

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Repeal Modification

2. Administrative Rule Chapter, Title and Number

Chapters DWD 111 (QUARTERLY WAGE REPORTING PROCEDURES), 113 (SETTLEMENT OF DISPUTES AND COMPROMISE OF LIABILITIES), 114 (LICENSE REVOCATION AND FINANCIAL RECORD MATACHING), 115 (BUSINESS TRANSFERS), 132 (DETERMINING ELIGIBILITY FOR BENEFITS) and 140 (UNEMPLOYMENT INSURANCE APPEALS)

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

- Chapter DWD 111 was originally ch. ILHR 111. Chapter ILHR 111 was created by an order of the Department of Industry, Labor and Human Relations on January 13, 1989 and was effective as of March 1, 1989. Chapter ILHR 111 was renumbered ch. DWD 111 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
- Chapter DWD 113 was originally ch. ILHR 113 and was effective on March 1, 1994. Chapter ILHR 113 was renumbered ch. DWD 113 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
- Chapter DWD 114 is necessary to create due to the recent passage of 2013 Wisconsin Act 36 (Act 36). Act 36 created s. 108.227 (1m), Stats., that instructed the Department of Workforce Development (DWD) to promulgate rules. The rules are to specify procedures to implement the process whereby employers who are delinquent in paying unemployment insurance (UI) contributions may have various licenses revoked or have an application for a license denied. In addition, Act 36 enabled DWD to operate a financial record matching program whereby DWD, for various asset verification or determination purposes, will match data of delinquent debtors possessed by DWD with the records of financial institutions. The proposed rule will ensure that the program operated by DWD can be run consistently with similar programs run by the Departments of Children and Families, Revenue, and Health Services.
- Chapter DWD 115 was originally ch. Ind-UC 115 and this was renumbered to be chapter ILHR 115 pursuant to s. 13.93 (2m) (b). Chapter ILHR 115 was repealed and a new chapter ILHR 115 was created effective February 1, 1992. Chapter ILHR 115 was renumbered ch. DWD 115 pursuant to s. 13.93 (2m) (b), Stats., as compiled in the June 1997 Administrative Register No. 498.
- Chapter DWD 132 was originally ch. Ind 132. Chapter Ind. 132 was repealed as it existed on August 31, 1987 and a new ch. ILHR 132 was created effective September 1, 1987. Chapter ILHR 132 was renumbered ch. DWD 132 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.
- Chapter DWD 140 was originally ch. Ind.-UC 140 and this was repealed and a new ch. ILHR 140 was created effective December 1, 1985. Chapter ILHR 140 was renumbered ch. DWD 140 pursuant to s. 13.93 (2m) (b) 1., Stats., as compiled in the June 1997 Administrative Register No. 498.

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4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

Unemployment Insurance Appeals

- Act 36 instructs the department to create a standard affidavit form that may be used by both claimants and employers during UI administrative appeals. Procedures regarding appeals are contained in ch. DWD 140 and DWD will prescribe the rules regarding the use of the standard affidavit form within this chapter.

DWD is proposing the creation of the following:

License Revocation and Financial Record Matching

- Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. The creation of ch. DWD 114 provides procedures for persons whose license or credential is to be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires DWD to promulgate rules for the process to deny or revoke a license based on delinquent UI taxes.
- Act 36 authorized DWD to operate a financial record matching program. The creation of ch. DWD 114 creates proposed rules that are consistent with the requirements used by other state agencies operating a similar financial record matching program.

5. Describe the Rule's Enforcement Provisions and Mechanisms

The proposed rule will ease program requirements for employers involved with the UI program. As a result, additional enforcement provisions are not necessary. The proposed rule eases the burden faced by employers by creating:

- Standards for DWD to waive or decrease interest charged to an employer that is delinquent in paying UI contributions.
- Rules regarding the use of a standard affidavit form for UI administrative appeal hearings. Act 36 requires DWD to create a standard affidavit form in order to ease the burden encountered by employers involved in a UI appeal.
- Procedural protections for employers whose license or credential may be denied, not renewed, discontinued, suspended or revoked based on being certified delinquent in paying UI contributions. Act 36 requires various state agencies and boards (licensing departments) that issue licenses to revoke a license or deny an application for a license if DWD certifies that the license holder or applicant owes DWD delinquent UI taxes. Act 36 requires DWD to promulgate rules for the process for when it certifies to a licensing department that it should deny or revoke a license based on delinquent UI taxes.

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6. Repealing or Modifying the Rule Will Impact the Following
(Check All That Apply)

- State's Economy
 Local Government Units

- Specific Businesses/Sectors
 Public Utility Rate Payers
 Small Businesses

7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

The proposed rule implements the UI proposals contained in Act 36. As a result, the fiscal note for Act 36 incorporates the economic impact of the rule.

The rule modifications impacting businesses will ease program requirements and likely reduce costs for small businesses. The businesses, including small businesses, that may be affected by this rule include the following:

- Businesses that are Delinquent in Paying UI Taxes:

1. DWD charges interest if an employer is delinquent in paying UI taxes. In limited circumstances, Act 36 grants DWD the authority to waive or decrease the interest charged to employers who are late in paying their UI taxes, but provides that DWD shall prescribe rules to exercise this authority. Thus, the rules will specify when all businesses, including small businesses, may be eligible for a waiver or reduction in interest charged to them as a result of their being delinquent in paying UI taxes.

2. Act 36 requires various state agencies and boards (licensing departments) that issue various licenses and other credentials (licenses) to revoke a license or deny an application for a license if DWD certifies the license holder or applicant owes UI contributions. Act 36 also requires DWD to promulgate rules with respect to the process DWD will follow when it uses this collection tool.

- Businesses involved in UI Administrative Appeals:

Act 36 instructs DWD to prescribe by rule a standard affidavit form that may be used by both claimants and employers, including small businesses, during UI administrative appeals. Employers and claimants will have discretion in whether or not to use these forms when involved in a UI administrative appeal. The standard affidavit form may be used by small business owners to reduce staff time and other resources associated with UI appeals.

8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

DWD posted the scope statement and proposed hearing draft on the DWD website and on the Wisconsin Administrative Rules' website for 14 days to solicit public comment on the economic impact of the rule. DWD did not receive any comments related to the economic impact of the proposed rule.

DWD held a public hearing in Madison on the proposed hearing draft rule and received one written comment by Attorney Victor Forberger. Mr. Forberger commented on the following and DWD addressed the comments as follows:

* Waiver of Interest for Employers' Unemployment Taxes
(Ch. DWD 113)

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1. Provide a definition and criteria for the terms "newly subject employer" and "has a history" of timely filing of tax reports and payments.
2. Clarify the language in s. DWD 113.025 (1) (f) relating to the waiver of interest and the appeal process. DWD has clarified the language to ensure there is no confusion over the DWD's intent.

The comments in 1. and 2. were addressed by the UIAC and recommended changes were implemented.

* License Revocation (Ch. DWD 114)

1. The 10-day response period for a debtor to cure all delinquencies prior to DWD's certification of delinquency should be extended to 14 or 21 days. This issue was addressed by the UIAC and the 10 day response period was increased to a 14 day response period.
2. In the event the employer fails to respond to the DWD's notice of delinquency, and DWD certifies the employer delinquent to a licensing agency, DWD should be required to notify the employer of this action and provide information on the steps the employer must take to cure the deficiency. The UIAC did not recommend changes to the rule provision. The Notice of Delinquency will clearly state if the employer does not pay all debts owed or enter into an installment payment plan, DWD will send a certification of delinquency to the licensing agency.
3. Create language that identifies whether DWD or the employer is responsible for any fees associated with the employer restoring a license to a licensing department after the delinquency has been cured. The UIAC did not recommend changes to the rule provision. The responsibility for the payment of fees associated with reinstating a license of an employer is determined by each individual licensing agency.
4. Create language that would require DWD to provide an employer, who fails to make a payment pursuant to an installment payment plan, at least seven days before the department issues a certificate of delinquency to a licensing agency. This issue was addressed by the UIAC and 7 days notice will be provided to the employer when there is a missed payment before issuing a certificate of delinquency.

* Financial Record Matching (Ch. DWD 114)

1. Identify criteria for the contracts between DWD and financial institutions participating in the program and the rules should include means to resolve disputes between the financial institution, DWD and Wisconsin residents that may arise under the program.
2. Identify procedures related to how the financial record matching program will function and safeguards and correctives that exist for mistakes or identify theft.

The UIAC did not recommend changes to the rule provision in comments 1. and 2. The provisions related to the financial record matching program are created to solely establish the 20 day time-line associated with the return of the agreement.

* Business Transfer (Ch. DWD 115)

The term "excusable neglect" should be defined. The UIAC did not recommend changes to the rule provision. The

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meaning of "excusable neglect" is a term of art established by court precedent and does not require further definition.

* Standard Affidavit Form (Ch. DWD 140)

1. The rules should provide clear guidance regarding the use and limitations of affidavits with respect to hearings. The affidavit should include some reference to the evidentiary issues created by a party using an affidavit.
2. Extend the DWD's hearing notice requirements to a 10 or 14 day notice for unemployment insurance hearing or eliminate the timeline requirement for a party to submit affidavits for unemployment insurance hearings.
3. Update grammatical mistake under s. DWD 140.22 (3) (a). The language under s. DWD 140.22 (3) (a) was updated to address this grammatical mistake.

The comments in 1. were addressed by the UIAC. No changes to the rules were made. An instruction sheet will accompany the affidavit form.

The UIAC did not recommend changes to the rule provision under comment 2. The current language provides an administrative law judge may accept the affidavit as an exhibit even if it is submitted after the deadline.

The comment in 3. was addressed by the UIAC and the recommended change was made.

9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

10. Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

11. Chapter 20, Stats. Appropriations Affected
s. 20.115(1)(q)

12. Fiscal Effect of Repealing or Modifying the Rule

- | | | |
|---|---|--|
| <input type="checkbox"/> No Fiscal Effect | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs |
| <input checked="" type="checkbox"/> Indeterminate | <input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Could Absorb Within Agency's Budget |
| | | <input type="checkbox"/> Decrease Cost |

13. Summary of Costs and Benefits of Repealing or Modifying the Rule

There are no costs and benefits of repealing and modifying the proposed rule that are independent of the fiscal effect of changes made to the UI program as result of passage of Acts 20 and 36.

14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No

15. Long Range Implications of Repealing or Modifying the Rule

The proposed rule will have a positive impact on employers by allowing DWD the flexibility to address problems encountered by employers within the UI system due to their inadvertent mistakes. The rule modifications will ease program requirements and likely reduce costs for all businesses, including small businesses.

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16. Compare With Approaches Being Used by Federal Government

Unemployment insurance was initiated on a national basis in the United States as Title III and Title IX of the Social Security Act of 1935 and is a Federal-State coordinated program. Each state administers its own program within national guidelines promulgated under federal law. As a condition of a state receiving its unemployment compensation administrative grant, 42 USC 503 (a) provides that the Secretary of the Department of Labor must find that the law of the state includes certain requirements. With respect to these rules, 42 USC 503 (a) (3) provides that state laws grant an opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment insurance are denied. Providing parties with the opportunity to use a standard affidavit form is consistent with this federal mandate.

None of the other proposed rules impact an area in which the federal government has dictated that state law or rules must conform to federal requirements.

17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

- Waiving or Decreasing Interest Charged to Employers Delinquent in Paying UI Tax

Illinois

The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)

Good cause has been defined by Department rule to consist of any or all of the following:

- (a) Where the delay was caused by the death or serious illness of the employer or a member of her immediate family, or by the death, or serious illness of the person in the employer's organization responsible for the preparation and filing of the report or for making the payment.
- (b) Where the delay was caused by the destruction of the employer's business records by fire or other casualty without fault.
- (c) Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.
- (d) For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error.

Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)

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The Director will waive interest for a nonprofit organization or for a local governmental entity, if all the following apply:

- (a) The organization or entity had never filed any of the reports or forms required of it under the UI law of Illinois.
- (b) It had not been determined to be the “chargeable employer” as result of the filing of a UI claim.
- (c) Its chief operating officer files an affidavit with the Director in which she states that, upon learning of the organization or entity’s liability under the Act, she took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)

Iowa

Chapter 96 of the Iowa Code does not include provisions for the waiver or forgiveness of interest charged to an employer who is delinquent in paying UI taxes.

Michigan

Section 15 (b) of the Michigan Employment Security Act requires the UI Agency to bill an employer for delinquent UI taxes and to charge interest. The law does not include provisions to enable the agency to waive or decrease this interest once it is charged.

Minnesota

Minnesota statutes at section 268.067 states:

- (a) The commissioner of employment and economic development may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant. This paragraph applies if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property.
- (b) The commissioner may at any time compromise any UI tax or reimbursement due from an employer under this chapter or Minnesota’s Special Assessment for Interest owed to the federal government.
- (c) Any compromise involving an amount over \$10,000 must be authorized by an attorney licensed to practice law in Minnesota who is an employee of the department designated by the commissioner for that purpose.
- (d) Any compromise must be in the best interest of the state of Minnesota.

- Revoke or Deny an Application for Licenses Based on Delinquent UI Contributions

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Illinois

Illinois' UI administrative code does not authorize the Illinois UI agency to certify to other state agencies that those agencies should revoke or deny an application for an employer's license based on delinquent UI contributions.

Iowa

Iowa's UI law does not authorize the Iowa UI agency to certify to other state agencies that they should revoke or deny an application for an employer's license based on delinquent UI contributions.

Michigan

Michigan's UI law does not authorize the Michigan UI agency to certify to other state agencies that those state agencies should revoke or deny an application for an employer's license based on delinquent UI contributions.

Minnesota

The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee, applicant, or employer owes unemployment insurance contributions of \$500 or more. A licensing authority that has received a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate. (M.S.A. § 268.0625 (Subdivision 1))

- Creation of Standard Affidavit for UI Administrative Appeal Hearings

Illinois does not direct its UI agency to create a standard affidavit for UI administrative appeal hearings.

A review of a document created by the Illinois UI agency document entitled "Preparing for your Appeal Hearing" only references affidavits by stating "Any document submitted in evidence must be supported by testimony from a person at the hearing who has direct knowledge of the document's contents. For example, third party affidavits or test results without someone who can testify as to their meaning or validity cannot overcome direct testimony from the opposing party. Likewise, business records must be supported by testimony during the hearing."

Iowa

Iowa does not use a standard affidavit for UI appeals.

Michigan

Michigan does not utilize a standard affidavit to be used by parties for UI appeals. Referees, who conduct the hearings, shall accept competent, relevant, and material evidence.

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Minnesota

Section 268.105 (b) of the Minnesota statutes provides that affidavits may be used in UI appeals as competent evidence of the facts contained in it, but does not provide that the Minnesota UI agency shall create a standard affidavit to be used in the hearings.

18. Contact Name Janell Knutson	19. Contact Phone Number (608) 266-1639
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