing more than a statement of the general rule that personnel policies should be applied consistently and fairly.)*

What your letter refers to as "bureaucratic requirements" are common sense standards that inform employees and deter absenteeism and tardiness. Would it be fair to fire a person for a violation of a work rule of which he or she had no knowledge? Most people would say "no" and surely most courts would rule that way.

Unemployment Insurance law as precedent: Your letter argues that: "...it is a guarantee that unions and lawyers will cite this new law as a precedent for other purposes such as grievance claims, discrimination claims and lawsuits." This assertion is at odds with Wis. Stat. 108.101 which prohibits the use of UI findings or decisions in any other action or administrative or judicial proceeding. The UI law itself is a legal standard solely for UI benefit decisions.

I am sympathetic to your concerns about small business and have been working hard to make the UI program more understandable and more manageable for them. I believe the attendance/tardiness provisions of SB 426 will be a significant improvement in the Wisconsin Unemployment law for smaller employers.


FORWARD
E PLURIBUS UNUM

Testimony on Assembly Bill 867 and Senate Bill 426
Assembly Committee on Insurance
December 13, 2005

Hal Bergan, Administrator
Unemployment Insurance Division
Department of Workforce Development

I want to thank Representative Nischke for scheduling this hearing and giving us the opportunity to discuss the Assembly Bill 867 and Senate Bill 426. My name is Hal Bergan. I am the administrator of the Division of Unemployment Insurance in the Department of Workforce Development. I am accompanied by Lutfi Shahrani, the Chief of the Benefit Operations Bureau, Brian Bradley, the Section Chief for Accounting and Finance and Dan LaRocque, the Director of the Bureau of Legal Affairs. Tom Smith, our Division's research attorney, is also here.

I am pleased to represent the Department of Workforce Development speaking in favor the Assembly Bill 867, which deals with changes to our state's Unemployment Insurance law. The bill is the culmination of many months of work by the members of the UI Advisory Council and the staff of the UI Division. In the two years that have passed since the Legislature last updated our law, the Advisory Council has listened to many hours of testimony from employers, individuals, legislators and other organizations vitally interested in the effective operation of our state's UI program. The bill before you represents a distillation of those hours of public testimony and of the Division staff's experience in administering the current law.

The passage of AB 867 will provide significant improvements in the fairness and administration of Wisconsin's nationally recognized UI program. I would like to take a few minutes to describe the most significant provisions of the bill and then I will be happy to answer any questions you might have. A plain language summary of the bill is attached to these remarks.

Increase in the maximum weekly benefit. AB 867 provides an increase in the maximum weekly benefits for UI recipients. In 2006 the maximum benefit would increase from $329 to $341. In 2007, benefits would increase an additional $14 to $355. Over the two year period, benefits would increase by 7.6%. It has been four years since the last benefit increase. During that time the cost of living has increased by 9.8%, so the proposed increase does not quite keep up with inflation.

A comparison of maximum weekly benefits within our region puts this increase into perspective. Currently, our $329 maximum benefit ranks us 6th of the six states in the region. Illinois, Michigan, Indiana, Minnesota and Iowa all pay more than we do, in some cases substantially more. Moreover, our exhaustion rate is the lowest in the region -- that means that UI claimants in Wisconsin are less

likely to receive benefits for a full 26 weeks. Our exhaustion rate is just 25.1%, which ranks Wisconsin 47th of 53 UI jurisdictions nationally. That means that only one-fourth of Wisconsin claimants draw all available benefits.

No-Fault Disqualification for Absences and/or Tardiness. AB 867 breaks new ground in addressing the often difficult problem faced by employers when their workers are absent or tardy without notice. These "no call, no show" attendance issues can be particularly problematic to smaller businesses or health care institutions where absences without notice can leave them short of legally prescribed staffing levels.

The bill adds a new "no fault" disqualification for UI benefits to the existing standard for disqualification under the misconduct provisions of the law. The new provisions do **not** affect the existing misconduct standard.

To provide some more specific information for the Legislature we sampled 200 of 16,451 decisions relating to misconduct. (The decisions were issued between August 14, 2005 and November 2, 2005.) Of the 200 misconduct decisions, 60 related to attendance. In 42 cases -- 70 per cent -- benefits were allowed. In 18 cases, -- 30 per cent -- benefits were denied. Disqualification for benefits because of misconduct requires that an employee's behavior demonstrate a "willful and wanton disregard" of an employer's interests. This standard was set in a Wisconsin Supreme Court case, Boynton Cab Co. vs. Walter Neubeck, in 1941. It can be a difficult standard to meet. Employers tend to be successful denying benefits when their attendance policies are well documented and absences or tardies clearly do harm to the employer.

In most of the cases in which benefits are allowed the adjudicators must decide whether or not the underlying reasons for the absences or tardiness are valid. In a typical case of this kind, absences are for a mix of valid and invalid reasons. AB 867 provides a "no-fault" system for denying benefits in the event of 5 absences or 6 instances of tardiness. "Valid reasons" are not an issue, since the new provision establishes a no-fault standard for absences or tardiness without notice. This is a change that reflects the experience of employers in the adjudication process.

Because this provision breaks new ground in our system, it has a four-year sunset. This will give the UI Advisory Council and the legislature an opportunity to assess its effectiveness before making it a permanent part of our law.

SUTA Dumping. SUTA dumping is a term which refers to the practice of employers seeking to reduce their UI tax rate by manipulating their experience rating. For example, a company with a 7% tax rate might buy an existing company with a 3% tax rate and move its employees to the purchased company with the intention of lowering its tax rate. In general, Wisconsin has done of good job of detecting and prohibiting these practices, but SUTA dumping is so

prevalent at the national level that a federal law was passed on the topic in 2004. The federal law requires the states to enact certain provisions aimed at SUTA dumping. Unless the SUTA dumping provisions are passed by December 31, 2005, our federal grant for administration will be in jeopardy.

The bill does the following things to combat SUTA dumping:

- Strengthens our successorship law by including companies who are owned, controlled, or managed by the same interests. The addition of the term *managed* broadens our already strong successorship provisions.
- Requires recomputation of tax rates at the beginning of the first quarter following the date of transfer.
- The bill provides for additional penalties, both criminal and civil, for employers who make false statements or representations during successorship investigations.
- Permits DWD to nullify a successorship transaction if it finds that it was undertaken primarily for purposes of avoiding or reducing UI tax obligations.

Employer Fault at Adjudication. Here is a scenario that happens all too often in our system. An employee is separated from his or her employment and files for unemployment compensation. The employer contests the claim, requiring that an adjudicator issue a decision as to whether benefits are payable. The employer or his agent fails to provide adequate or timely information during the adjudication process. The adjudicator, doing his or her best with the available information, awards benefits. The employer or agent then appeals. During the appeal process the employer supplies information that had not been provided during adjudication. The administrative law judge reverses the adjudicator's decision and assesses an overpayment against the claimant, requiring him or her to pay back the benefits received. The employer's account is credited with the amount of the benefits paid and it falls to the Department to collect the overpayment. This is a difficult and time consuming process and usually ends with the UI trust fund bearing the cost of at least some of the benefit payment.

The new provision provides that if an administrative law judge finds that an employer was at fault in failing to provide the information at the adjudication phase without good cause, the benefits "stand as paid" up until the time of the reversal. No overpayment is assessed.

This problem is particularly acute as it relates to large "third party agents", firms who contract with employers to handle their unemployment insurance claims. Generally, employers who deal with us directly do a good job of providing timely and complete information at the adjudication stage. Large, multi-state employers who contract out their UI transactions to agents are much more likely to fail to provide sufficient information at the adjudication stage and thereby start the overpayment cycle described above.

Reed Act Funds for UI Administration. The bill provides the authority for the UI Division to utilize as much as $1 million in Reed Act funds for UI administration in Fiscal Year 2007. Using the funds in this way is subject to approval by the Council. We are hopeful that we will not have to use the Reed Act funds for this purpose, but it is important to have this option available to us should we need it. Last month the U.S. House of Representatives passed a spending reduction bill which would reduce the federal funding for UI grants by $99 million next year. If that provision stands in the final spending reduction bill that comes from the Congress, it will increase the likelihood that we would have to tap this money.

Bad Debt Assessment for Reimbursement Employers. Some employers in the UI system -- specifically non-profit organizations and local governments -- have the option of reimbursing the UI trust funds for benefits paid to their employees. This is in contrast to most employers who pay taxes into the UI system. In recent years some of the non-profit reimbursable employers have gone out of existence and did not have the resources or sufficient "assurance of reimbursement" to pay for their outstanding claims. When this happens the burden of the bad debts is transferred to taxable employers. The bill sets up a "bad debt assessment" process which relies on other non-profit reimbursable employers to repay uncollectible debts. The maximum amount assessed in any year is $200,000.

Technical Changes. There are a few more technical changes to the UI law which are spelled out in the plain language summary that is attached to this testimony. For the most part these changes are designed to improve the administration of the program by making our procedures more consistent from issue to issue. Taken together, these changes represent a small step forward in improving the administration of the UI program and making it more easily understood.

I'm happy to respond to any questions you may have about the bill.

PLAIN LANGUAGE SUMMARY OF THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL AGREED UPON BILL, 2005

Statute Section	**BENEFIT PROVISIONS**
Benefits	
108.04(1)(c)	Harmonize "Partial-week" and "Family and Medical Leave" Provisions Adds language to apply the partial-week disqualification to partial weeks of a family and medical leave, to partial weeks of a disqualification for a suspension if it affects only a portion of a week and to the week a termination occurs if it affects only a portion of a week. **REASON:** This change creates a consistent and equitable method for determining benefits payable for partial weeks under the related statutes.
108.04(1)(e)	Modify Work Search Requirements for Self-Employed Repeals the requirement that a self-employed individual make a bona fide search for employment each week to be eligible for benefits regardless of whether the individual is eligible for a waiver of the requirement.. **REASON:** Due to prior law changes, this subsection required any self-employed person, regardless of the nature or purpose of the business, to search for work each week even if one of the waivers would apply. There are a number of situations where the outside business does not limit the claimant's attachment to other work in the labor market and where the individual should be given a waiver, like any other claimant, if qualified. Likewise, when a self-employed individual is not available for suitable work as a result of the self-employment, a disqualification under the able and available provisions would be imposed.
108.04(5g)	Disqualification for Failure to Give Notice of Absence This statute creates a specific disqualification relating only to absences and tardiness without notice. Employers are required to have a written policy which is to include what constitutes a "tardy", the process for giving notice,

verification that the employee received the policy, one warning before discharge and uniform application. 6 tardies or 5 absences without notice within a twelve month period will result in disqualification. To requalify, the individual must wait 6 weeks and have earned 6 times the employee's weekly benefit rate.. This statute has a four year sunset.

REASON: Employers desired an attendance based disqualification with a lower standard of proof than that for misconduct. This change creates a standard for requalification which is less than that for misconduct and there is no loss of wage credits.

108.04(13)

Employer Fault and Benefit Charging

Redefines employer fault to include an employer's failure to respond to an adjudicator's request for information during a fact-finding interview. Any benefits paid until a new decision is made will "stand as paid" unless an ALJ finds that the failure is with good cause.

REASON: The department has encountered a lot of difficulty with employers who fail to respond to requests for information at the initial adjudication level but then provide the necessary information at the appeal level. This failure to respond has resulted in numerous overpayments if the initial determination is overturned. The department then encounters numerous problems and the high administrative costs when trying to collect the overpayments. Also many of the appeal hearings could be avoided if the employer or their agent responded at the adjudication level. The department has tried unsuccessfully to work with the employers/agents to resolve this problem. The law change will provide consequences for the employer/agent's failure to respond.

108.04(16)(e)

Technical Correction

Removed reference to sections 108.04(2)(a) or (d) to prevent an interpretation that would noncharge employers when an able & available disqualification is not imposed because the claimant is enrolled in approved training.

REASON: Sections 108.04(2)(a) or (d) were included in error during the last bill cycle. The Council did not intend to provide a relief of charges to all liable employers for benefits paid while an individual is enrolled in approved

training simply because the individual has restrictions other than the schooling. The relief from charges was only intended for situations involving a separation of employment or job refusal with a specific employer.

108.05(1)(o) and (p)

Benefit Rate Increase

These statutes provide for an increase in the maximum weekly benefit rate. The increase beginning January 1, 2006 is $12 and the increase beginning January 1, 2007 will be $14.

REASON: The last benefit rate increase was in December 2002.

108.05(3)(a)

Benefits for Partial Unemployment

Repealed the wage disregard to volunteer firefighters, volunteer emergency medical technician or volunteer "first responder".

REASON: Virtually all individuals who provide services to our communities as a volunteer firefighter, volunteer emergency medical technician or volunteer "first responder" receive some type of compensation for their services. This makes it difficult to clearly define the types of services that would be considered truly "volunteer". This change would make the treatment of the benefit year and base period wages earned by performing these services more equitable for claimants and employers.

108.068(2)

Technical Correction

Amended language to fix conflicting effective dates for benefits and tax issues when the department recognizes the federal election of an LLC to be treated as a corporation for tax purposes.

REASON: The intent of the department when creating this provision was to avoid payment of retroactive benefits and to avoid retroactive adjustment of benefit eligibility when recognizing the federal tax status of an LLC. However, the language that was used has led to problems in application the department did not anticipate. This change would eliminate the problems while still minimizing the retroactive adjustment of benefit claims.

108.105(2)

Revocation of employer agent right to represent employer

Allows for revocation of the right of an employer agent to represent employers for continued failure to provide information during a fact finding investigation. If an appeal tribunal reverses and denies benefits in 5% or more of the cases appealed by an agent within a 12-month period and the ALJ finds the agent's failure to provide information is without good cause, the agent's privilege to act as an employer agent may be suspended for up to one year.

REASON: The reason for this change is the same as for 108.04(13) above.

Tax

108.151(7)(a)

Bad Debt Assessment for Reimbursement Employers

This amendment will require all non-profit employers who have elected reimbursement financing to pay an assessment into a newly created account when there is a balance of unpaid and uncollectible benefit reimbursements. The assessment is equitable to the size of the organization. The maximum total amount assessed in any year is $200,000. If this is not enough to cover the outstanding bad debts the remaining balance will be carried over to the next year.

REASON: Employers who have elected reimbursement financing do not pay state or federal UI taxes but rather reimburse the fund for any benefits paid to their employees. Reimbursement employers are required to file an assurance of reimbursement to guarantee payment of the required reimbursement along with any interest and tardy filing fees. The assurance must be equal to or greater than 4% of the employer's taxable payroll and when such an employer goes out of business, the assurance is not always sufficient to cover the benefit charges.

When a reimbursement receivable is declared uncollectible it is charged to the UI fund's balancing account which is funded by employers who pay state UI taxes. The new assessment will eliminate the unpaid reimbursement charges to the balancing account.

108.16

SUTA Dumping

Congress passed and the President signed the Federal SUTA Dumping Prevention Act of 2004. All states are required to amend their UI laws to remain in compliance

with federal laws. SUTA dumping is manipulation of business transfers to obtain artificially low UI tax rates.

REASON: The federal law requires that state laws mandate the transfer of UI account experience when the seller and buyer of a business are owned, controlled or managed by the same interests. It also requires that states prohibit transfer of account experience to a new business where the primary purpose of the purchase is to obtain a lower rate than would otherwise apply. Criminal penalties are also required by federal law.

The determination or redetermination of the contribution rate for the successor will be effective at the beginning of the first quarter after the transfer of the business. The department will also have the authority to undo a transfer of UI account experience under certain other circumstances which evince a primary purpose to obtain a lower tax rate.

108.17

Expansion of Employer Electronic Reporting

This change would require employer agents who prepare reports for less than 25 employers to use the department's internet reporting application. This change would also require employers reporting 50 or more employees to use any electronic media to file their wage reports and the internet to file their tax report.

REASON: Currently about 50,000 tax reports and 383,000 wage records are submitted on paper. Information received on paper reports has to be manually keyed or scanned into the systems. Significant savings would be realized if more information was submitted electronically.

108.22(2)(a)1

Individual Liability for Corporate Tax Debt

Specifically allows department to file a lien against an individual who has been found personally liable for a corporate tax debt.

REASON: While the statute could have been interpreted to include implicit authority to issue warrants against individuals held personally liable, it would be better to make the authority specific.

108.225(20) Changes to Levy Fees

Changes levy statute to provide that the levy fee is in addition to the levy amount so that the fee is not deducted from the amount sent to the Department. Also increases the levy fee to $15 for multiple-payment levies.

REASON: This change clarifies that the levy fee that is charged is in addition to the expenses of the levy incurred by the department. The change to $15 for multiple levies creates a single fee where under prior law, there could be an unlimited number of $5 levy fees.

Other

108.02(12)

Technical Change
Changes the statute to define employee as someone who performs services for pay subject to the exclusions of 108.02(12)(b). Also clarifies that a sole owner or partner is not an employee only with respect to those services performed for their own business.

REASON: This change codifies the department's practice to define an employee to mean an individual who performs services and to agree with 108.02(15)(a) which defines "employment" as the performance of services for pay.

Also clarifies that a sole proprietor or partner who provides services to their own sole proprietorship or partnership are not considered employees of that sole proprietorship or partnership. However they would be considered employees if services are provided for pay to a business which they do not own or are not a partner.

108.02(5)(k)14

Repeal Food Processing Exclusion
Repealed this exclusion that applies to the employment of certain employees who worked in the process of fresh fruits an vegetables solely during the active processing seasons.

REASON: Currently this statute excludes wages paid to certain individuals who work for employers processing fresh fruits or vegetables. Conditions have changed that now it is not uncommon for claimants to work for a single employer or multiple employers in more than one active season which can overlap. The work performed by active processing season employees is basically factory work not agricultural work. As such, these individuals should not

have to meet higher eligibility criteria than other factory workers.

108.02(21e)

Changes to PEO Statute

Changes the definition of professional employer organization to those organizations that are in the business on an ongoing basis of providing staffing services as stated in the professional employer organization statute. Also allows PEO and client to share responsibility for setting wages.

REASON: The statute was originally enacted to benefit companies that routinely act as a professional employer organization. The change would still protect the PEO but close the gap that allowed parent organizations to act as a PEO to one of its subsidiaries. Instances were found where the parent organization took part in this activity because the parent organization had a much lower unemployment insurance tax rate or to simplify reporting.

108.09(4n)

Admissibility of labor Market Reports (COED)

Creates a statutory provision which makes the department COED reports admissible as prima facie evidence in UI hearings without need for certification by an expert. These reports are used to determine benefit eligibility when labor market and occupational data is necessary.

REASON: The reason for the change is to provide for the admissibility of COED reports under a statute specific to that document rather than under a statute not intended for that purpose and which requires the department to rely on the fiction of "expert" certification.

108.22(8)(b)

Eliminate Offset to Collect Imposter Penalties

Changed to remove the department's authority to offset benefit payments in order to recover administrative assessments levies against imposters.

REASON: This change is necessary to be in compliance with federal law. Money withdrawn from the unemployment fund is to be used solely for the payment of unemployment compensation and refunds of money erroneously paid into the fund. Recovery of administrative assessments against imposters from unemployment funds is

not allowed under federal law. The U.S. Department of Labor has notified the DWD that this change is required for Wisconsin's continued conformity with federal law.

20.445(1)(nb)

Permits use of up to $1 million in Reed Act funds for UI administration, if needed, in SFY 07. The department will consult with the UI Advisory Council before any expenditure.

REASON: Reed Act funds are grants to the states by the U.S. Department of Labor which may be used to pay unemployment benefits or for administration of the UI and Employment Service programs. Based on current knowledge of the funding situation for Wisconsin UI, there is a small possibility that the UI Division may need to use such funds during SFY 07.

Nonstatutory Provisions

Benefit Claiming Procedures

Directs the department to amend administrative rule DWD 12901(1). The change will increase the time period in which a claimant can file a timely initial claim application for a given week. Currently the claimant has 7 days after the week being claimed to file the application. The proposal would give the claimant 14 days after the week being claimed to file the application.

REASON: When a claimant files an untimely claim often it is due to a misunderstanding about when the claim must be filed. Currently initial claim applications must be filed within 7 days after the week being claimed but a claimant is allowed 2 weeks after the close of the week being claimed to timely file a weekly claim certification. When a claimant files an untimely initial claim application, the claim must be adjudicated prior to issuing a monetary computation.

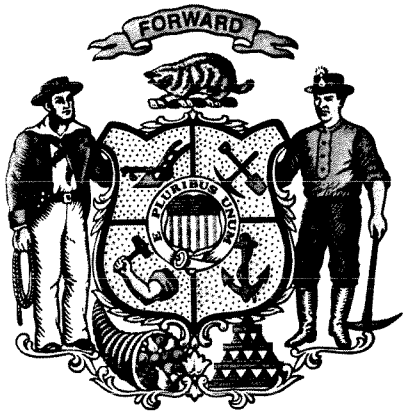
The change would reduce the confusion by making the timeliness requirement for initial claim applications and weekly claim certifications consistent. It would also avoid the delays involved with adjudicating these issues at the beginning of the claim.

Study of Unemployment Insurance Fund
The department and the Unemployment Insurance Advisory Council agree to complete a study regarding the financing and viability of the unemployment reserve fund.

REASON: This study is to determine the long-term stability of the unemployment fund. Based on this information the department and the advisory council on unemployment insurance will determine what measures are needed to maintain that stability. The findings and recommendations from this study will be reported to the governor and the chief clerk of each house of the legislature for referral to the appropriate standing committees no later than July 1, 2007.

Authorized Position in the Department of Justice
Creates and appropriates funding for a half-time position in the Department of Justice.

REASON: The person in this position would be responsible for enforcing those statutes relating to unemployment that provide for criminal penalties. This will allow increased prosecution of benefit and tax fraud.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Wisconsin State AFL-CIO ...the voice for working families.

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

TO: Assembly Insurance Committee Members
FROM: Phil Neuenfeldt, Secretary-Treasurer
DATE: December 13, 2005

RE: **Support for Senate Bill 426 / Assembly Bill 867**
Unemployment Insurance Law Changes

The Wisconsin State AFL-CIO strongly supports this agreed-upon package of changes to the benefits and procedures under Wisconsin's Unemployment Insurance Law. It provides for an increase to $341 in the maximum weekly benefit rate as of January 2006 (currently, $329) and to $355 in January 2007, plus other changes. Through the mutual efforts of labor and management representatives on the Unemployment Insurance Advisory Council, SB 426/AB 867 includes changes to current UI law that are of benefit to both employers and employees. This is a classic case of labor and management working together to craft legislation that keeps stability in our vital unemployment insurance system as our economy changes.

While we realize that some might prefer changes to the bill to benefit either employers or workers, we urge that SB 426/AB 867 be supported as presented so that the delicate balance in the bill will be preserved and the integrity of the Advisory Council process will be maintained. For over 70 years Wisconsin has used the Unemployment Insurance Advisory Council as a proven means for revising our UI law. The Advisory Council, with expert representation from both labor and business, has been able to present to the Legislature *balanced* packages of revisions based on many months of bargaining. Any amendment to the package, whether it benefits employers or workers, upsets the balance by making one change in the law in isolation from all other considerations. Even if an amendment would benefit workers, the Wisconsin State AFL-CIO would strongly oppose it.

Neither labor nor management achieves all we hope for in an agreed-upon bill, but each does benefit and that is what makes Wisconsin's UI Advisory Council process the envy of many other states. It is far superior to states where there is no advisory council and legislators have to analyze the impact of many individual, competing UI bills that are introduced by various interests. UI changes become part of a partisan political debate which consumes huge amounts of time that could be spent more productively, and it also results in fragmented and poorly conceived UI law that benefits neither employers nor employees.

Our Unemployment Insurance system is essential in order to reduce individual hardship and stabilize our communities as we move through periods of economic contraction and expansion. We urge support for SB 426/AB 867 and the effective, proven UI Advisory Council process.

PN:JR:pas,opeiu#9,afl-cio

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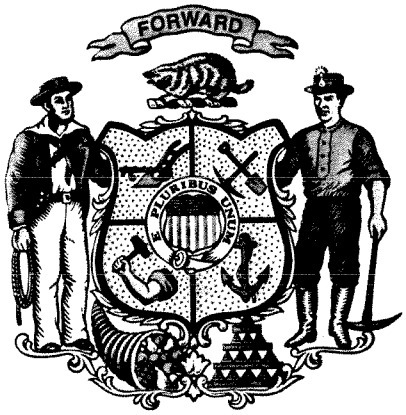
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December 13, 2005

TO: Members, Assembly Insurance Committee

FR: Attorney General Peg Lautenschlager

RE: 2005 Senate Bill 426

Dear committee members:

I am writing to you today regarding Senate Bill 426, relating to various changes in the unemployment insurance law.

Senate Bill 426 contains several provisions aimed at improving Wisconsin's unemployment insurance law. The bill's proposed benefit rate, tax, and other changes should make the law more workable for both employees and employers.

Senate Bill 426 also provides authorization and funding for unemployment insurance law enforcement by the Department of Justice. However, while the department supports this effort to enforce compliance with state laws governing the unemployment insurance program, we are concerned about funding for the 1.0 FTE assistant attorney general position contemplated. We anticipate the need to recruit an attorney to fill the position, and that that attorney's time will be allocated to this work. The bill as drafted ensures funding for only .5 FTE. This level of funding will allow the department to offer approximately $26,000 in salary and $10,000 in fringe for a half-time assistant attorney general position. It may be difficult finding an attorney with the training and skills to prosecute unemployment insurance cases under those circumstances.

The Department of Justice supports being authorized to prosecute violations of the unemployment insurance law, but has concerns that SB 426 does not provide the resources to adequately carry out that enforcement.

Very truly yours,

Peggy A. Lautenschlager
Attorney General

PAL:mwr