

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Monday, October 12, 2015 3:22 PM
To: Duchek, Michael
Subject: UIAC
Attachments: 15-2743_P1.pdf; D15-13 - repeal sunset of program integrity account.doc; D15-12 Employer definition technical change 072315.doc; D15-11 - move 102 23 into 108 ver 091415.doc; D15-10 Technical Changes to 108.05 91015.doc; 15-2921_P2.pdf

Mike-

UIAC approved D15-10 through D15-13 today. Please incorporate them into the agreed bill.

D15-06 (appeals modernization) and D15-08 will hopefully be wrapped up by 10/29, which is the next UIAC meeting.

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D15-10
Technical Changes to Wis. Stat. § 108.05

Date: September 17, 2015
Proposed by: DWD
Prepared by: Andrew Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Technical Changes to Wis. Stat. § 108.05

1. Description of Proposed Change

Wis. Stat. § 108.05(1)(r) provides a formula for calculating the amount of weekly benefits to which a benefit claimant is entitled. The weekly benefit rate is “4 percent of the employee’s base period wages that were paid during that quarter of the employee’s base period in which the employee was paid the highest total wages, rounded down to the nearest whole dollar.” The chart following paragraph (r) provides that a claimant’s minimum weekly benefit rate is \$54 and the maximum weekly benefit rate is \$370. The chart demonstrates claimants’ weekly benefit rates based on the highest quarterly wages paid to the claimant. The chart occupies several pages in the statutes.

The Department publishes the charts on its website (available at <http://dwd.wisconsin.gov/uiben/handbook/pdf/wbrchart.pdf>). And the Department provides a calculator on its website for claimants to estimate their weekly benefit rate based on their wages (http://dwd.wisconsin.gov/uiben/calculator_wbr.htm).

The Department proposes the amendment of Wis. Stat. § 108.05(1)(r) to delete the charts from the statutes and to provide that the statutory formulas contain the current minimum and maximum amount of benefits. The Department also proposes to require the Department to continue to publish the charts on its website.

The Department also suggests the repeal of Wis. Stat. § 108.05(1)(q), which determines the benefit rates of previous years, because that section applies only to weeks of unemployment

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Technical Changes to Wis. Stat. § 108.05

through January 5, 2014. The rates under section 108.05(1)(q) no longer apply to claimants so this section and the chart following that section should be repealed.

The Department proposes the repeal of Wis. Stat. §§ 108.05(2) and 108.05(2m). Section 108.05(2) provides for semiannual adjustments of maximum and minimum benefit rates and section 108.05(2m) provides for the suspension of the semiannual adjustments. The Department no longer adjusts the weekly benefit rates on a semiannual basis, which makes these unused sections outdated.

These proposed changes would not reduce or increase benefit payments to claimants but are designed as technical changes to section 108.05 in order to simplify the statute and reduce printing costs.

2. Proposed Statutory Language

Proposed statutory language is attached.

3. Effects of Proposed Changes

- a. Policy. The technical legislative change will not change the amount of benefits paid to claimants.
- b. Administrative. There will be little, if any, administrative effect of this proposal because the Department already publishes the charts on its website. The Department no longer applies the sections to be repealed, which means there will be no training needed for this change.
- c. Fiscal. An estimate of the fiscal effect of this proposal is not yet available. The fiscal effect is estimated to be negligible.

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Technical Changes to Wis. Stat. § 108.05

4. State and Federal Issues

There are no known federal conformity issues with the technical corrections as proposed. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. 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

LRB-2921/P2
AJM:klm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 108.05 (1) (q), 108.05 (1) (r) (figure), 108.05 (2) and 108.05 (2m);
2 and **to amend** 108.05 (1) (r) and 108.141 (4) of the statutes; **relating to:** the
3 unemployment insurance weekly benefits rate schedule and rate adjustments.

Analysis by the Legislative Reference Bureau

Under current law, UI weekly benefit rate schedules are published in the statutes. The schedules illustrate the results of the formula for calculating weekly benefit amounts and establish minimum and maximum weekly benefit rates. Current law requires the Department of Workforce Development (DWD) to adjust the minimum and maximum weekly benefit rates, but a separate provision indefinitely suspends this adjustment requirement.

This bill repeals the UI benefit rate schedules contained in the statutes showing the results of the formula for calculating weekly benefit amounts and instead requires DWD to publish and maintain such schedules on its Internet site. The bill maintains the minimum and maximum weekly benefit rate amounts as currently established in the schedules. The bill repeals the provisions requiring adjustment of benefit amounts and the provision suspending those provisions.

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

4 **SECTION 1.** 108.05 (1) (q) of the statutes is repealed.

1 **SECTION 2.** 108.05 (1) (r) of the statutes is amended to read:

2 108.05 (1) (r) Except as provided in s. 108.062 (6) (a), each eligible employee
3 shall be paid benefits for each week of total unemployment that commences on or
4 after January 5, 2014, at the weekly benefit rate specified in this paragraph. Unless
5 sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base
6 period wages that were paid during that quarter of the employee's base period in
7 which the employee was paid the highest total wages, rounded down to the nearest
8 whole dollar, except that, if that amount is less than ~~the minimum amount shown~~
9 ~~in the following schedule \$54~~, no benefits are payable to the employee and, if that
10 amount is more than ~~the maximum amount shown in the following schedule \$370~~,
11 the employee's weekly benefit rate shall be ~~the maximum amount shown in the~~
12 ~~following schedule \$370~~ and except that, if the employee's benefits are exhausted
13 during any week under s. 108.06 (1), the employee shall be paid the remaining
14 amount of benefits payable to the employee ~~in lieu of the amount shown in the~~
15 ~~following schedule: [See Figure 108.05 (1) (r) following]~~ under s. 108.06 (1). The
16 department shall publish on its Internet site a weekly benefit rate schedule of
17 quarterly wages and the corresponding weekly benefit rates as calculated in
18 accordance with this paragraph.

19 **SECTION 3.** 108.05 (1) (r) (figure) of the statutes is repealed.

20 **SECTION 4.** 108.05 (2) of the statutes is repealed.

21 **SECTION 5.** 108.05 (2m) of the statutes is repealed.

22 **SECTION 6.** 108.141 (4) of the statutes is amended to read:

23 108.141 (4) WEEKLY EXTENDED BENEFIT RATE. The weekly extended benefit rate
24 payable to an individual for a week of total unemployment is the same as the rate
25 payable to the individual for regular benefits during his or her most recent benefit

1 year as determined under s. 108.05 (1). ~~No adjustment of rates under s. 108.05 (2)~~

2 ~~applies to benefits payable under this section.~~

3 (END)

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Transfer Circuit Court Review Statutes to Chapter 108

Date: September 17, 2015
Proposed by: DWD
Prepared by: Andy Rubsam

**ANALYSIS OF PROPOSED UI LAW CHANGE
Transfer Circuit Court Review Statutes to Chapter 108**

1. Description of Proposed Change

Currently, Wis. Stat. § 102.23, a worker's compensation statute, contains the procedures for actions for judicial review of the decisions of the Labor and Industry Review Commission. The unemployment insurance statutes incorporate those provisions by reference. Wis. Stat. § 108.09(7)(a). Some portions of § 102.23 relate only to worker's compensation appeals to circuit court. The Department proposes to amend the unemployment insurance statutes to include the judicial review provisions of § 102.23 and to change some of those provisions.

The Commission has taken the position that the Department may not file an action for judicial review of a Commission decision unless the Department participated in the proceedings at the Commission. Current § 108.09(7)(a) states that the department may file an action for judicial review and does not require that the Department participate in proceedings at the Commission. This change clarifies that the Department need not participate in proceedings before the Commission in order to appeal the Commission's order.

Currently, there is no deadline for the Commission to transmit the record of proceedings to the circuit court in a judicial review action. Under this proposal, the Commission must transmit the record to the circuit court within sixty days of filing its answer to the complaint for judicial review. This change is designed to prevent delays in the judicial review process.

This proposal also provides for certain changes to the venue provisions of judicial review actions. Under § 102.23, an action for judicial review of a Commission decision must be filed in the county in which the plaintiff resides, unless the plaintiff is the Department. If the

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Department files the action for judicial review, the case must be filed in the county of the defendant's residence. Under current § 102.23, the case may be filed in any county if all of the parties and the court agree. The proposed change provides that if, after notice to the parties who have answered the complaint or otherwise appeared and a hearing, the court may order that the case may proceed to decision on the merits in that county. This change gives courts more discretion regarding venue issues, which is similar to the law regarding other circuit court actions.

The Department always appears as a party in judicial appeals of unemployment insurance tax cases that the Commission decided. The Department may, but is not required, to be a party to unemployment insurance benefit appeals of Commission decisions. The Department proposes that it always be a party in all unemployment insurance appeals to court, which would ensure that the Department always has the opportunity to defend its position in judicial review cases.

2. Proposed Statutory Change

108.09 (7) of the statutes is repealed and recreated to read:¹

108.09 (7) JUDICIAL REVIEW.

- (a) ~~The department or either~~ Any party may commence an action for the judicial review of a decision of the commission under this chapter after exhausting the remedies provided under this section. The department may commence an action for the judicial review of a commission decision under this section, but the department is not required to have been a party to the proceedings before the commission or to exhaust the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve them as required by this subsection, the court shall dismiss the action. ~~if the party or the department has commenced such action in~~

¹ Strikethrough and underline portions reflect only proposed changes to the current 108.09(7).

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~~accordance with s. 102.23 within 30 days after a decision of the commission is mailed to a party's last known address.~~

- (b) Any judicial review under this chapter shall be confined to questions of law and shall be in accordance with this subsection, ~~and the provisions of ch. 102 with respect to judicial review of orders and awards shall likewise apply to any decision of the commission reviewed under this section.~~ In any such judicial action, the commission may appear by any licensed attorney who is a salaried employee of the commission and has been designated by it for this purpose, or at the commission's request, by the department of justice. In any such judicial action, the department may appear by any licensed attorney who is a salaried employee of the department and has been designated by it for this purpose.

(c) ²

1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order of the commission is subject to review only as provided in this subsection and not under ch. 227 or s. 801.02. Within 30 days after the date of an order made by the commission, any party or the department may, by serving a complaint as provided in subdivision 3. and filing the summons and complaint with the clerk of the circuit court, commence an action against the commission for judicial review of the order. In an action for judicial review of a commission order, every other party to the proceedings before the commission shall be made a defendant. The department shall also be made a defendant if the department is not the plaintiff. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any order, the circuit court may extend the time in which an action may be commenced by an additional 30 days.
2. Except as provided in this subdivision, the proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is the department, the proceedings shall be in the circuit court of the county where a defendant, other than the commission, resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree or if the court, after

² Compare the proposed section 108.09(7)(c) to current section 102.23(1)(a).

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notice and a hearing, orders. Commencing an action in a county in which no defendant resides does not deprive the court of competency to proceed to judgment on the merits of the case.

3. In such an action, a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon the commission or agent authorized by the commission to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission shall mail one copy to each other defendant.
 4. Each defendant shall serve its answer within 20 days after the service of the complaint, which answer may, by way of counterclaim or cross-complaint, ask for the review of the order referred to in the complaint, with the same effect as if the defendant had commenced a separate action for the review of the order.
 5. Within 60 days of appearing in an action for judicial review, the commission shall make return to the court of all documents and materials on file in the matter, all testimony that has been taken, and the commission's order and findings. Such return of the commission, when filed in the office of the clerk of the circuit court, shall constitute a judgment roll in the action, and it shall not be necessary to have a transcript approved. After the Commission makes return of the judgment roll to the court, the court shall schedule briefing by the parties. Any party may request oral argument before the court; subject to the provisions of law for a change of the place of trial or the calling in of another judge.
 6. The court may confirm or set aside the Commission's order, but may set aside the order only upon any of the following grounds:
 - a. That the commission acted without or in excess of its powers.
 - b. That the order was procured by fraud.
 - c. That the findings of fact by the commission do not support the order.
- (d) The court shall disregard any irregularity or error of the commission or the department unless it is made to affirmatively appear that a party was damaged by that irregularity or

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error.³ ~~Notwithstanding ss. 102.26 (1) and 814.245, upon review of a decision of the commission under this chapter, costs as between the parties shall be in the discretion of the court, but no costs may be taxed against the department.~~

- (e) The record in any case shall be transmitted to the commission within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from the order or judgment.⁴
- (f) If the commission's order depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order and remand the case to the commission if the commission's order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.⁵
- (g) Any party aggrieved by a judgment entered upon the review of any circuit court order under this subsection may appeal as provided in ch. 808.⁶
- (h) The clerk of any court rendering a decision affecting a decision of the commission shall promptly furnish all parties a copy of such decision without charge.⁷
- (i) No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and certified transcripts of judgments. In proceedings to review an order, costs as between the parties shall be in the discretion of the court. Notwithstanding s. 814.245, no costs may be taxed against the commission or the department.⁸

108.09 (4o) of the statutes is amended to read:

DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. In any hearing before an appeal tribunal under this section, a departmental record relating to a claim for benefits, other than a report specified in sub. (4m), constitutes prima facie evidence, and shall be

³ Compare the proposed section 108.09(7)(d) to current section 102.23(2).

⁴ Compare the proposed section 108.09(7)(e) to current section 102.23(3).

⁵ Compare the proposed section 108.09(7)(f) to current section 102.23(6).

⁶ Compare the proposed section 108.09(7)(g) to current section 102.25(1).

⁷ Compare the proposed section 108.09(7)(h) to current section 102.25(2).

⁸ Compare the proposed section 108.09(7)(i) to current section 102.26(1).

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Transfer Circuit Court Review Statutes to Chapter 108

admissible to prove, that an employer provided or failed to provide to the department complete and correct information in a fact-finding investigation of the claim, notwithstanding that the record or a statement contained in the record may be uncorroborated hearsay and may constitute the sole basis upon which issue of the employer's failure is decided, if the parties appearing at the hearing have been given an opportunity to review the record at or before the hearing and to rebut the information contained in the record. A record of the department that is admissible under this subsection shall be regarded as self-authenticating and shall require no foundational or other testimony for its admissibility, unless the circumstances affirmatively indicate a lack of trustworthiness in the record. If such a record is admitted and made the basis of a decision, the record may constitute substantial evidence under sub. (7)(f) s. 102.23 (6). For purposes of this subsection, "departmental record" means a memorandum, report, record, document, or data compilation that has been made or maintained by employees of the department in the regular course of the department's fact-finding investigation of a benefit claim, is contained in the department's paper or electronic files of the benefit claim, and relates to the department's investigative inquiries to an employer or statements or other matters submitted by the employer or its agent in connection with the fact-finding investigation of a benefit claim. A departmental record may not be admitted into evidence under this subsection or otherwise used under this subsection for any purpose other than to prove whether an employer provided or failed to provide to the department complete and correct information in a fact-finding investigation of a claim.

108.10 (4) of the statutes is amended to read:

The department or the employing unit may commence an action for the judicial review of a commission decision under this section, provided the department, or the employing unit has, after exhausting the remedies provided under this section, has commenced such action within 30 days after such decision was mailed to the employing unit's last known address. The department may commence an action for the judicial review of a commission decision under this section, but the department is not required to have been a party to the proceedings before the commission or to exhaust the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve them as required by s. 108.09

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~~(7), the court shall dismiss the action.~~ The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). ~~In an action commenced by an employing unit under this section, the department shall be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the complaint commencing the action.~~

3. Effects of Proposed Change

- a. Policy. This proposal transfers the judicial review statute into chapter 108 so that it will be unnecessary for litigants and the courts to cross-reference the worker's compensation statutes. The proposal will more clearly separate provisions that relate to workers compensation cases from those that relate to unemployment insurance cases. The proposal also clarifies and simplifies certain procedural aspects of judicial review.
- b. Administrative. The administrative effect of this proposal on the Department and the Commission is expected to be minimal. The Commission will be required to transmit the hearing record to the circuit court within sixty days, which is not expected to be burdensome.
- c. Fiscal. A fiscal estimate is not yet available. It is anticipated that this proposal will have a negligible fiscal effect.

4. State and Federal Issues

There are no known federal conformity issues with revising the circuit court review statutes. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

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

D15-12
Technical Change to Definition of “Employer”

Date: August 20, 2015
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Technical Change to Definition of “Employer”

1. Description of Proposed Change

The 2015-2017 budget created a statute that permits fiscal agents to act on behalf of children who are being provided long-term community support services. 2015 Act 55 § 1535, creating Wis. Stat. § 46.272(7)(e). If a child or the child’s parent receives direct funds for the child’s long-term care and uses those funds to pay caregivers, the child may be an employer for unemployment insurance purposes. The budget bill provides that a fiscal agent may act on behalf of a child in order to ensure that the child complies with the requirements of the unemployment insurance law.

This new law is similar to existing laws related to fiscal agents acting on behalf of elderly individuals who receive long-term community support services. *See* Wis. Stat. § 46.27(5)(i).

Under existing law, the definition of “employer” in unemployment insurance law excludes fiscal agents for individuals who receive long-term support services under section 46.27. *See* Wis. Stat. § 108.02(13)(k).

The Department proposes this technical change to the definition of “employer” to also exclude fiscal agents acting on behalf of children receiving long-term support services.

D15-12
Technical Change to Definition of “Employer”

2. Proposed Statutory Change

108.02 (13) (k) of the statutes is amended to read:

“Employer” does not include a county department aging unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.27 (5) (i), 46.272 (7) (e) or 47.035 as to any individual performing services for a person receiving long-term support services under s. 46.27 (5) (b), 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c).

3. Effects of Proposed Change

- a. Policy. This proposal adds an exception to the definition of “employer” in order that all fiscal agents for recipients of long-term support services are treated the equally under the unemployment insurance law. Without this change, the definition of “employer” could depend on the age of the person receiving long-term support services. The current law may also dissuade fiscal agents from assisting children receiving long-term support services.
- b. Administrative. There is no expected administrative effect of this proposal.
- c. Fiscal. A fiscal estimate is not yet available.

4. State and Federal Issues

There are no known federal conformity issues with amending the definition of “employer” to exclude fiscal agents of children who receive long-term support services. The Department recommends that any changes to the judicial review statute be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

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

D15-13
Repeal Sunset of Program Integrity Fund

Date: August 20, 2015
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
Repeal Sunset of Program Integrity Fund

1. Description of Proposed Change

The 2015-2017 budget increased the civil penalty assessed for concealment from 15% to 40%. 2015 Act 55 § 3113. Act 55 also provides that 62.5% of the civil penalty must be deposited into the program integrity fund.

The program integrity fund is scheduled to be automatically repealed (“sunset”) on January 1, 2034. The Department proposes the repeal of the sunset in order for the program integrity fund to continue to exist after January 1, 2034.

2. Proposed Statutory Change

Proposed statutory language is attached.

3. Effects of Proposed Change

- a. Policy. The program integrity fund should continue to exist beyond 2033 because recoveries of civil penalties are expected to be deposited into the account after that date.
- b. Administrative. There is no expected administrative effect of this proposal.
- c. Fiscal. A fiscal estimate is not yet available, but no fiscal effect is expected.

4. State and Federal Issues

There are no known federal conformity issues with repealing the sunset of the program integrity account. The Department recommends that any changes to the judicial review statute be sent to the U.S. Department of Labor for conformity review.

5. 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

LRB-2743/P1
MED:cjs/jld/amm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to affect* 2011 Wisconsin Act 198, section 4m, 2011 Wisconsin Act 198,
2 section 6m, 2011 Wisconsin Act 198, section 37m, 2011 Wisconsin Act 198,
3 section 47m (1) and 2013 Wisconsin Act 36, section 236m; **relating to:** the
4 unemployment insurance program integrity fund and related provisions.

Analysis by the Legislative Reference Bureau

Under current law, there is created a separate, nonlapsible trust fund designated as the program integrity fund. Moneys from the program integrity fund are appropriated to the Department of Workforce Development (DWD) for the payment of costs associated with program integrity activities. Also under current law, DWD must assess a penalty against a claimant for unemployment insurance benefits in an amount equal to 40 percent of the benefit payments erroneously paid to the claimant as a result of one or more acts of concealment performed by the claimant. Current law directs 62.5 percent of those penalties to the program integrity fund. 2013 Wisconsin Act 36 provides for the sunset (repeal) of the establishment of the program integrity fund and related provisions, effective January 1, 2034.

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Monday, October 12, 2015 3:32 PM
To: Duchek, Michael
Subject: RE: UIAC

LRB 2020 should not contain the items in 3185.

Concealment can stay in 2020 for now – it will likely need some edits after the meeting on 10/29.

I'm not sure that we'll need a revised 2020 draft for the 10/29 meeting – unless there are language changes to the D15-10 through 13 items in the LRB draft.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Monday, October 12, 2015 3:28 PM
To: Rubsam, Andrew J - DWD
Subject: RE: UIAC

Just so I'm clear –

- 1.) The agreed upon bill (LRB-2020) draft currently contains the items in LRB-3185 (the three that were split off and drafted as a separate bill). Should those stay in the agreed upon bill?
- 2.) The agreed upon bill currently still has the concealment proposal. Should that stay in as well for now?

-Mike

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Monday, October 12, 2015 3:22 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: UIAC

Mike-

UIAC approved D15-10 through D15-13 today. Please incorporate them into the agreed bill.

D15-06 (appeals modernization) and D15-08 will hopefully be wrapped up by 10/29, which is the next UIAC meeting.

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Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Wednesday, October 14, 2015 9:18 AM
To: Duchek, Michael
Subject: RE: 2020

Sorry to change – please remove the concealment language from LRB 2020.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Tuesday, October 13, 2015 2:28 PM
To: Rubsam, Andrew J - DWD
Subject: RE: 2020

Yes, I am just going through it and we should be able to do that.

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Tuesday, October 13, 2015 11:23 AM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: 2020

Mike-

If possible, please have a final version of LRB 2020 (the agreed bill) for the 10/29 meeting.

Let's discuss this week if you have drafting issues with the D15-11 proposal.

Thanks-

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Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Wednesday, October 14, 2015 3:08 PM
To: Duchek, Michael
Subject: RE: Initial applicability

What if we made effective date 60 days after passage and then said it applies to judicial review actions filed on the effective date? That would give LIRC a chance to update its instructions that it mails with its decisions.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Wednesday, October 14, 2015 3:04 PM
To: Rubsam, Andrew J - DWD
Subject: RE: Initial applicability

I don't know... That would mean that if a LIRC decision was issued before the bill was enacted and someone hadn't filed for review yet but still had time, the rules would suddenly change. That might be OK, but it would seem to make more sense to just have it apply to LIRC decisions issued on the bill's effective date so no one would get messed up. And obviously you can go further back than that too and say it first applies to determinations under ss. 108.09 or 108.10, but I'm guessing you'd like it to change as soon as possible.

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Wednesday, October 14, 2015 3:01 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: RE: Initial applicability

For now, let's not worry about applicability of 06 and 08 since we don't know if they'll pass. Let's let future Andy and future Mike deal with that.

For D15-11, would it be wise to say it applies to actions for judicial review filed on or after X date? I'll check with Dan/Janell.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Wednesday, October 14, 2015 2:58 PM
To: Rubsam, Andrew J - DWD
Subject: Initial applicability

Do we want a special initial applicability for proposal D15-11, or would we anticipate that we would do one that might ultimately cover both D15-06 and D15-08. If we want one just for D15-11, it could basically first apply to LIRC decisions issued on the effective date. If you did a combined one with D15-06, it would have to go back further to ALJ decisions or something. Thoughts?

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

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, October 16, 2015 9:35 AM
To: Duchek, Michael
Subject: RE: 102->108 effective date

Sounds good.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Friday, October 16, 2015 9:33 AM
To: Rubsam, Andrew J - DWD
Subject: RE: 102->108 effective date

Yes. We can't know exactly when it will be signed, so if you want something at least 120 days ahead, we'd instead say "the first day of the 5th month beginning after publication."

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Friday, October 16, 2015 9:30 AM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: RE: 102->108 effective date

Janell mentioned that she wanted it on the first of the month to avoid changing procedures mid-month. Possible?

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Friday, October 16, 2015 9:29 AM
To: Rubsam, Andrew J - DWD
Subject: RE: 102->108 effective date

I think that's fine, but usually what we do instead is we just give it a 120-day delayed effective date and then say it first applies to actions filed on that effective date (same result).

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Friday, October 16, 2015 9:25 AM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: 102->108 effective date

Mike-

What do you think of having it apply to actions for judicial review filed on the first day of the month that is 120 days after passage?

Andy Rubsam, Esq.
Bureau of Legal Affairs
Unemployment Insurance Division
Wisconsin Department of Workforce Development

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Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Wednesday, October 21, 2015 11:10 AM
To: Duchek, Michael
Subject: RE: Judicial review

Mike-

My notes, below.

Thanks,
Andy

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Wednesday, October 21, 2015 10:31 AM
To: Rubsam, Andrew J - DWD
Subject: Judicial review

Went through this one more time –

1. 108.09 (7) (a), as amended, would begin “Any party may commence an action...” The next sentence then talks about the department commencing an action. Can we change the first sentence to “Any party that is not the department may commence...” because the department could be a party and this would make absolutely clear that when the department is commencing an action, it is governed by the second sentence only, not the first sentence. Perhaps overkill, but I think it would be slightly more clear. Yes.
2. 108.09 (7) (a) requires dismissal if a plaintiff fails to name DWD or LIRC *or fails to serve* DWD or LIRC. However, 108.09 (7) (c) appears to say that only LIRC is required to be served. Is this an inconsistency that should be resolved? Yes. Should say serve the commission.
3. In s. 108.09 (7) (c), would the 20 day clock start once the person has received a copy of the complaint from LIRC or the date LIRC was served? I would read as the latter but let me know if we should clarify. It's not exactly clear, but current s. 102.23(1)(c) says, I think, that commission shall answer within 20 days of service and "within the like time, the adverse party may serve an answer to the complaint...." Maybe should change s. 108.09(7)(c) to say " Each defendant shall serve its answer within 20 days after the service of the complaint on the commission...." I'm wondering if 20 days is enough time. 30 would be nicer because the other defendants don't get served right away – LIRC mails the complaint to them. I don't know that we can extend that because the UIAC already approved the language. But if we changed 20 to 30 maybe UIAC could approve that minor change at the next meeting. I'll talk to Janell about this point.

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

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Wednesday, October 21, 2015 1:27 PM
To: Duchek, Michael
Subject: RE: Judicial review

Let's clarify #3 below to say that all defendants must answer within 20 days of LIRC being served. OK?

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Wednesday, October 21, 2015 10:31 AM
To: Rubsam, Andrew J - DWD
Subject: Judicial review

Went through this one more time –

1. 108.09 (7) (a), as amended, would begin “Any party may commence an action...” The next sentence then talks about the department commencing an action. Can we change the first sentence to “Any party that is not the department may commence...” because the department could be a party and this would make absolutely clear that when the department is commencing an action, it is governed by the second sentence only, not the first sentence. Perhaps overkill, but I think it would be slightly more clear.
2. 108.09 (7) (a) requires dismissal if a plaintiff fails to name DWD or LIRC *or fails to serve* DWD or LIRC. However, 108.09 (7) (c) appears to say that only LIRC is required to be served. Is this an inconsistency that should be resolved?
3. In s. 108.09 (7) (c), would the 20 day clock start once the person has received a copy of the complaint from LIRC or the date LIRC was served? I would read as the latter but let me know if we should clarify.

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

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, October 23, 2015 9:07 AM
To: Duchek, Michael; Knutson, Janell - DWD
Cc: McKean, Aaron
Subject: RE: D15-12

Sounds good, assuming Janell agrees.

-Andy

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Friday, October 23, 2015 9:05 AM
To: Rubsam, Andrew J - DWD; Knutson, Janell - DWD
Cc: McKean, Aaron - LEGIS
Subject: D15-12

In reviewing this proposal, I noticed that s. 108.02 (13) (k) appears to be missing something between "county department" and "aging unit." In many of the provisions in ch. 46 cross-referenced there, "county department" and "aging unit" are two different concepts. So I think it should say "does not include a county department, an aging unit, or, under s. 46.2785, a private agency..." (note that there is already a comma after "aging unit" so I think it probably should have read this way all along) I also discussed this change with the drafter of s. 46.272 and she concurred.

Let me know if this change is not OK (in addition to what is in the proposal, which looks fine).

-Mike

Duchek, Michael

From: Duchek, Michael
Sent: Monday, October 26, 2015 10:00 AM
To: 'Rubsam, Andrew J - DWD'
Subject: RE: Reimbursables

Sounds good to me.

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Monday, October 26, 2015 9:43 AM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: RE: Reimbursables

Mike—

Happy Monday!

Let's put it for October 2016 to make sure that we have our programming finished in time.

First Sunday in October is 10/2/16. What do you think?

-Andy

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Monday, October 26, 2015 8:30 AM
To: Rubsam, Andrew J - DWD
Subject: Reimbursables

Our editor noticed that D-15-04 has an effective date of 1/1/16. Given that there's really no way this could pass before then, do you want to move this date up, or simply provide that it would take effect upon enactment?

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