

## Duchek, Michael

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**From:** Sussman, Scott - DWD <Scott.Sussman@dwd.wisconsin.gov>  
**Sent:** Thursday, March 19, 2015 3:33 PM  
**To:** Duchek, Michael  
**Cc:** Rubsam, Andrew J - DWD; Knutson, Janell - DWD  
**Subject:** Department Proposals Approved by the UIAC

**Sensitivity:** Confidential

Mike – The following three Department proposals were approved by the Council earlier today. (Department Proposals D15-02, D15-03, and D15-05) All of the proposals have statutory language. If possible can you get LRB drafts of these proposals to us by April 16. This is when the Council is currently tentatively scheduled to meet next.

- With respect to D15-02 & D15-03, if you have any follow up questions either Janell or I would be the one to contact;
- With respect to D15-05, if you have any follow up questions either Janell or Andy would be the one to contact.

Also with respect to D15-03, the statutory language is federally required. The statutory language has been reviewed by USDOL to ensure that it complies with a newly created federal mandate and they have informally approved this language as making Wisconsin to be in conformity with the new federal mandate.



D15-02 Combined D15-03 Treasury D15-05 LLP and  
Wage Claim Me... Offset Program... LLC personal li...

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**Thank you very much.**

**D15-02**  
**Combined Wage Claims**

Date: February 19, 2015  
Proposed by: DWD  
Prepared by: Scott Sussman

**ANALYSIS OF PROPOSED UI LAW CHANGE**

**COMBINED WAGE CLAIMS**

**1. Description of Proposed Change**

The proposed amendment to Wisconsin law addresses a requirement created by the interaction of two federal mandates. The first federal mandate requires states to pay unemployment insurance (UI) benefits in cases where an unemployed individual has wages and employment in more than one state, commonly referred to as a combined wage claim (CWC). In these situations, if the individual combines their wages to establish a CWC to qualify for UI benefits in Wisconsin, Wisconsin is identified as the "paying state" and the other state is identified as the "transferring state." The second federal mandate prohibits states from providing relief from charges to an employer's UI account when the employer's actions cause an improper payment of UI benefits. The interaction of these two federal mandates has created a new requirement for states.

The requirement is outlined by the United States Department of Labor (USDOL) in UIPL 2-12 Change 2. In UIPL 2-12 Change 2, the USDOL states that the "paying state" is responsible for issuing an appealable determination to an out-of-state employer when it is found that the employer is at fault for not responding timely or adequately to the paying state's request for information. The paying state must also notify the transferring state of the determination when appropriate. This interpretation creates two obligations for state UI agencies:

- The first obligation is to issue an appealable determination against the out-of-state employer. The appealable determination would be a prohibition on providing relief from charges to that employer's UI account due to the fact the employer's actions caused the improper payment.

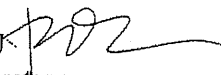
Wisconsin's definition of "employer" does not include out-of-state employers. As a result, the Department cannot issue an appealable decision against an out-of-state employer. An amendment to Wisconsin's law is necessary to enable the Department to issue an appealable determination against an out-of-state employer.<sup>1</sup>

- The second obligation is to advise the state agency that administers the UI program of the "transferring state" of the determinations issued that impact employers in that state. Wisconsin does not need to amend its law to comply with this second obligation.

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Unemployment Compensation
	<b>CORRESPONDENCE SYMBOL</b> OUI/DUIO
	<b>DATE</b> October 15, 2014

**ADVISORY:** UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 02-12,  
Change 2

**TO:** STATE WORKFORCE AGENCIES

**FROM:** PORTIA WU   
Assistant Secretary

**SUBJECT:** Unemployment Compensation (UC) Program Integrity Provisions –  
Amendments made by the Trade Adjustment Assistance Extension Act of 2011  
(TAAEA) – Combined Wage Claim (CWC) Program Questions and Answers

1. **Purpose.** To respond to questions from state workforce agencies and clarify states' responsibilities related to the TAAEA amendments and their effect on the CWC program.

2. **References.**

- TAAEA (Pub. L. 112-40) (19 U.S.C. 2101);
- Section 303 of the Social Security Act (SSA) (42 U.S.C. 503);
- Sections 3303 and 3304 of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3303, 3304);
- 20 CFR, Part 616;
- Unemployment Insurance Program Letter (UIPL) No. 02-12, *Unemployment Compensation (UC) Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)*;
- UIPL No. 02-12, Change 1, *Unemployment Compensation (UC) Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) – Questions and Answers*; and
- Training and Employment Notice No. 16-13, *New Unemployment Insurance Interstate Connection (UI-ICON) Web Applications Related to UI Integrity*.

3. **Background.** Section 3304(a)(9)(B), FUTA, requires states participating in the federal-state unemployment insurance (UI) program to participate in an interstate arrangement, which the Secretary of Labor (Secretary) has approved in consultation with state UI agencies, as reasonably calculated to assure prompt and full payment of benefits in cases where an unemployed worker has wages or employment in more than one state. U.S. Department of Labor (Department) regulations at 20 CFR, part 616, implementing this FUTA provision, established the interstate arrangement currently in place, commonly known as the "combined wage claim" or CWC program. Under this program, individuals in multi-state situations combine their employment and wages to establish a CWC benefit year under the law of a

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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single state in order to qualify for benefits or increase weekly or maximum benefit amounts. The “paying state” is the state in which the individual elects to file the CWC and where the employment and wages will be combined for purposes of establishing monetary eligibility under that state law. An individual must have employment and wages in the paying state’s base period(s) in order to file a CWC in that state. A “transferring state” is a state(s) that transfers employment and wages to the paying state for use in establishing the CWC.

### TAAEA Impact on the CWC Program

Section 3303(a), FUTA, governs the conditions under which a state may reduce employers’ rates of contribution to the state’s unemployment fund. As explained in UIPL No. 02-12, *Unemployment Compensation Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011*, many states relieve an employer’s unemployment account of charges (that is, the state will not charge the employer’s account for experience rating purposes) when the state has determined benefits were improperly paid.

Section 252(a), TAAEA, added a new provision to section 3303, FUTA. The new subsection of FUTA (f) provides that for a state’s law to meet the requirements of section 3303(a)(1), FUTA, – a condition necessary for the Secretary to certify the state’s law – the state must not relieve an employer of charges (i.e., must not allow non-charging of the employer’s account) when the employer or an agent of the employer:

- 1) was at fault for failing to respond timely or adequately to a request, from the state agency for information relating to a UC claim and an overpayment resulted; and
- 2) the employer (or its agent) has established a pattern of failing to respond timely or adequately to requests from the state agency for information relating to UC claims.

This new provision prohibits states from providing relief from charges to an employer’s UI account when the actions of the employer or the agent of the employer have led to an improper payment(s). (See UIPL No. 02-12.) The new provision does not require charging under these circumstances; it only prohibits relief from charges if/when an employer has the potential to be charged under the state UI law. Determinations about a claimant’s eligibility for benefits may be separate from determinations about whether an employer’s account is charged for those benefits. Thus, the application of this provision depends on whether, in that state, a claimant is eligible (or would have been eligible in the case of a transferring state had the claim been filed in the transferring state) and whether the grounds for a determination of eligibility (such as the reason for separation) would normally result in a charge to an employer’s account. This new provision does not apply if state law would not otherwise permit or require a charge to an employer’s account for benefits paid to a claimant since in such case there are no charges from which an employer could be relieved. For example, an employer would not be charged when a transferring state relieves of charges (i.e., non-charges) the employer’s account if benefits would have been denied due to a monetary ineligibility had the claim been filed in the transferring state.

**ATTACHMENT**

**Integrity Provisions – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) for Combined Wage Claims (CWC)  
Questions and Answers**

**State Determinations**

***Question #1 – If an overpayment occurs on a CWC, which state is responsible for determining whether the chargeable employer is at fault for failing to respond timely or adequately to the paying state’s request for information?***

**Answer.** The paying state is responsible for the determination. Once the paying state’s unemployment insurance (UI) agency requests necessary information from an employer or its agent in processing a CWC filed in the state, only the “paying state” can determine whether the employer or its agent is at fault for failing to respond timely or adequately to the request. In this case, the paying state is making a determination about timeliness or adequacy with respect to the employer’s actions and not ruling on the matter of the broader pattern of behavior. The paying state must promptly issue a determination to the employer and, as appropriate, advise the transferring state of that determination. It is strongly recommended that states use the Unemployment Insurance (UI) Interstate Connection (ICON) CWC 02-12 application.

***Question #2 - Which state is responsible for determining whether the employer has established a pattern of failing to respond timely or adequately to requests from a state agency for information relating to a CWC?***

**Answer.** It depends. If the chargeable employer is a covered employer in the paying state (i.e., an “in-state” employer), the paying state will determine whether the employer has met the paying state’s standard for a pattern and issue a determination to the employer.

If the chargeable employer is a covered employer in the transferring state (i.e., an “out-of-state” employer, from the perspective of the paying state), the transferring state will determine whether the employer has met the transferring state’s standard for a pattern and will issue a determination to the employer following its own law concerning notification of charges to an employer.

A state, under its law or written policy, may elect to combine occurrences of an employer’s failure to respond timely or adequately from one or more states to determine whether the employer or its agent has developed a “pattern.”

***Question #3 – Does TAAEA require paying states to use the UI-ICON CWC 02-12 application to notify other states of determinations about a CWC that triggers the new employer charging provisions?***

**Answer.** States are not required to use the UI-ICON CWC 02-12 application. However, paying states do have an obligation to notify the transferring state promptly when the paying state

A CWC, by definition, always involves wages from two or more states and, therefore, from the perspective of the paying state will always involve both in-state and out-of-state employers. Therefore, the processing and payment of CWCs require additional communication between states, including communication about claimant eligibility and the grounds for charging or non-charging an employer's account. In cases where a paying state determines that a benefit overpayment resulted due to an out-of-state employer's failure to respond timely or adequately to the paying state's request for information, the paying state must promptly communicate its determination to the appropriate transferring state.

Each state has the responsibility to determine its own standard for what constitutes a "pattern" under these TAAEA provisions (i.e., the employer has established a pattern of failing to respond timely or adequately to requests from a state agency for information relating to a CWC). Thus, in cases where an overpayment is attributable to an employer covered by the law of the paying state, the paying state determines whether the employer or its agent has established a "pattern." On the other hand, if the overpayment is attributable to an employer covered by the law of a transferring state, the transferring state must act promptly and appropriately based on that transferring state's own definition or standard for a "pattern." (See questions and answers related to the respective responsibilities of the paying and transferring states in the attachment to this UIPL.)

4. **UI ICON CWC Application.** The Department recognizes the need for states to have an efficient, secure, and expedient way of communicating with each other on these CWC issues. As a result, a new web-based application, called the CWC 02-12, was developed for states' use on the UI Interstate Connection (ICON) network. ICON is a secure telecommunications network through which states exchange UI claims-related data. The Department developed the UI-ICON CWC 02-12 application to ensure that a paying state is able to promptly communicate with a transferring state when the paying state determines an overpayment is the result of failure by an employer (from the transferring state) to respond timely and/or adequately to the paying state's request for information on a CWC.
5. **Action Requested.** State Administrators are requested to provide this guidance to appropriate staff.
6. **Inquiries.** Please direct questions to the appropriate Regional Office.
7. **Attachment.** Integrity Provisions – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) for Combined Wage Claims (CWC) Questions and Answers

determines that an employer from the transferring state is at fault for a CWC overpayment, based on the employer's failure to respond timely or adequately to the paying state's request for information. The paying state is also required to notify the transferring state of any appeals and appeal decisions related to the initial determination. Based on state input, the UI-ICON CWC 02-12 application was developed to facilitate the necessary communications between paying states and transferring states with regard to the TAAEA provisions. Thus, we strongly recommend that states use the UI-ICON CWC 02-12 application for this purpose.

### **Employer Appeals**

***Question #4 - If the chargeable employer appeals the paying state's determination that the employer has failed to respond timely or adequately to the state's request for information, which state has the responsibility of hearing the appeal?***

**Answer:** The paying state is responsible for hearing an employer's appeal from its determination that the employer failed to respond timely or adequately to a request for information. The paying state will hear the appeal of its determination whether the employer is an in-state or an out-of-state employer. The paying state must promptly communicate the disposition of the appeal to the transferring state, as appropriate. We strongly recommend that this be done through the UI-ICON CWC 02-12 application to help ensure that the employer's account is charged or relieved of charges ("non-charged"), as appropriate, in the transferring state.

***Question #5 - Which state hears an employer's appeal from a determination that the employer or its agent has established a pattern of failing to respond timely or adequately to request from a state agency for information relating to a CWC?***

**Answer:** It depends. If the chargeable employer is a covered employer in the paying state, the paying state determines whether the employer met its standard for a "pattern" and will be responsible for hearing the appeal. If the chargeable employer is covered under the law of the transferring state, the transferring state determines whether the employer met its standard for a pattern and will be responsible for hearing the appeal.

**D15-02**  
**Combined Wage Claims**

**2. Proposed Statutory Language**

**Amend Wis. Stat. § 108.04(13)(f) to provide:**

108.04 (13) (f) If benefits are erroneously paid because the employer fails to file a report required by this chapter, the employer fails to provide correct and complete information on the report, the employer fails to object to the benefit claim under s. 108.09 (1), the employer fails to provide correct and complete information requested by the department during a fact-finding investigation, unless an appeal tribunal, the commission, or a court of competent jurisdiction finds that the employer had good cause for the failure to provide the information, or the employer aids and abets the claimant in an act of concealment as provided in sub. (11), the employer is at fault. The department may issue a determination that an out-of-state employer is at fault if all of the following apply:

1. The benefits erroneously paid result from a combined-wage claim.
2. The out-of-state employer's account is potentially chargeable.

The out-of-state employer may appeal the determination pursuant to the requirement of s. 108.10. For purposes of this paragraph "combined-wage claim" shall mean a claim based on wages and employment in Wisconsin and under the unemployment compensation laws of another state that has been approved by the United States Secretary of Labor. For purposes of this paragraph "out-of-state employer" shall mean an employer for whom the claimant lacks sufficient employment in this state to qualify for benefits, but for whom the wages and employment with that employer form part of the basis for the filing of the combined-wage claim.

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

This proposal is mandated by federal law.

**4. Effects of Proposed Changes**

- a. Policy. The proposed law change is mandated by federal law and will ensure that out-of-state and in-state employers are treated similarly under Wisconsin law.
- b. Administrative Impact. The number of claims filed in this type of situation is relatively small and the law change will not have a significant impact on UI operations.
- c. Fiscal. See attached fiscal estimate.



**D15-02**  
**Combined Wage Claims**

**5. State and Federal Issues**

The change is mandated by federal law as a result of passage of the *Trade Adjustment Assistance Extension Act of 2011*. It is necessary to amend state law to conform with this federal mandate.

**6. Proposed Effective/Applicability Date**

This proposal would be effective and applicable with other changes made as part of the agreed bill cycle.

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<sup>i</sup>The new federal mandate does not apply if the law in the other state would not otherwise permit or require a charge to an employer's account for benefits paid to a claimant since in such case there are no charges from which an employer could be relieved.

**D15-05**

**Enabling Department to Hold Managing Partners of LLPs Personally Liable**

Date: February 19, 2015  
Proposed by: DWD  
Prepared by: Andrew Rubsam

**ANALYSIS OF PROPOSED UI LAW CHANGE**

**HOLDING MANAGING PARTNERS OF LIMITED LIABILITY PARTNERSHIPS (“LLPS”) PERSONALLY LIABLE FOR THE CONTRIBUTIONS OWED BY THE LLP**

**1. Description of Proposed Change**

Currently, the department may hold individuals who are officers, employees, members or managers holding at least 20% of the ownership interest of a corporation or limited liability company (LLC) personally liable for the unpaid unemployment insurance (UI) contributions of the corporation or LLC. Wis. Stat. § 108.22(9).

Current law does not clearly permit the department to hold the managing partners of a limited liability partnership (LLP) personally liable for the unpaid contributions of the LLP.

Wisconsin Law permits the Wisconsin Department of Revenue (WI-DOR) to hold an “officer, employee or **other responsible person** of a corporation or **other form of business association** or a member, employee or other responsible person of a partnership, limited liability company or sole proprietorship” personally liable for the unpaid sales and use tax of a business entity. Wis. Stat. § 77.60(9).

Wisconsin law also allows WI-DOR to hold an individual personally liable for the unpaid income or franchise taxes of a “corporation, **other form of business association**, partnership, limited liability company or sole proprietorship.” Wis. Stat. § 71.83(1)(b)2. WI-DOR confirms that these statutes result in personal liability for LLP tax debts.

This proposal amends Wis. Stat. § 108.22(9) in order to permit the department to hold individuals personally liable for the UI contributions of “other forms of business association,” which include LLPs.

**2. Proposed Statutory Language**

108.22 (9) of the statutes is amended to read:

108.22 (9) An individual who is an officer, employee, member, ~~or~~ manager, partner or other responsible person holding at least 20% of the ownership interest of a corporation, ~~or~~ limited liability company or of any other form of business association subject to this chapter, and who has control or supervision of or responsibility for filing any required contribution reports or

## D15-05

### Enabling Department to Hold Managing Partners of LLPs Personally Liable

making payment of contributions, and who willfully fails to file such reports or to make such payments to the department, or to ensure that such reports are filed or that such payments are made, may be found personally liable for such amounts, including interest, tardy payment or filing fees, costs and other fees, in the event that after proper proceedings for the collection of such amounts, as provided in this chapter, the corporation, ~~or~~ limited liability company or other form of business association is unable to pay such amounts to the department. Ownership interest of a corporation, ~~or~~ limited liability company or other form of business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation, ~~or~~ limited liability company or other form of business association of which the corporation, ~~or~~ limited liability company or other form of business association unable to pay such amounts is a wholly owned subsidiary. The personal liability of such officer, employee, member, ~~or~~ manager, partner, or other responsible person as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation, ~~or~~ limited liability company or other form of business association and shall be set forth in a determination or decision issued under s. 108.10.

### 3. Reason for the Change

This proposal will create a more level playing field because it will ensure that responsible persons are not able to avoid personal liability for unpaid UI contributions simply because they chose a particular form of business entity. It also provides flexibility for the department to impose personal liability if the Legislature creates other business forms (such as a Low-Profit Limited Liability Company or "L3C").

## D15-05

### Enabling Department to Hold Managing Partners of LLPs Personally Liable

#### 4. Effects of Proposed Changes

- a. Policy. The legislative change will result in the UI law more closely tracking the WI-DOR statutes, ensuring more predictability for individuals who are potentially personally liable for unpaid taxes.
- b. Administrative Impact. Implementation of this proposal should be relatively straightforward. The department already determines individuals personally liable for UI contributions owed by corporations and LLCs. The tax collections staff will need to be trained to issue personal liability determinations to responsible persons related to other types of business associations.

The department should not need to change any existing or promulgate any new administrative code provisions.

- c. Fiscal. See attached fiscal estimate.

#### 5. State and Federal Issues

This proposal will make the UI law more closely track the WI-DOR statutes and therefore will ensure more predictability for individuals who are potentially personally liable for unpaid taxes.

There are no known federal conformity issues.

#### 6. Proposed Effective/Applicability Date

This proposal will be effective and applicable on the first day of the quarter following enactment.

**D15-03**  
**Treasury Offset Program**

Date: February 19, 2015  
Proposed by: DWD  
Prepared by: Scott Sussman

**ANALYSIS OF PROPOSED UI LAW CHANGE**

**TREASURY OFFSET PROGRAM**

**1. Description of Proposed Change**

The Treasury Offset Program ("TOP") is a centralized collection tool administered by the U.S. Department of Treasury, Bureau of Fiscal Service (Fiscal Service), used to collect delinquent debts owed to federal agencies and states who have submitted debt information to Fiscal Service. In partnership with the U.S. Department of Labor (USDOL), the TOP intercepts federal tax refund payments of claimants who owe unemployment insurance (UI) debt. The TOP compares claimant names and taxpayer identification numbers (TIN) to names and TINs in TOP's debtor database.

On December 26, 2013, the Bipartisan Budget Act (Act) was signed into law. This Act requires states, as a condition for receipt of grants to administer UI programs, to use TOP to recover UI debt that remains uncollected as of the date that is one year after the debt was finally determined to be due. Previously it was discretionary with a state regarding whether it wanted to use TOP.

Wisconsin currently participates in TOP to collect delinquent UI debt due to a claimant's fraud or a claimant's failure to report earnings.

This proposed statutory language expands the department's use of TOP to collect unpaid specified UI debt owed by employers resulting from:

- (a) Unpaid UI contributions due to Wisconsin's UI Trust Fund for which the person has been determined to be liable; and,
- (b) Any penalties and interest assessed on such debt.

The USDOL provides that a state must enact conforming legislation in the 2015 session of its state legislature. The department sent the proposed legislation to the USDOL for review. The USDOL has informally confirmed that upon enactment of this proposal Wisconsin law will conform with the requirements imposed on states by the Act.

(10) In section 314(d)(2), strike subparagraph (A), redesignate subparagraphs (B) and (C) as subparagraphs (A) and (B) respectively, in subparagraph (A), as redesignated, strike “under subparagraph (A)” and insert “under paragraph (1)”, and in subparagraph (B), as redesignated, strike “under subparagraph (B)” and insert “under subparagraph (A)”.

(11) In section 315, add at the end the following new sentence: “In the case of a reported bill or joint resolution considered pursuant to a special order of business, a point of order under section 303 shall be determined on the basis of the text made in order as an original bill or joint resolution for the purpose of amendment or to the text on which the previous question is ordered directly to passage, as the case may be.”

(12) In section 401(b)(2), strike “section 302(b)” and insert “section 302(a)”.

(13) In section 401(c), add at the end the following new paragraph:

“(3) In the House of Representatives, subsections (a) and (b) shall not apply to new authority described in those subsections to the extent that a provision in a bill or joint resolution, or an amendment thereto or a conference report thereon, establishes prospectively for a Federal office or position a specified or minimum level of compensation to be funded by annual discretionary appropriations.”

(14) In section 421(5)(A)(i)(II), strike “subparagraph (B))” and insert “subparagraph (B)”.

(15) In section 505(c), strike “section 406(b)” both places it appears and insert “section 405(b)”.

(16) In section 904(c)(2), strike “258A(b)(3)(C)(I)” and “258(h)(3)” and insert “258A(b)(3)(C)(i)” and “258B(h)(3)”, respectively, and strike “and 314(e)” and insert “314(e), and 314(f)”.

(17) In section 904(d)(3), strike “258A(b)(3)(C)(I)” and “258(h)(3)” and insert “258A(b)(3)(C)(i)” and “258B(h)(3)”, respectively, and strike “and 312(c)” and insert “312(c), 314(e), and 314(f)”.

## TITLE II—PREVENTION OF WASTE, FRAUD, AND ABUSE

### SEC. 201. IMPROVING THE COLLECTION OF UNEMPLOYMENT INSURANCE OVERPAYMENTS.

(a) IN GENERAL.—Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end the following:

“(m) In the case of a covered unemployment compensation debt (as defined under section 6402(f)(4) of the Internal Revenue Code of 1986) that remains uncollected as of the date that is 1 year after the debt was finally determined to be due and collected, the State to which such debt is owed shall take action to recover such debt under section 6402(f) of the Internal Revenue Code of 1986.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect upon the date of enactment of this Act.

**D15-03**  
**Treasury Offset Program**

**2. Proposed Statutory Language**

**Create: 108.22(1n):**

If any individual who is found personally liable under sub. (9) or any employing unit fails to pay to the department any amount found to be due it in proceedings pursuant to s. 108.10, provided that no appeal or review permitted under s. 108.10 is pending and that the time for taking an appeal or review has expired, the department or any authorized representative may offset the amount of the delinquency against a federal tax refund as provided in section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

**Amend s. 108.16 (6m) (g), Stats., to read:**

108.16 (6m) There shall be charged against the fund's balancing account: . . .

*Fees charged to claimant*

(g) Except if the fee or payment is not charged to the department, any Any payments of fees or expenses assessed by the U.S. secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009, if the fee or expense was assessed to collect an overpayment.

**Amend s. 108.16 (10) to read:**

All money withdrawn from the fund shall be used solely in the payment of benefits, exclusive of expenses of administration, and for refunds of sums erroneously paid into the fund, for refund of a positive net balance in an employer's reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the employer, for expenditures made pursuant to s. 108.161 and consistently with the federal limitations applicable to s. 108.161, and if charged by the federal government for payment of fees and expenses for collection of overpayments resulting from fraud or failure to report earnings that are assessed by the U.S. secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

**No amendment necessary to s. 108.22(8)(b)1.d. which currently provides:**

(b) 1. To recover any overpayment to an individual which is not otherwise repaid or recovery of which has not been waived, the department may recoup the amount of the overpayment by: . . .

d. If the overpayment results from fraud or failure to report earnings, offsetting the amount of the overpayment against a federal tax refund as provided in section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

**No amendment necessary to s. 108.16(6)(L) which currently provides:**

(6) The department shall maintain within the fund a "balancing account," to which shall be credited: . . .

**D15-03**  
**Treasury Offset Program**

(L) The amount of any overpayments that are recovered by the department by setoff pursuant to s. 71.93 or the amount of any overpayments resulting from fraud or failure to report earnings that are recovered by the department by offset pursuant to section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

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

To comply with the federal mandate and expand the collection tools available to the department to collect unpaid UI debt.

**4. Effects of Proposed Changes**

- a. Policy. This proposal is mandated by federal law and enhances the department's ability to collect unpaid UI debt.
- b. Administrative Impact. This proposal will expand the collection tools available to the department to collect unpaid UI debt.
- c. Fiscal. See attached fiscal estimate.

**5. State and Federal Issues**

The Bipartisan Budget Control Act amended Section 303 of the Social Security Act to require states, as a condition of their UI administrative grants, to use the TOP to recover UI debt. It is necessary to amend Wisconsin's law to conform to this federal mandate.

**6. Proposed Effective/Applicability Date**

This proposal would be effective with other changes made as part of the agreed bill cycle.





State of Wisconsin  
2015 - 2016 LEGISLATURE

In 4-6-14  
Wed, 4-8 if poss.

LRB-2020/1  
MED:.....

gs cs

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA

D-note

Law

1 **AN ACT**; relating to: various changes to the unemployment insurance law.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

1

2 **SECTION 1.** 108.04 (13) (g) of the statutes is created to read:

3 108.04 (13) (g) 1. In this paragraph:

4 a. "Combined wage claim" means a claim for benefits under this chapter that  
5 is filed pursuant to a reciprocal arrangement entered into under s. 108.14 (8n). ✓

\*\*\*\*NOTE: Please review this language. I cross-referenced s. 108.14 (8n) since it was a statute that already gave authority for these arrangements. OK? ✓✓

6 b. "Out-of-state employer" means a person that employs, for work performed  
7 outside this state, an individual who files a combined wage claim.

\*\*\*\*NOTE: Will this work? I was wary of using "employment," which has the meaning under s. 108.02 (15). ✓

1           2. The department may issue a determination that an out-of-state employer  
 2 is at fault for the erroneous payment of benefits <sup>pe</sup> in a combined wage claim in the  
 3 same manner as the department issues determinations under s. 108.10, if the  
 4 account of the out-of-state employer in another jurisdiction's account in the  
 5 "Unemployment Trust Fund" is potentially chargeable.

\*\*\*\*NOTE: Will this language work to describe what was meant by "account"?

6           3. A determination issued under subd. 2. is subject to s. 108.10 and may be  
 7 appealed in the same manner as a determination <sup>issued under s. 108.10</sup> may be appealed under s. 108.10.

8           **SECTION 2.** 108.16 (6) (L) of the statutes is amended to read:

9           108.16 (6) (L) The amount of any overpayments that are recovered by the  
 10 department by setoff pursuant to s. 71.93 or the amount of any overpayments  
 11 resulting from fraud or failure to report earnings that are recovered by the  
 12 department by offset pursuant to section 26 USC 6402 (f) of the federal Internal  
 13 Revenue Code in effect on June 1, 2009.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 20, 36.

14           **SECTION 3.** 108.16 (6m) (g) of the statutes is amended to read:

15           108.16 (6m) (g) Any payments of fees or expenses assessed by the U.S.  
 16 secretary of the treasury and charged to the department under section 26 USC 6402  
 17 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 20, 36.

18           **SECTION 4.** 108.16 (10) of the statutes is amended to read:

19           108.16 (10) All money withdrawn from the fund shall be used solely in the  
 20 payment of benefits, exclusive of expenses of administration, and for refunds of sums  
 21 erroneously paid into the fund, for refund of a positive net balance in an employer's  
 22 reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the

1 employer, for expenditures made pursuant to s. 108.161 and consistently with the  
 2 federal limitations applicable to s. 108.161, and for payment of fees and expenses for  
 3 collection of overpayments resulting from fraud or failure to report earnings that are  
 4 assessed by the U.S. secretary of the treasury and charged to the department under  
 5 section 26 USC 6402 (f) of the federal Internal Revenue Code in effect on June 1,  
 6 2009.

**History:** 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 20, 36.

7 **SECTION 5.** 108.22 (1r) of the statutes is created to read:

8 108.22 (1r) If any employing unit or any individual who is found personally  
 9 liable under sub. (9) fails to pay to the department any amount found to be due it in  
 10 proceedings pursuant to s. 108.10, provided that no appeal or review permitted  
 11 under s. 108.10 is pending and that the time for taking an appeal or review has  
 12 expired, the department or any authorized representative may offset the amount  
 13 against a federal tax refund as provided in 26 USC 6402 (f).

14 **SECTION 6.** 108.22 (8) (b) 1. d. of the statutes is amended to read:

15 108.22 (8) (b) 1. d. If the overpayment results from fraud or failure to report  
 16 earnings, offsetting the amount of the overpayment against a federal tax refund as  
 17 provided in section 26 USC 6402 (f) of the federal Internal Revenue Code in effect on  
 18 June 1, 2009.

**History:** 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 36, 276.

19 **SECTION 7.** 108.22 (9) of the statutes is amended to read:

20 108.22 (9) An individual who is an officer, employee, member or manager,  
 21 partner, or other responsible person holding at least 20% 20 percent of the ownership  
 22 interest of a corporation or of a limited liability company, or other business entity  
 23 subject to this chapter, and who has control or supervision of or responsibility for

1 filing any required contribution reports or making payment of contributions, and  
2 who willfully fails to file such reports or to make such payments to the department,  
3 or to ensure that such reports are filed or that such payments are made, may be found  
4 personally liable for such amounts, including interest, tardy payment or filing fees,  
5 costs and other fees, in the event that after proper proceedings for the collection of  
6 such amounts, as provided in this chapter, the corporation ~~or~~, limited liability  
7 company, or other business entity is unable to pay such amounts to the department.  
8 Ownership interest of a corporation ~~or~~, limited liability company, or other business  
9 entity includes ownership or control, directly or indirectly, by legally enforceable  
10 means or otherwise, by the individual, by the individual's spouse or child, by the  
11 individual's parent if the individual is under age 18, or by a combination of 2 or more  
12 of them, and such ownership interest of a parent corporation ~~or~~, limited liability  
13 company, or other business entity of which the corporation ~~or~~, limited liability  
14 company, or other business entity unable to pay such amounts is a wholly owned  
15 subsidiary. The personal liability of such officer, employee, member ~~or~~, manager,  
16 partner, or other responsible person as provided in this subsection survives  
17 dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of  
18 creditors, judicially confirmed extension or composition, or any analogous situation  
19 of the corporation ~~or~~, limited liability company, or other business entity and shall be  
20 set forth in a determination or decision issued under s. 108.10.

**History:** 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 36, 276.

\*\*\*\*NOTE: I had our drafter who does business law review this language, and he said  
"business entity" is the more commonly used term, so I used that. OK?

21

(END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2020/P1dn

MED:.....

CS  
CS

- date -

I did not include any effective date or initial applicability provisions in this version as I understand these are still being determined. Note that for some of these changes, neither type of provision may be needed at all.

Michael Duchek  
Legislative Attorney  
(608) 266-0130  
michael.duchek@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2020/P1dn  
MED:cjs:cs

April 9, 2015

I did not include any effective date or initial applicability provisions in this version as I understand these are still being determined. Note that for some of these changes neither type of provision may be needed at all.

Michael Duchek  
Legislative Attorney  
(608) 266-0130  
michael.duchek@legis.wisconsin.gov

## Duchek, Michael

---

**From:** Sussman, Scott - DWD <Scott.Sussman@dwd.wisconsin.gov>  
**Sent:** Thursday, April 16, 2015 2:49 PM  
**To:** Duchek, Michael  
**Cc:** Knutson, Janell - DWD; Rubsam, Andrew J - DWD  
**Subject:** Council Approved Departmental Proposals

**Sensitivity:** Confidential

Mike – It was great that you were able to come to the UIAC meeting today. The Council approved Department Proposals D15-01 (SSDI and UI) ; D15-07 (Work share Partial Wage Formula); and D15-08 (Able and Available). With respect to each proposal approved today:

- D15-01 – The attached proposal includes the statutory language, which was handed to the Council.
- D15-07 – I have attached the proposal along with your draft statutory language you drafted for this proposal, which was handed to the Council.
- D15-08 - Andy is working on the draft legislation for D15-08 (Able and Available) and will share that with you shortly.



D15-01 SSDI and  
UI.doc



D15-07 Work  
Share Program ...



LRB 0205.P1.pdf

If possible can we get a revised version of LRB-2020/P1 with these proposals incorporated before the next Council meeting. There is not a firm date set for the next Council meeting, but they were talking about holding it sometime within the second full week of May.

Regarding LRB-2020/P1 –

1. With respect to s. 108.22(9) (personal liability for LLPs and other business forms) you changed the proposed "other form of business association" to "other business entity" because "entity" is the more common term. But the WI-DOR personal liability statute uses the term "other form of business association." Andy thinks consistency is best here since we're aiming to make our statute more in line with Revenue's.
2. We have discussed your changes to the Combined Wage Claim for out of state businesses and I am working on proposed revised language to this;
3. We are fine with the change you made throughout to TOP to change the reference from section 26 USC 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.
4. We will be getting effective dates to all these items to you shortly.

Scott Sussman  
Attorney, Bureau of Legal Affairs  
Division of Unemployment Insurance  
State of Wisconsin Department of Workforce Development

201 East Washington Avenue, Room E303  
Madison, WI 53708  
(608) 266-8271 (landline)

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**Thank you very much.**



**D15-01**  
**Social Security Disability Income and UI Benefits**

Date: March 19, 2015 (Updated)  
Proposed by: DWD  
Prepared by: Scott Sussman

**ANALYSIS OF PROPOSED UI LAW CHANGE**

**AMENDMENTS TO RECENTLY ENACTED SSDI PROVISION**

**1. Description of Proposed Change**

Claimants were previously allowed to simultaneously collect Social Security Disability Insurance (SSDI) and UI benefits. This practice allows the claimant to collect benefits from two benefit programs designed to supplement lost earnings due to the claimant's inability to work. During the last agreed upon bill cycle, the Unemployment Insurance Advisory Council (Council) unanimously supported a Department proposal to address this issue.

2013 Wisconsin Act 36 created Wis. Stat. § 108.04 (12) (f) 1. which provides "[a]ny individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week is ineligible for benefits paid or payable in that same week under this chapter." This statute was intended to provide that claimants who received SSDI during the month would not be eligible for UI benefits during that month.

The Labor and Industry Review Commission (LIRC) has issued a number of decisions that interpret the language of Wis. Stat. § 108.04 (12) (f) 1. to mean that a claimant is only ineligible for UI benefits during the week SSDI payment is received by the claimant. SSDI benefits are paid on a monthly basis, unlike UI benefits which are paid on a weekly basis.

The statutory interpretation applied by LIRC was not the intent of the Legislature, Department, or Council. At the February 20, 2014 UIAC meeting, the Council unanimously approved a resolution confirming the intent of this proposal. The resolution included a statement that "SSDI benefits are paid on a monthly basis. It was intended that claimants are not only ineligible in the week in which the SSDI check is delivered to the SSDI benefit recipient. It was intended that a SSDI payment would disqualify a claimant from unemployment insurance benefits in all weeks of the month."

The draft provides:

- A claimant is ineligible for UI benefits throughout the entire month in which the claimant is issued monthly SSDI benefits.
- The first time a claimant is issued a monthly SSDI benefit check, the claimant will be ineligible for UI benefits only for the prospective weeks in which the SSDI was paid and not necessarily the entire month. For example, if a claimant is issued their first monthly SSDI benefit check on May 21, 2015, the claimant would be ineligible for UI benefits the weeks of May 17-23 and May 24-30, 2015. UI benefit weeks start on Sunday. A claimant will become ineligible for UI benefits for the entire month in which a claimant is issued subsequent monthly SSDI benefit checks.

**D15-01**  
**Social Security Disability Income and UI Benefits**

- Once a claimant receives their last monthly SSDI benefit check, the claimant will become eligible for UI benefits following the last full benefit week of that month. For example, a claimant receives their last monthly SSDI benefit check in June 2015. The first benefit week in which the claimant will be eligible for UI benefits is June 28 - July 4, 2015.

**2. Proposed Statutory Language**

**Amend Wis. Stat. § 108.04(2)(h):**

**108.04 (2) (h)** An individual shall, when the individual first files a claim for benefits under this chapter and during each subsequent week the individual files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance ~~benefits under 42 USC ch. 7 subch. II. payments, as defined in sub. (12) (f) 1.~~

**Amend Wis. Stat. § 108.04(12)(f)1.:**

**108.04(12)(f)1.** ~~Any individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week~~ Except as provided in subd. a. to c., an individual is ineligible for benefits paid or payable in that same week under this chapter for each week in the entire calendar month in which a social security disability insurance payment is issued to the individual. For purposes of this paragraph and sub. (2)(h), the term “social security disability insurance payment” means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

a. In the first month a social security disability insurance payment is first issued to an individual, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that calendar month.

b. Following a cessation of social security disability insurance payments to an individual and upon the individual again being issued a social security disability insurance payment, the individual is ineligible for benefits under this chapter for each week beginning with the week the

**D15-01**  
**Social Security Disability Income and UI Benefits**

social security disability insurance payment is issued to the individual and all subsequent weeks in that calendar month.

c. Following cessation of social security disability insurance payments, an individual may be eligible for benefits under this chapter, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final social security disability insurance payment.

**Amend Wis. Stat. § 108.04(12)(f)2.:**

**108.04 (12) (f) 2.** Information that the department receives or acquires from the federal social security administration ~~that an individual is receiving social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week~~ regarding the issuance of social security disability insurance payments is considered conclusive, absent clear and convincing evidence that the information was erroneous.

**Create Wis. Stat. § 108.04(12)(f)2.:**

**108.04 (12) (f) 3.** The intent of the legislature in enacting this paragraph is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

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

To correct an unintended statutory interpretation contained in decisions issued by LIRC.

**4. Effects of Proposed Changes**

- a. Policy. This change provides a technical correction to clarify the intended purpose of the original proposal.
- b. Administrative Impact. The administrative impact of this proposal is minor.
- c. Fiscal. The proposed law change is technical in nature, so no fiscal estimate is included. As part of the overall fiscal estimate contained in 2013 Wisconsin Act 36, it was estimated this proposal would increase the UI Trust Fund balance by \$2.3 million annually.

**D15-01**  
**Social Security Disability Income and UI Benefits**

**5. State and Federal Issues**

The U.S. Department of Labor found no conformity issue with the current statute. The proposed amendment just clarifies the intent.

**6. Proposed Effective/Applicability Date**

This proposal should be effective with other changes made as part of the agreed bill cycle.

**D15-07**  
**Work Share Partial Wage Formula**

Date: February 19, 2015  
Proposed by: DWD  
Prepared by: Scott Sussman

**ANALYSIS OF PROPOSED UI LAW CHANGE**

**WORK SHARE PARTIAL WAGE FORMULA**

**1. Description of Proposed Change**

Wisconsin's work share program (2013 Wisconsin Act 11) became effective December 31, 2013. Voluntary participation in the work share program provides an employer with an alternative to layoffs when faced with a temporary decline in business. The layoff of workers is avoided by an employer reducing the hours for employees in a particular unit or their entire workforce.

For work share claimants, Wisconsin law provides two methods to determine the amount of benefits. Under Wisconsin law, a regular unemployment insurance (UI) claimant may be eligible for partial UI benefits if their work hours are reduced by more than eight hours and earnings are less than \$500 in a week. The first method calculates the benefit rate using the partial wage formula. The second method calculates the benefit rate using a proportional benefit rate as a percentage of regular UI benefits (the same proportion as the reduction in work hours). A work share claimant receives the higher of the two benefit rates. For an individual claimant, which formula results in a higher UI benefit payment is dependent on various factors including: the claimant's weekly benefit rate; the claimant's wage before the reduction in hours; and the percentage of hours reduced.

Of the 29 states with a work share program, Wisconsin is the only state that provides two methods to determine the amount of UI benefits. All other states solely rely on the proportional benefit rate that is calculated as a percentage of regular UI benefits.

The Middle Class Tax Relief and Job Creation Act of 2012 provides financial incentives for states to enact, and employers to participate, in work share programs. Until August 22, 2015, the federal government will reimburse 92.7% of the employer's share of UI charges for the reduced work hours under a work share program.

The United States Department of Labor (USDOL) has made two determinations with respect to the benefit calculation provisions in the current work share law:

- First, it conforms to requirements under federal law for a work share program.
- Second, employers participating in a work share program will not be reimbursed by the federal government for UI benefits paid using the partial wage formula.

Implementation of the program by the department is complicated by USDOL's interpretation regarding the partial wage formula. Wisconsin has been awarded the maximum grant amount available from the federal government for it to implement the work share program, \$641,216.

**D15-07**  
**Work Share Partial Wage Formula**

However, the grant funds are insufficient to cover costs for necessary computer upgrades to efficiently implement the program and prevent delay of UI benefit payments. Due to the antiquated nature of the department's computer system, it is estimated that a high-tech solution for implementing Wisconsin's work share program will cost approximately \$1,145,000 over five years. Of this amount, approximately \$730,000 is attributable to the additional cost of implementing the partial wage formula calculation required by the USDOL interpretation.

The department proposes an amendment to the current law eliminating the provision for calculation of UI benefits based on the partial wage formula.

**2. Proposed Statutory Language**

See attached draft.

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

As a result of the USDOL's interpretation, the implementation costs for the department to efficiently administer the program exceed what has been awarded by the federal government.

**4. Effects of Proposed Changes**

- a. Policy. This will provide employers, who are considering whether to participate in the work share program, greater certainty regarding whether benefits paid under their work share plan will be reimbursed by the federal government. As a result, employers will have greater incentive to participate in a work share program.
- b. Administrative Impact. This will greatly reduce the estimated fiscal impact of implementing the work share program. Over \$750,000 of the estimated implementation cost is attributable to the additional cost of implementing the partial wage formula calculation as part of a work share plan.
- c. Fiscal. Not Yet Available.

**5. State and Federal Issues**

There are no conformity issues with this proposal. There is no federal requirement to include the partial wage formula as one method to calculate a claimant's work share UI benefit amount.

**6. Proposed Effective/Applicability Date**

This proposal should be effective the first Sunday after publication of the Act in which it is enacted. The proposal should first apply with respect to work share plans submitted by employers on or after the effective date.



State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-0205/P1  
MED:cjs:jf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to repeal* 108.062 (7); and *to amend* 108.062 (6) (a) of the statutes;  
2             **relating to:** unemployment insurance benefits payable under a work-share  
3             program.

---

***Analysis by the Legislative Reference Bureau***

Under current law, any employer may create a work-share program, defined as a program approved by the Department of Workforce Development under which the hours of work of employees in a work unit are reduced in lieu of the layoffs of two or more employees in the work unit. An employee included under a work-share program who otherwise qualifies to receive regular Unemployment Insurance (UI) benefits must receive a UI benefit payment for each week that the employee is included under the program. The amount of the benefit payment is the employee's regular UI benefit amount multiplied by the employee's proportionate reduction in hours for that week under the work-share program (work-share benefits). Current law also provides, however, that an employee included under a work-share program who would otherwise be paid benefits for any week under the UI law's partial benefits formula (partial benefits) must instead receive a benefit payment for that week in the amount payable to the employee under that formula, if that amount is higher than the work-share benefits amount.

Under this bill, employees included under a work-share program may only be paid work-share benefits, and not partial benefits.





## Duchek, Michael

---

**From:** Sussman, Scott - DWD <Scott.Sussman@dwd.wisconsin.gov>  
**Sent:** Thursday, April 16, 2015 3:56 PM  
**To:** Duchek, Michael  
**Subject:** RE: Council Approved Departmental Proposals

**Sensitivity:** Confidential

Mike – Here are my comments:

### **Changes to LRB 15-2020 P1 with respect to combined-wage claim section:**

- All the references to combined-wage claim should include a hyphen. The federal regulations and UIPLs always have a hyphen.
- Page 1 Lines 8-9 change to:

"Out-of-state employer" means a person that employs an individual who files a combined-wage claim in which the wages and employment from that person are covered under the unemployment compensation law of another State.

I know you are concerned about use of the term "employment" but if you look at 26 USC § 3304 (9)(b) this parallels what is used by the feds and I think this will be safer.

- Change Lines 1-5 of page 2 to read:

The department may issue a determination that an out-of-state employer is at fault for the erroneous payment of benefits under a combined wage claim in the same manner as the department issues determinations under s. 108.10, if the unemployment insurance account of the out-of-state employer ~~in another jurisdiction's account in the "Unemployment Trust Fund"~~ is potentially chargeable.

I do not think we need to reference the fact that the out-of-state employer's account is in another jurisdiction that has an account in the Unemployment Trust Fund. I think the fact that it is an out-of-state employer who is only subject to this matter due to it being part of a combined-wage claim will ensure that everyone knows the account is in another jurisdiction.

- Change Lines 6-8 on page 2 to read:

A determination issued under subd. 2. is subject to s. 108.10 and may be appealed in the same manner as a determination issued under s. 108.10 ~~may be appealed under s. 108.10.~~

I would strike this language because otherwise we are twice saying that the determination may be appealed.

Scott Sussman  
Attorney, Bureau of Legal Affairs  
Division of Unemployment Insurance  
State of Wisconsin Department of Workforce Development  
201 East Washington Avenue, Room E303  
Madison, WI 53708  
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**Thank you very much.**

---

**From:** Duchek, Michael [<mailto:Michael.Duchek@legis.wisconsin.gov>]  
**Sent:** Thursday, April 16, 2015 3:11 PM  
**To:** Sussman, Scott - DWD  
**Subject:** RE: Council Approved Departmental Proposals  
**Sensitivity:** Confidential

OK. No huge rush. So do you have any sense of whether either side will have any proposals?

---

**From:** Sussman, Scott - DWD [<mailto:Scott.Sussman@dwd.wisconsin.gov>]  
**Sent:** Thursday, April 16, 2015 3:10 PM  
**To:** Duchek, Michael  
**Subject:** RE: Council Approved Departmental Proposals  
**Sensitivity:** Confidential

I should have something to you later today.

Scott Sussman  
Attorney, Bureau of Legal Affairs  
Division of Unemployment Insurance  
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(608) 266-8271 (landline)

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**Thank you very much.**

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**From:** Duchek, Michael [<mailto:Michael.Duchek@legis.wisconsin.gov>]  
**Sent:** Thursday, April 16, 2015 3:10 PM  
**To:** Sussman, Scott - DWD  
**Subject:** RE: Council Approved Departmental Proposals  
**Sensitivity:** Confidential

Do you want me to hold off on anything until you have something new on combined wage claims?

-Mike

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**From:** Sussman, Scott - DWD [<mailto:Scott.Sussman@dwd.wisconsin.gov>]  
**Sent:** Thursday, April 16, 2015 2:49 PM  
**To:** Duchek, Michael  
**Cc:** Knutson, Janell - DWD; Rubsam, Andrew J - DWD  
**Subject:** Council Approved Departmental Proposals  
**Sensitivity:** Confidential

Mike – It was great that you were able to come to the UIAC meeting today. The Council approved Department Proposals D15-01 (SSDI and UI) ; D15-07 (Work share Partial Wage Formula); and D15-08 (Able and Available). With respect to each proposal approved today:

- D15-01 – The attached proposal includes the statutory language, which was handed to the Council.
- D15-07 – I have attached the proposal along with your draft statutory language you drafted for this proposal, which was handed to the Council.
- D15-08 - Andy is working on the draft legislation for D15-08 (Able and Available) and will share that with you shortly.

<< File: D15-01 SSDI and UI.doc >> << File: D15-07 Work Share Program Memo to UIAC.doc >>  
>> << File: LRB 0205.P1.pdf >>

If possible can we get a revised version of LRB-2020/P1 with these proposals incorporated before the next Council meeting. There is not a firm date set for the next Council meeting, but they were talking about holding it sometime within the second full week of May.

Regarding LRB-2020/P1 –

1. With respect to s. 108.22(9) (personal liability for LLPs and other business forms) you changed the proposed "other form of business association" to "other business entity" because "entity" is the more common term. But the WI-DOR personal liability statute uses the term "other form of business association." Andy thinks consistency is best here since we're aiming to make our statute more in line with Revenue's.
2. We have discussed your changes to the Combined Wage Claim for out of state businesses and I am working on proposed revised language to this;
3. We are fine with the change you made throughout to TOP to change the reference from section 26 USC 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.
4. We will be getting effective dates to all these items to you shortly.

Scott Sussman  
Attorney, Bureau of Legal Affairs  
Division of Unemployment Insurance  
State of Wisconsin Department of Workforce Development  
201 East Washington Avenue, Room E303  
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(608) 266-8271 (landline)

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**Thank you very much.**