

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Thursday, January 14, 2016 7:24 PM
To: Duchek, Michael; McKean, Aaron
Cc: Knutson, Janell - DWD
Subject: UIAC added a lot of stuff

I'll call you when I get in on Friday 1/15.

Please add P3 of the D15-06 proposal to 2020.

Will have to create a standalone LRB for the labor/management proposals and then get them to approve that and then add that to 2020.

Meeting on 1/19/16 at 1:30 pm to approve LRB language!

Thanks-

Andy Rubsam, Esq.
Bureau of Legal Affairs
Unemployment Insurance Division
Wisconsin Department of Workforce Development
PO Box 8942
Madison, WI 53708
Tel: 608-261-9440
Fax: 608-266-8221
E-mail: andrew.rubsam@dwd.wi.gov

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 15, 2016 9:14 AM
To: Duchek, Michael
Subject: FW: Recall: D15-06 revised LRB version

Good cause still approved by VIAC

-----Original Message-----

From: Scott Manley [mailto:smanley@wmc.org]
Sent: Thursday, January 14, 2016 5:29 PM
To: Rubsam, Andrew J - DWD
Subject: Re: Recall: D15-06 revised LRB version

The department may not find good cause for refusal of an offer of suitable work unless the refusal relates to the claimant's personal safety, sincerely held religious beliefs, an unreasonable commuting distance, or another compelling reason that would that would make accepting the offer unreasonable.

Scott Manley
Vice President of Government Relations
Wisconsin Manufacturers & Commerce
(608) 258-3400
www.wmc.org<<http://www.wmc.org>>

On Jan 14, 2016, at 5:11 PM, Rubsam, Andrew J - DWD
<Andrew.Rubsam@dwd.wisconsin.gov<mailto:Andrew.Rubsam@dwd.wisconsin.gov>> wrote:

Rubsam, Andrew J - DWD would like to recall the message, "D15-06 revised LRB version".

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 15, 2016 9:23 AM
To: Duchek, Michael
Subject: UIAC

1. Delete 102.07(8)9d) - Misclassification provision in Workers Compensation statute
2. Delete 111.327 – Misclassification provision in Employment Relations statute
3. Delete 108.24(2m) – Misclassification provision in Unemployment Insurance statute) and replace with this proposal.

Limited to *any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures.*

Willful Violation

1. Replace “willfully” with “knowingly and intentionally”
2. Factors to consider in determining knowingly and intentionally
 - a. Whether the employer was previously found to have misclassified an employee in the same or a substantially similar position.
 - b. Whether the employer received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee.

-
1. Knowingly and intentionally misclassifying one or more individuals - Administrative assessment - \$500 per employee, not to exceed \$7,500.
 2. Subsequent instances of knowingly and intentionally misclassifying one or more individuals – option to refer to DOJ - \$1,000 per employee not to exceed \$25,000.
 3. Required through coercion to adopt nonemployee status – DOJ of \$1,000 per worker.

Andy Rubsam, Esq.
Bureau of Legal Affairs
Unemployment Insurance Division
Wisconsin Department of Workforce Development
PO Box 8942
Madison, WI 53708
Tel: 608-261-9440
Fax: 608-266-8221
E-mail: andrew.rubsam@dwd.wi.gov

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 15, 2016 12:43 PM
To: Duchek, Michael
Subject: RE: Question

Looks good.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Friday, January 15, 2016 12:28 PM
To: Rubsam, Andrew J - DWD
Subject: RE: Question

I guess I would say take another look at 108.04 (7) (e). Currently this provision is written in terms of "good cause" and not "suitable work" and we're kind of changing (8) (d) so it's about defining suitable work instead of good cause. So maybe (7) (e) should be revised somehow to instead refer to suitable work, or it should be amended to reference the new good cause provision instead (religious beliefs). Here is one way it could be amended, but this is a policy choice in the end:

(e) Paragraph (a) does not apply if the department determines that the employee accepted work which the employee could have failed to accept ~~with good cause~~ under sub. (8) and terminated such work ~~with the same good cause~~ on the same grounds and within the first 30 calendar days after starting the work, or that the employee accepted work which the employee could have refused under sub. (9) and terminated such work within the first 30 calendar days after starting the work. For purposes of this paragraph, an employee has the same ~~good cause~~ grounds for voluntarily terminating work if the employee could have failed to accept the work under sub. (8) (d) when it was offered, regardless of the reason articulated by the employee for the termination.

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Friday, January 15, 2016 12:12 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: RE: Question

Didn't see that. LOLZ. Maybe never but we're not going to repeal it now!

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Friday, January 15, 2016 12:11 PM
To: Rubsam, Andrew J - DWD
Subject: RE: Question

(c) says "If an employee receives actual notice of a recall to work, par. (a) applies in lieu of this paragraph." So I'm not even clear about when (c) ever applies.

From: Duchek, Michael
Sent: Friday, January 15, 2016 11:39 AM
To: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Subject: Question

So here's another question. 108.04 (8) (c) does not actually deal with "suitable work" but rather deals with recall to a former employer. Was the intent that the "suitable work" stuff would apply to (c) as well, or just (a)?

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 15, 2016 1:43 PM
To: Duchek, Michael
Subject: RE: 2 proposals

In red below

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Friday, January 15, 2016 1:22 PM
To: Rubsam, Andrew J - DWD
Subject: 2 proposals

Some more thoughts on these first two things (suitable work/good cause and worker's comp):

1. Would it help to get a draft out today that had at least these two items? Yes.
2. With respect to suitable work/good cause – As you know these changes primarily affect 108.04 (8), plus one change to 108.04 (7) (e). Last session, in Acts 20 and 36, we used an initial applicability of “first applies to determinations issued on the effective date.” Maybe that would be the one to do. I think that was chosen after internal consultation within your division as to what would be the easiest to implement the changes. Yes.
3. Also, you spoke of a July 1, 2016 effective date. We usually try to use effective dates for UI that are tied to Sundays. So I would instead suggest July 3 in that case unless you want something else. Still working on this.
4. Would we need an initial applicability for the worker's comp change? I'll let you know soon.

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 15, 2016 2:31 PM
To: Duchek, Michael
Subject: FW: Effective dates

1. Definition of suitable work –4 weeks after the bill is signed for training
2. Definition of good cause – same 4 weeks
3. Worker's comp – same 4 weeks.

Should be determinations issued on the 4th Sunday after publication I think

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 15, 2016 3:04 PM
To: Duchek, Michael
Subject: FW: effective dates - penalties

We'll need 6 months after bill is signed for effective date for the coercion penalty and the misclass admin penalty.

Andy Rubsam, Esq.
Bureau of Legal Affairs
Unemployment Insurance Division
Wisconsin Department of Workforce Development
PO Box 8942
Madison, WI 53708
Tel: 608-261-9440
Fax: 608-266-8221
E-mail: andrew.rubsam@dwd.wi.gov

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 15, 2016 3:21 PM
To: Duchek, Michael
Subject: misclass

Section 108.24 (2m) as well as an administrative penalty under 108.22, would be limited to any employer described in s. 108.18 (2)(c) or engaged in the painting or drywall finishing of buildings or other structures.

The Council seeks to create an administrative penalty for knowingly and intentionally misclassifying workers. Factors to consider in determining whether an employing unit knowingly and intentionally misclassified a worker include:

1. Whether the employer was previously found to have misclassified an employee in the same or a substantially similar position.
2. Whether the employer received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee.

The administrative penalty for knowingly and intentionally misclassifying a worker is \$500 per employee, not to exceed \$7500 per incident, per employer.

The criminal penalty under 108.24 (2m), as recreated, for subsequent instances of knowingly and intentionally misclassifying one or more individuals, includes the option to refer to the Department of Justice, is \$1,000 per employee, not to exceed \$25,000 per incident, per employer, as a fine imposed by a court. The administrative penalties for knowingly and intentionally misclassifying workers would be deposited into the Program Integrity Fund.

Andy Rubsam, Esq.
Bureau of Legal Affairs
Unemployment Insurance Division
Wisconsin Department of Workforce Development
PO Box 8942
Madison, WI 53708
Tel: 608-261-9440
Fax: 608-266-8221
E-mail: andrew.rubsam@dwd.wi.gov

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 15, 2016 3:21 PM
To: Duchek, Michael
Subject: Coercion

Under 108.22, as created and regarding coercion, an employing unit that requires a worker to adopt non-employee status is subject to administrative penalty of \$1,000 per worker, not to exceed \$10,000 per employing unit, per year. Penalty funds will be deposited into the Program Integrity Fund.

Andy Rubsam, Esq.
Bureau of Legal Affairs
Unemployment Insurance Division
Wisconsin Department of Workforce Development
PO Box 8942
Madison, WI 53708
Tel: 608-261-9440
Fax: 608-266-8221
E-mail: andrew.rubsam@dwd.wi.gov

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Saturday, January 16, 2016 12:52 PM
To: Duchek, Michael
Cc: Knutson, Janell - DWD
Subject: Re: UIAC stuff

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Friday, January 15, 2016 6:04 PM
To: Rubsam, Andrew J - DWD
Cc: Knutson, Janell - DWD
Subject: UIAC stuff

Andy responses in brackets

Time is short and while I plan to look at this some more tomorrow with the goal of having it out to you Sunday morning, we may not have a chance to research every issue. But below are a few thoughts that maybe you could respond to. (Maybe Dan LaRocque would be a good person to consult with on some of this too?):

1. I spoke with the criminal drafters in our office, and they agreed that it would be somewhat unusual, if not problematic, to have a hybrid statute whereby a first violation would be punishable by an administrative assessment, with subsequent violations punishable as a crime. Not only are different standards of proof involved, it's also the case that you can't really make the AG prosecute something which could mean that the second+ offense would never be penalized. In addition, with respect to a crime, I don't think you can have the court/jury consider certain factors per se, but instead each element of the crime has to be proven beyond a reasonable doubt. I would also just note for what it's worth that in 2001, the legislature eliminated graduated penalties for most offenses (OWI being the notable exception). My thought would be to try to separate these as two provisions, one of which would be the admin. assessment, and one would be the crime. For the criminal penalty then, one of the elements would simply be whether the department had previously assessed, which would simply be something that could be proven as a fact, though I'm not sure whether an employer could collaterally attack the earlier assessment in the criminal proceeding. Also, the current regime seems to be that criminal penalties are placed in s. 108.24, while administrative penalties, as you note, are mostly contained in s. 108.22. I would recommend we stick to that and place the crime in 108.24 and the admin. assessments in 108.22. Thoughts? *[I think the intent was as you describe. 108.24 should include your suggestion about an element of the crime being a previous determination of an administrative penalty assessed by the department. I think you should draft the new 108.24(2m) as a regular criminal penalty with a note in the LRB version that it is unconventional to say that the crime can only be prosecuted by WI-AG. Janell, I think we should tell the UIAC to do a resolution at the meeting when they vote that, if the DWD wants to refer a case under 108.24 for prosecution, the DWD shall make every attempt for the WI-DOJ to prosecute the case instead of the local DA.]*
2. Should the department have the power to collect these assessments in various ways? This may involve adding cross-references in certain places, such as 108.223 - 108.227. *[Yes, but my understanding is that current law provides DWD the ability to collect the new penalties. 108.22-108.227 says that we can collect on any amount due under 108.10 or "any penalty" assessed by the department. If you think we need to amend those sections, we can, but I think that "any penalty" will cover the new penalties for coercion and misclass.]*

3. What is meant by "subject position" in the language you provided? [Not sure what you mean. Do you mean "similar position" for the misclass penalty? I think they mean that you should do something similar to the factor listed in L15-01, page 4, which lists the factors for the labor side's worker misclass proposal, which says, "Whether the employing unit or person differently classifies workers who perform the same tasks." I don't think that they want that same language, but I think that's what they mean.]

Let me know if you have further suggested changes to the other proposals that went out today. On first read of P1, I thought it was good. I'll have to read it a few more times.)

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Saturday, January 16, 2016 10:07 PM
To: Duchek, Michael
Cc: Knutson, Janell - DWD
Subject: LRB-4456/P1 - UIAC bill

Mike,

Janell and I think you need to make a change to page 5 lines 6-7. We think lines 6-7 should say "the lowest quartile of wages for similar work in the region in which the **work** is located, as determined by the department."

Janell, I think we should double-check this with the bureau of benefits staff on Tuesday morning to confirm that is current DWD policy. I don't think the UIAC wanted to change current policy on that point. Who do you recommend we e-mail about this point? Could e-mail them today and ask for a response first thing Tuesday.

-Andy

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Sunday, January 17, 2016 1:45 PM
To: Duchek, Michael; Knutson, Janell - DWD
Subject: Re: Suitable work

We have it now. Thanks.

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Sunday, January 17, 2016 1:43 PM
To: Knutson, Janell - DWD
Cc: Rubsam, Andrew J - DWD
Subject: Re: Suitable work

I will check. The email could have come from someone else though...
Sent from Outlook Mobile

On Sun, Jan 17, 2016 at 11:09 AM -0800, "Knutson, Janell - DWD" <Janell.Knutson@dwd.wisconsin.gov> wrote:

OK. However, I did not receive anything this morning.

Sent from my iPhone

On Jan 17, 2016, at 1:07 PM, Duchek, Michael <Michael.Duchek@legis.wisconsin.gov> wrote:

Ok I can do that tomorrow ok? Someone came in briefly this morning to work on the other one which hopefully you got.
Sent from Outlook Mobile

On Sun, Jan 17, 2016 at 11:05 AM -0800, "Knutson, Janell - DWD" <Janell.Knutson@dwd.wisconsin.gov> wrote:

Mike,
Please see Amy's response below. Please make the changes to the suitable work draft.

Thanks!

Janell

Sent from my iPhone

Begin forwarded message:

From: "Banicki, Amy - DWD" <Amy.Banicki@dwd.wisconsin.gov>
Date: January 17, 2016 at 12:52:57 PM CST
To: "Rubsam, Andrew J - DWD" <Andrew.Rubsam@dwd.wisconsin.gov>
Cc: "Knutson, Janell - DWD" <Janell.Knutson@dwd.wisconsin.gov>
Subject: Re: Suitable work

Hi Andy,

We look at the labor market where the work is located (by zip code). It would be unfair to the employer to compare to where the employee resides. Yes, we would prefer "labor market area". We use it for other things too, i.e. Able and Available issues.

I hope this helps.

Amy

Sent from my iPad

On Jan 17, 2016, at 9:25 AM, Rubsam, Andrew J - DWD
<Andrew.Rubsam@dwd.wisconsin.gov> wrote:

Amy-

When the department currently determines whether work is suitable for a claimant, does the department compare the wages of the work to the labor market area in which the **employee** resides or the labor market where the **work** is located?

Please let us know as soon as possible - this relates to the new definition of suitable work in the statute that the UIAC will be voting to approve on Tuesday.

Also, the proposed statutory change to define "suitable work" would direct the department to consider whether the work "pays wages that are above the lowest quartile of wages for similar work in the region in which the work is located." (unless current department policy says that you compare the work to the region where the employee resides.) Should the new statute say "labor market area" instead of "region?"

Thanks,
Andy Rubsam

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Sunday, January 17, 2016 4:51 PM
To: Duchek, Michael; Knutson, Janell - DWD
Subject: Re: Suitable work

Mike:

Change 1: It should say "labor market area" instead of "region." (Not your fault as it was in the draft but DWD staff suggest this change for consistency.)

Change 2: It should say the labor market area of where the "work" is, not where the "employee" is located.

So page 5, lines 6-7 should read: "the lowest quartile of wages for similar work in the **labor market area** in which the **work** is located, as determined by the department."

-Andy

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Sunday, January 17, 2016 3:46 PM
To: Knutson, Janell - DWD
Cc: Rubsam, Andrew J - DWD
Subject: RE: Suitable work

When you get a chance, please let me know the exact words to change. (Is this 2 changes or one?)

From: Knutson, Janell - DWD [Janell.Knutson@dwd.wisconsin.gov]
Sent: Sunday, January 17, 2016 1:05 PM
To: Duchek, Michael
Cc: Rubsam, Andrew J - DWD
Subject: Fwd: Suitable work

Mike,
Please see Amy's response below. Please make the changes to the suitable work draft.

Thanks!

Janell

Sent from my iPhone

Begin forwarded message:

From: "Banicki, Amy - DWD" <Amy.Banicki@dwd.wisconsin.gov>
Date: January 17, 2016 at 12:52:57 PM CST
To: "Rubsam, Andrew J - DWD" <Andrew.Rubsam@dwd.wisconsin.gov>
Cc: "Knutson, Janell - DWD" <Janell.Knutson@dwd.wisconsin.gov>
Subject: Re: Suitable work

Hi Andy,

We look at the labor market where the work is located (by zip code). It would be unfair to the employer to compare to where the employee resides. Yes, we would prefer "labor market area". We use it for other things too, i.e. Able and Available issues.

I hope this helps.

Amy

Sent from my iPad

On Jan 17, 2016, at 9:25 AM, Rubsam, Andrew J - DWD
<Andrew.Rubsam@dwd.wisconsin.gov> wrote:

Amy-

When the department currently determines whether work is suitable for a claimant, does the department compare the wages of the work to the labor market area in which the **employee** resides or the labor market where the **work** is located?

Please let us know as soon as possible - this relates to the new definition of suitable work in the statute that the UIAC will be voting to approve on Tuesday.

Also, the proposed statutory change to define "suitable work" would direct the department to consider whether the work "pays wages that are above the lowest quartile of wages for similar work in the region in which the work is located." (unless current department policy says that you compare the work to the region where the employee resides.) Should the new statute say "labor market area" instead of "region?"

Thanks,
Andy Rubsam

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Monday, January 18, 2016 11:10 AM
To: Duchek, Michael
Subject: UIAC

not sure if we discussed this but for any of the changes you make to 15-4479/P1 and 15--4456/P1 for the P2 versions, please put a note after each.

For the suitable work change regarding labor market area, please put a note that says that this change (from "region") was made to ensure consistency with current DWD practice.

Janell says no other changes.

Please text me when the P2s are done.

Thanks,
Andy

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Monday, January 18, 2016 12:34 PM
To: Duchek, Michael; Knutson, Janell - DWD
Subject: Re: Appeals mod.

Mike,

I understand your concerns but I don't think we need a change. If it's a problem in the future we can correct.

Thanks,
Andy

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Monday, January 18, 2016 11:11 AM
To: Rubsam, Andrew J - DWD; Knutson, Janell - DWD
Subject: Appeals mod.

In reviewing appeals modernization one more time, I noticed some things that I think would be worth clarifying if possible. I know the council has already voted on these and perhaps these are too late to fix, but they would be relatively simple fixes:

108.04 (4) (d) 1. says if the appellant fails to appear, the ALJ shall dismiss *unless subd. 2. applies*. Subd. 2. was changed last week when I was out, and I believe the idea was to make the language more consistent, which was fine. But in doing so, the language in subd. 2. providing that the appeal would be dismissed if the appellant lacked good cause was deleted. I think language should be added back in to subd. 2. to make clear that *if the appellant does not establish good cause, the appeal is still dismissed*. The simple solution would be to restore "dismissing the appeal" on page 4, line 25 to page 5, line 1.

Similarly, 108.04 (4) (e) 1. says that if the respondent fails to appear, the ALJ shall hold the hearing and issue a decision *unless subd. 2. applies*. But subd. 2. doesn't say what happens with respect to that decision if the respondent fails to show good cause for not appearing. Here, I think the solution would be to restore the sentence providing "The same or another appeal tribunal established by the department for this purpose shall also issue a decision based on the testimony and other evidence presented at the hearing at which the respondent failed to appear."

Take a look. Obviously I wouldn't make any such changes without your instruction.

-Mike

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Monday, January 18, 2016 12:53 PM
To: Duchek, Michael
Cc: Knutson, Janell - DWD
Subject: UIAC - misclass

Mike-

They want to change page 3, lines 5-6 as follows:

"Whether the employer WAS THE SUBJECT OF WORKER MISCLASSIFICATION LITIGATION OR GOVERNMENT INVESTIGATION AND received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

They want it clear that the court decision related to THAT employer.

Let me know if you have questions.

-Andy

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Monday, January 18, 2016 1:03 PM
To: Duchek, Michael
Cc: Knutson, Janell - DWD
Subject: RE: UIAC - misclass

I'll check with them.

From: Duchek, Michael [Michael.Duchek@legis.wisconsin.gov]
Sent: Monday, January 18, 2016 12:58 PM
To: Rubsam, Andrew J - DWD
Cc: Knutson, Janell - DWD
Subject: RE: UIAC - misclass

Proposed rewrite for grammar/clarity:

"Whether the employer WAS THE SUBJECT OF LITIGATION OR A GOVERNMENTAL INVESTIGATION RELATING TO WORKER MISCLASSIFICATION AND THE EMPLOYER, AS A RESULT OF THAT LITIGATION OR INVESTIGATION, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

OK?

Otherwise can I send this out?

-Mike

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Monday, January 18, 2016 12:53 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Cc: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Subject: UIAC - misclass

Mike-

They want to change page 3, lines 5-6 as follows:

"Whether the employer WAS THE SUBJECT OF WORKER MISCLASSIFICATION LITIGATION OR GOVERNMENT INVESTIGATION AND received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

They want it clear that the court decision related to THAT employer.

Let me know if you have questions.

-Andy

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Monday, January 18, 2016 1:36 PM
To: Duchek, Michael
Cc: Knutson, Janell - DWD
Subject: RE: UIAC - misclass

Mike,
As we discussed, I haven't heard back on this. Please make the change as you suggest and add a note.
Thanks.

From: Duchek, Michael [Michael.Duchek@legis.wisconsin.gov]
Sent: Monday, January 18, 2016 12:58 PM
To: Rubsam, Andrew J - DWD
Cc: Knutson, Janell - DWD
Subject: RE: UIAC - misclass

Proposed rewrite for grammar/clarity:

"Whether the employer WAS THE SUBJECT OF LITIGATION OR A GOVERNMENTAL INVESTIGATION RELATING TO WORKER MISCLASSIFICATION AND THE EMPLOYER, AS A RESULT OF THAT LITIGATION OR INVESTIGATION, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

OK?

Otherwise can I send this out?

-Mike

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Monday, January 18, 2016 12:53 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Cc: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Subject: UIAC - misclass

Mike-

They want to change page 3, lines 5-6 as follows:

"Whether the employer WAS THE SUBJECT OF WORKER MISCLASSIFICATION LITIGATION OR GOVERNMENT INVESTIGATION AND received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

They want it clear that the court decision related to THAT employer.

Let me know if you have questions.

-Andy

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Monday, January 18, 2016 2:00 PM
To: Duchek, Michael
Cc: Knutson, Janell - DWD
Subject: RE: UIAC - misclass

It's good.

From: Rubsam, Andrew J - DWD
Sent: Monday, January 18, 2016 1:36 PM
To: Duchek, Michael
Cc: Knutson, Janell - DWD
Subject: RE: UIAC - misclass

Mike,
As we discussed, I haven't heard back on this. Please make the change as you suggest and add a note.
Thanks.

From: Duchek, Michael [Michael.Duchek@legis.wisconsin.gov]
Sent: Monday, January 18, 2016 12:58 PM
To: Rubsam, Andrew J - DWD
Cc: Knutson, Janell - DWD
Subject: RE: UIAC - misclass

Proposed rewrite for grammar/clarity:

"Whether the employer WAS THE SUBJECT OF LITIGATION OR A GOVERNMENTAL INVESTIGATION RELATING TO WORKER MISCLASSIFICATION AND THE EMPLOYER, AS A RESULT OF THAT LITIGATION OR INVESTIGATION, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

OK?

Otherwise can I send this out?

-Mike

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Monday, January 18, 2016 12:53 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Cc: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Subject: UIAC - misclass

Mike-

They want to change page 3, lines 5-6 as follows:

"Whether the employer WAS THE SUBJECT OF WORKER MISCLASSIFICATION LITIGATION OR GOVERNMENT INVESTIGATION AND received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

They want it clear that the court decision related to THAT employer.

Let me know if you have questions.

-Andy

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Tuesday, January 19, 2016 9:58 AM
To: Duchek, Michael
Subject: RE: Changes

Please make the notes. Thanks!

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Tuesday, January 19, 2016 9:58 AM
To: Rubsam, Andrew J - DWD
Subject: Changes

Unless you want me not to, I will put a note under each affected provision noting that changes were made as requested by the department.

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Tuesday, January 19, 2016 10:04 AM
To: Duchek, Michael
Subject: RE: Changes

Please use "on."

Thanks!

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Tuesday, January 19, 2016 10:02 AM
To: Rubsam, Andrew J - DWD
Subject: RE: Changes

One more minor thing – I will use “on one or more...” instead of “at one or more” in subd. 2. since that is what the current statute uses, so they’ll both match. If you prefer to use “at” let me know and then I will use “at” in both 1. and 2.

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Tuesday, January 19, 2016 9:58 AM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: RE: Changes

Please make the notes. Thanks!

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Tuesday, January 19, 2016 9:58 AM
To: Rubsam, Andrew J - DWD
Subject: Changes

Unless you want me not to, I will put a note under each affected provision noting that changes were made as requested by the department.

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130

Duchek, Michael

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Saturday, January 16, 2016 2:46 PM
To: Rubsam, Andrew J - DWD; Duchek, Michael
Subject: Re: UIAC stuff

I agree with Andy on 1. below. For 2, can we state that we may refer to DOJ or some language that would encourage DOJ to handle these?

For 3,, I guess I am not following.

I will read the draft Mike sent out yesterday. I did send it to Manley and Reihl and have not yet heard back from them.

Thanks!

Sent from my iPad

On Jan 16, 2016, at 12:51 PM, "Rubsam, Andrew J - DWD" <Andrew.Rubsam@dwd.wisconsin.gov> wrote:

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Friday, January 15, 2016 6:04 PM
To: Rubsam, Andrew J - DWD
Cc: Knutson, Janell - DWD
Subject: UIAC stuff

Time is short and while I plan to look at this some more tomorrow with the goal of having it out to you Sunday morning, we may not have a chance to research every issue. But below are a few thoughts that maybe you could respond to. (Maybe Dan LaRocque would be a good person to consult with on some of this too?):

1. I spoke with the criminal drafters in our office, and they agreed that it would be somewhat unusual, if not problematic, to have a hybrid statute whereby a first violation would be punishable by an administrative assessment, with subsequent violations punishable as a crime. Not only are different standards of proof involved, it's also the case that you can't really make the AG prosecute something which could mean that the second+ offense would never be penalized. In addition, with respect to a crime, I don't think you can have the court/jury consider certain factors per se, but instead each element of the crime has to be proven beyond a reasonable doubt. I would also just note for what it's worth that in 2001, the legislature eliminated graduated penalties for most offenses (OWI being the notable exception). My thought would be to try to separate these as two provisions, one of which would be the admin. assessment, and one would be the crime. For the criminal penalty then, one of the elements would simply be whether the department had previously assessed, which would simply be something that could be proven as a fact, though I'm not sure whether an employer could collaterally attack the earlier assessment in the criminal proceeding. Also, the current regime seems to be that criminal penalties are placed in s. 108.24, while administrative penalties, as you note, are mostly contained in s. 108.22. I would recommend we stick to that and place the crime in 108.24 and the admin. assessments in 108.22. Thoughts? I think the intent was as you describe. 108.24 should include your suggestion about an element of the crime being a previous determination of an administrative penalty assessed by the department. I think you should draft the new 108.24(2m) as a regular criminal penalty with a note

in the LRB version that it is unconventional to say that the crime can only be prosecuted by WI-AG. Janell, I think we should tell the UIAC to do a resolution at the meeting when they vote that, if the DWD wants to refer a case under 108.24 for prosecution, the DWD shall make every attempt for the WI-DOJ to prosecute the case instead of the local DA.

2. Should the department have the power to collect these assessments in various ways? This may involve adding cross-references in certain places, such as 108.223 - 108.227. Yes, but my understanding is that current law provides DWD the ability to collect the new penalties. 108.22-108.227 says that we can collect on any amount due under 108.10 or "any penalty" assessed by the department. If you think we need to amend those sections, we can, but I think that "any penalty" will cover the new penalties for coercion and misclass.

3. What is meant by "subject position" in the language you provided? Not sure what you mean. Do you mean "similar position" for the misclass penalty? I think they mean that you should do something similar to the factor listed in L15-01, page 4, which lists the factors for the labor side's worker misclass proposal, which says, "Whether the employing unit or person differently classifies workers who perform the same tasks." I don't think that they want that same language, but I think that's what they mean.

Let me know if you have further suggested changes to the other proposals that went out today. On first read of P1, I thought it was good. I'll have to read it a few more times.

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130

Duchek, Michael

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Saturday, January 16, 2016 6:31 PM
To: Duchek, Michael
Cc: Rubsam, Andrew J - DWD
Subject: Re: UIAC stuff

Wow, rereading my email, I really apologize for all the typos. That's what happens when I dictate into my phone and don't carefully proofread. Thanks for your understanding

Sent from my iPhone

On Jan 16, 2016, at 5:08 PM, Duchek, Michael <Michael.Duchek@legis.wisconsin.gov> wrote:

Ok. It should get emailed to you tomorrow morning and then we can talk Monday about any tweaks about any of that stuff or anything else.

Sent from Outlook Mobile

On Sat, Jan 16, 2016 at 2:06 PM -0800, "Knutson, Janell - DWD" <Janell.Knutson@dwd.wisconsin.gov> wrote:

If you want to do two separate draft one for labor and one for management to put their respective items, that is fine. I don't think it's an absolute necessity though, so if it's going to take your extra time I would say just run them altogether in one draft.

I think with regard to the factors, that while we determine specific and workers are employees or independent contractors, there may be many people with the same work duties and subject to the same direction or control. In other words, we were taking into account really the business model. So if the specific employees no longer working there, but they hire someone else I replace them and they're performing the same duties him have the same terms and conditions of employment and subject to the same direction and control etc., that person in that position would also be classified as an employee. Does that make sense?

You are right in that we do not want to prohibited County DAs from taking the cases.

Good question on how we measure the year. What would make the most sense? One per calendar year I suppose would make the most sense. Now you could've a situation then where we could assess the penalty and December for coercion and then again in January, but that is highly unlikely anyway since we audit by quarters and we likely would not go back in on it so soon again. That may be a question we need to ask labor and management on Monday. I think just drafted the way it makes the most sense to you and we can cover that with them. It would be an annual maximum penalty per year.

I think putting the misters a penalty in the new section makes sense, I would be cleaner drafting. So that is fine.

And he can comment if he has other ideas.

Let us know when you were in on Monday so we can touch base.

Thanks!

Janell

Sent from my iPhone

On Jan 16, 2016, at 3:20 PM, Duchek, Michael <Michael.Duchek@legis.wisconsin.gov> wrote:

I am going to get a draft of this out to you guys tomorrow. It will be a separate draft as well so that there will be one "labor" draft and one "management" draft, to avoid any potential confusion. Few more thoughts:

1. I did review a case about using previous offenses in the OWI context. If you want to read it, it's *State v. Verhagen*, 2013 WI App 16, 346 Wis. 2d 196, 827 N.W.2d 891.
2. With respect to #3 below, Andy said the language for one of the factors was "Whether the employer received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee." This just read strangely to me in that I wasn't sure what it meant for a "position" to be classified as an employee. It seems to me that a position is something *held* by an employee, and the employee is the one who is (mis)classified. I put it the way you wrote it, but it just seemed like an awkward construction so let me know if this should be rephrased.
3. I copied some language from another provision that would say that DWD could refer to DOJ or the county, since I don't think you necessarily want to prohibit a local DA from doing this especially if you had a county where this was a bigger problem, agree? But having said that, it's a bit odd since we won't have this language for other provisions. Might be something to revisit since DWD can already refer anything to DOJ.
4. Andy had mentioned the question of what is an "incident" for purposes of one of the provisions. One of Andy's emails also said that the coercion penalty was "per year." I wasn't sure what was meant by this. It's unusual to have a penalty assessed "per year" and I wasn't sure whether this was for purposes of the maximum or whether this was going to be an annually assessed penalty, or what. Let me know what the thought was there, as I may have further comment depending on what you mean by this. For example, if it's an annual maximum, then when do you start measuring (i.e., calendar year?).
5. For now, I put the assessments in a new section, because 108.22 seems like it was originally about making timely payments and contribution payments, so it's not obvious that you would look there to find these provisions. In addition, there is language providing that penalties under s. 108.22 are sent to the "administrative account" by default so by putting this in a new section I avoid having to address those provisions. I can always move it if you want.

Anyway, you can see what I came up with. I plan not to be in on Sunday, but will be on Monday at least partly so I can make further changes if needed and we will be staffed so I can get you out whatever is needed. Thanks,

-Mike

From: Knutson, Janell - DWD [<mailto:Janell.Knutson@dwd.wisconsin.gov>]
Sent: Saturday, January 16, 2016 2:46 PM
To: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>; Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: Re: UIAC stuff

I agree with Andy on 1. below. For 2, can we state that we may refer to DOJ or some language that would encourage DOJ to handle these?

For 3,, I guess I am not following.

I will read the draft Mike sent out yesterday. I did send it to Manley and Reihl and have not yet heard back from them.

Thanks!

Sent from my iPad

On Jan 16, 2016, at 12:51 PM, "Rubsam, Andrew J - DWD" <Andrew.Rubsam@dwd.wisconsin.gov> wrote:

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Friday, January 15, 2016 6:04 PM
To: Rubsam, Andrew J - DWD
Cc: Knutson, Janell - DWD
Subject: UIAC stuff

Time is short and while I plan to look at this some more tomorrow with the goal of having it out to you Sunday morning, we may not have a chance to research every issue. But below are a few thoughts that maybe you could respond to. (Maybe Dan LaRocque would be a good person to consult with on some of this too?):

1. I spoke with the criminal drafters in our office, and they agreed that it would be somewhat unusual, if not problematic, to have a hybrid statute whereby a first violation would be punishable by an administrative assessment, with subsequent violations punishable as a crime. Not only are different standards of proof involved, it's also the case that you can't really make the AG prosecute something which could mean that the second+ offense would never be penalized. In addition, with respect to a crime, I don't think you can have the court/jury consider certain factors per se, but instead each element of the crime has to be proven beyond a reasonable doubt. I would also just note for what it's worth that in 2001, the legislature eliminated graduated penalties for most offenses (OWI being the notable exception). My thought would be to try to separate these as two provisions, one of which would be the admin. assessment, and one would be the crime. For the criminal penalty then, one of the elements would simply be whether the department had previously assessed,

which would simply be something that could be proven as a fact, though I'm not sure whether an employer could collaterally attack the earlier assessment in the criminal proceeding. Also, the current regime seems to be that criminal penalties are placed in s. 108.24, while administrative penalties, as you note, are mostly contained in s. 108.22. I would recommend we stick to that and place the crime in 108.24 and the admin. assessments in 108.22. Thoughts? I think the intent was as you describe. 108.24 should include your suggestion about an element of the crime being a previous determination of an administrative penalty assessed by the department. I think you should draft the new 108.24(2m) as a regular criminal penalty with a note in the LRB version that it is unconventional to say that the crime can only be prosecuted by WI-AG. Janell, I think we should tell the UIAC to do a resolution at the meeting when they vote that, if the DWD wants to refer a case under 108.24 for prosecution, the DWD shall make every attempt for the WI-DOJ to prosecute the case instead of the local DA.

2. Should the department have the power to collect these assessments in various ways? This may involve adding cross-references in certain places, such as 108.223 - 108.227. Yes, but my understanding is that current law provides DWD the ability to collect the new penalties. 108.22-108.227 says that we can collect on any amount due under 108.10 or "any penalty" assessed by the department. If you think we need to amend those sections, we can, but I think that "any penalty" will cover the new penalties for coercion and misclass.
3. What is meant by "subject position" in the language you provided? Not sure what you mean. Do you mean "similar position" for the misclass penalty? I think they mean that you should do something similar to the factor listed in L15-01, page 4, which lists the factors for the labor side's worker misclass proposal, which says, "Whether the employing unit or person differently classifies workers who perform the same tasks." I don't think that they want that same language, but I think that's what they mean.

Let me know if you have further suggested changes to the other proposals that went out today. On first read of P1, I thought it was good. I'll have to read it a few more times.

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130

Duchek, Michael

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Saturday, January 16, 2016 10:34 PM
To: Rubsam, Andrew J - DWD
Cc: Duchek, Michael
Subject: Re: LRB-4456/P1 - UIAC bill

Amy Banicki. She checks her email sometimes on weekends. So please email her this weekend. Thanks. Go Packets! Tied game- overtime

Sent from my iPhone

On Jan 16, 2016, at 10:06 PM, Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov> wrote:

Mike,

Janell and I think you need to make a change to page 5 lines 6-7. We think lines 6-7 should say "the lowest quartile of wages for similar work in the region in which the **work** is located, as determined by the department."

Janell, I think we should double-check this with the bureau of benefits staff on Tuesday morning to confirm that is current DWD policy. I don't think the UIAC wanted to change current policy on that point. Who do you recommend we e-mail about this point? Could e-mail them today and ask for a response first thing Tuesday.

-Andy

Duchek, Michael

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Sunday, January 17, 2016 1:05 PM
To: Duchek, Michael
Cc: Rubsam, Andrew J - DWD
Subject: Fwd: Suitable work

Mike,
Please see Amy's response below. Please make the changes to the suitable work draft.

Thanks!

Janell

Sent from my iPhone

Begin forwarded message:

From: "Banicki, Amy - DWD" <Amy.Banicki@dwd.wisconsin.gov>
Date: January 17, 2016 at 12:52:57 PM CST
To: "Rubsam, Andrew J - DWD" <Andrew.Rubsam@dwd.wisconsin.gov>
Cc: "Knutson, Janell - DWD" <Janell.Knutson@dwd.wisconsin.gov>
Subject: Re: Suitable work

Hi Andy,

We look at the labor market where the work is located (by zip code). It would be unfair to the employer to compare to where the employee resides. Yes, we would prefer "labor market area". We use it for other things too, i.e. Able and Available issues.

I hope this helps.

Amy

Sent from my iPad

On Jan 17, 2016, at 9:25 AM, Rubsam, Andrew J - DWD
<Andrew.Rubsam@dwd.wisconsin.gov> wrote:

Amy-

When the department currently determines whether work is suitable for a claimant, does the department compare the wages of the work to the labor market area in which the **employee** resides or the labor market where the **work** is located?

Please let us know as soon as possible - this relates to the new definition of suitable work in the statute that the UIAC will be voting to approve on Tuesday.

Also, the proposed statutory change to define "suitable work" would direct the department to consider whether the work "pays wages that are above the lowest quartile of wages for similar work in the region in which the work is located." (unless current department policy says that you compare the work to the region where the employee resides.) Should the new statute say "labor market area" instead of "region?"

Thanks,

Andy Rubsam

Duchek, Michael

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Sunday, January 17, 2016 5:56 PM
To: Duchek, Michael
Cc: Rubsam, Andrew J - DWD
Subject: Re: Suitable work

So,
Page 2 #2. "For similar work in the labor market area in which the work is located"

Page 5 line 6-7. "for similar work in the labor market area in which the work is located"

Thanks!
Janell

Sent from my iPhone

On Jan 17, 2016, at 3:46 PM, Duchek, Michael <Michael.Duchek@legis.wisconsin.gov> wrote:

When you get a chance, please let me know the exact words to change. (Is this 2 changes or one?)

From: Knutson, Janell - DWD [Janell.Knutson@dwd.wisconsin.gov]
Sent: Sunday, January 17, 2016 1:05 PM
To: Duchek, Michael
Cc: Rubsam, Andrew J - DWD
Subject: Fwd: Suitable work

Mike,
Please see Amy's response below. Please make the changes to the suitable work draft.

Thanks!

Janell

Sent from my iPhone

Begin forwarded message:

From: "Banicki, Amy - DWD" <Amy.Banicki@dwd.wisconsin.gov>
Date: January 17, 2016 at 12:52:57 PM CST
To: "Rubsam, Andrew J - DWD" <Andrew.Rubsam@dwd.wisconsin.gov>
Cc: "Knutson, Janell - DWD" <Janell.Knutson@dwd.wisconsin.gov>
Subject: Re: Suitable work

Hi Andy,

We look at the labor market where the work is located (by zip code). It would be unfair to the employer to compare to where the employee resides. Yes, we would prefer "labor market area". We use it for other things too, i.e. Able and Available issues.

I hope this helps.

Amy

Sent from my iPad

On Jan 17, 2016, at 9:25 AM, Rubsam, Andrew J - DWD
<Andrew.Rubsam@dwd.wisconsin.gov> wrote:

Amy-

When the department currently determines whether work is suitable for a claimant, does the department compare the wages of the work to the labor market area in which the **employee** resides or the labor market where the **work** is located?

Please let us know as soon as possible - this relates to the new definition of suitable work in the statute that the UIAC will be voting to approve on Tuesday.

Also, the proposed statutory change to define "suitable work" would direct the department to consider whether the work "pays wages that are above the lowest quartile of wages for similar work in the region in which the work is located." (unless current department policy says that you compare the work to the region where the employee resides.) Should the new statute say "labor market area" instead of "region?"

Thanks,

Andy Rubsam

Duchek, Michael

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Sunday, January 17, 2016 5:57 PM
To: Rubsam, Andrew J - DWD
Cc: Duchek, Michael
Subject: Re: Suitable work

Sorry did not mean to be redundant. Started my email 2 hours ago but was interrupted...

Sent from my iPhone

On Jan 17, 2016, at 4:51 PM, Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov> wrote:

Mike:

Change 1: It should say "labor market area" instead of "region." (Not your fault as it was in the draft but DWD staff suggest this change for consistency.)

Change 2: It should say the labor market area of where the "work" is, not where the "employee" is located.

So page 5, lines 6-7 should read: "the lowest quartile of wages for similar work in the **labor market area** in which the **work** is located, as determined by the department."

-Andy

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Sunday, January 17, 2016 3:46 PM
To: Knutson, Janell - DWD
Cc: Rubsam, Andrew J - DWD
Subject: RE: Suitable work

When you get a chance, please let me know the exact words to change. (Is this 2 changes or one?)

From: Knutson, Janell - DWD [Janell.Knutson@dwd.wisconsin.gov]
Sent: Sunday, January 17, 2016 1:05 PM
To: Duchek, Michael
Cc: Rubsam, Andrew J - DWD
Subject: Fwd: Suitable work

Mike,

Please see Amy's response below. Please make the changes to the suitable work draft.

Thanks!

Janell

Sent from my iPhone

Begin forwarded message:

From: "Banicki, Amy - DWD" <Amy.Banicki@dwd.wisconsin.gov>
Date: January 17, 2016 at 12:52:57 PM CST
To: "Rubsam, Andrew J - DWD" <Andrew.Rubsam@dwd.wisconsin.gov>
Cc: "Knutson, Janell - DWD" <Janell.Knutson@dwd.wisconsin.gov>
Subject: **Re: Suitable work**

Hi Andy,

We look at the labor market where the work is located (by zip code). It would be unfair to the employer to compare to where the employee resides. Yes, we would prefer "labor market area". We use it for other things too, i.e. Able and Available issues.

I hope this helps.

Amy

Sent from my iPad

On Jan 17, 2016, at 9:25 AM, Rubsam, Andrew J - DWD
<Andrew.Rubsam@dwd.wisconsin.gov> wrote:

Amy-

When the department currently determines whether work is suitable for a claimant, does the department compare the wages of the work to the labor market area in which the **employee** resides or the labor market where the **work** is located?

Please let us know as soon as possible - this relates to the new definition of suitable work in the statute that the UIAC will be voting to approve on Tuesday.

Also, the proposed statutory change to define "suitable work" would direct the department to consider whether the work "pays

wages that are above the lowest quartile of wages for similar work in the region in which the work is located." (unless current department policy says that you compare the work to the region where the employee resides.) Should the new statute say "labor market area" instead of "region?"

Thanks,

Andy Rubsam

Duchek, Michael

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Monday, January 18, 2016 1:07 PM
To: Rubsam, Andrew J - DWD
Cc: Duchek, Michael
Subject: Re: Appeals mod.

Yes we don't want to take it back to the UIAC on the dept proposals unless absolutely necessary :-)

Sent from my iPhone

On Jan 18, 2016, at 12:33 PM, Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov> wrote:

Mike,

I understand your concerns but I don't think we need a change. If it's a problem in the future we can correct.

Thanks,

Andy

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Monday, January 18, 2016 11:11 AM
To: Rubsam, Andrew J - DWD; Knutson, Janell - DWD
Subject: Appeals mod.

In reviewing appeals modernization one more time, I noticed some things that I think would be worth clarifying if possible. I know the council has already voted on these and perhaps these are too late to fix, but they would be relatively simple fixes:

108.04 (4) (d) 1. says if the appellant fails to appear, the ALJ shall dismiss *unless subd. 2. applies*. Subd. 2. was changed last week when I was out, and I believe the idea was to make the language more consistent, which was fine. But in doing so, the language in subd. 2. providing that the appeal would be dismissed if the appellant lacked good cause was deleted. I think language should be added back in to subd. 2. to make clear that *if the appellant does not establish good cause, the appeal is still dismissed*. The simple solution would be to restore "dismissing the appeal" on page 4, line 25 to page 5, line 1.

Similarly, 108.04 (4) (e) 1. says that if the respondent fails to appear, the ALJ shall hold the hearing and issue a decision *unless subd. 2. applies*. But subd. 2. doesn't say what happens with respect to that decision if the respondent fails to show good cause for not appearing. Here, I think the solution would be to restore the sentence providing "The same or another appeal tribunal established by the department for this purpose shall also issue a decision based on the testimony and other evidence presented at the hearing at which the respondent failed to appear."

Take a look. Obviously I wouldn't make any such changes without your instruction.

-Mike

Duchek, Michael

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Monday, January 18, 2016 1:25 PM
To: Duchek, Michael
Cc: Rubsam, Andrew J - DWD
Subject: Re: UIAC - misclass

makes sense to me

Sent from my iPad

On Jan 18, 2016, at 12:58 PM, "Duchek, Michael" <Michael.Duchek@legis.wisconsin.gov> wrote:

Proposed rewrite for grammar/clarity:

"Whether the employer WAS THE SUBJECT OF LITIGATION OR A GOVERNMENTAL INVESTIGATION RELATING TO WORKER MISCLASSIFICATION AND THE EMPLOYER, AS A RESULT OF THAT LITIGATION OR INVESTIGATION, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

OK?

Otherwise can I send this out?

-Mike

From: Rubsam, Andrew J - DWD [<mailto:Andrew.Rubsam@dwd.wisconsin.gov>]
Sent: Monday, January 18, 2016 12:53 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Cc: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Subject: UIAC - misclass

Mike-

They want to change page 3, lines 5-6 as follows:

"Whether the employer WAS THE SUBJECT OF WORKER MISCLASSIFICATION LITIGATION OR GOVERNMENT INVESTIGATION AND received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee."

They want it clear that the court decision related to THAT employer.

Let me know if you have questions.

-Andy

Jackson, Wendy

From: Duchek, Michael
Sent: Tuesday, January 19, 2016 1:55 PM
To: Hanaman, Cathlene
Cc: Jackson, Wendy; McKean, Aaron
Subject: Fwd: UIAC - good to go

LRB-2020 is good to go. Please add this email to the file and send it out as is.

Will then need companion if you can do that Cathlene. Thanks,

Mike

Sent from Outlook Mobile

----- Forwarded message -----

From: "Rubsam, Andrew J - DWD" <Andrew.Rubsam@dwd.wisconsin.gov>
Date: Tue, Jan 19, 2016 at 11:48 AM -0800
Subject: UIAC - good to go
To: "McKean, Aaron" <Aaron.McKean@legis.wisconsin.gov>, "Duchek, Michael" <Michael.Duchek@legis.wisconsin.gov>

Aaron/Mike-

UIAC approved 4456/P3 and 4479/P2 without change. Please add them to the agreed bill and please jacket for senate and assembly. Please let me, Janell and Andrew Evenson know when that is ready.

Thanks,

Andy Rubsam, Esq.
Bureau of Legal Affairs
Unemployment Insurance Division
Wisconsin Department of Workforce Development
PO Box 8942
Madison, WI 53708
Tel: 608-261-9440
Fax: 608-266-8221
E-mail: andrew.rubsam@dwd.wi.gov