

STATEMENT OF SCOPE
Department of Workforce Development

Rule No: DWD 123

Relating to: Benefit charges for initial claims related to the public health emergency declared by Executive Order 72

Rule Type: Emergency

Finding/nature of emergency:

By Executive Order 72, the Governor declared a public health emergency to protect the health and well-being of the state's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses have temporarily or permanently closed, resulting in significant business income reduction and layoffs. On April 4, 2020, the President issued a declaration under the Stafford Act that a major disaster exists in Wisconsin, beginning January 30, 2020 and continuing, due to the COVID-19 pandemic.

Under 2019 Wisconsin Act 185, s. 50, which created s. 108.07 (5) (bm), Stats., the Department of Workforce Development is directed to charge unemployment benefits for initial claims that are related to the public health emergency first declared on March 12, 2020, by Executive Order 72 to the balancing account of the Trust Fund for contribution employers. For reimbursable employers, the Department charges such benefits to the interest and penalty appropriation. This treatment of claims charging applies to weeks of benefits payable from the week of March 15, 2020 through December 26, 2020.

2019 Act 185 also created s 108.04 (2) (d), Stats., which requires employees and employers to "indicate whether a claim for regular benefits is related to the public health emergency declared on March 12, 2020, by executive order 72" when the Department requests. The statute does not provide a deadline for employees or employers to submit the information. That paragraph further provides that the Department "may specify the information required to be provided."

The Department's antiquated computer systems are ill-equipped to handle the changes in charges from the employers' accounts to the balancing account or interest and penalty appropriation. Each weekly claim to be recharged under new section 108.08 (5) (bm), Stats., requires Department personnel to manually change the benefit charges from the employer's account, after any federal funds have been appropriately applied, to the balancing account or interest and penalty appropriation. The Department estimates that this manual process will take approximately 15 minutes for each weekly claim. Given the high volume of claims being filed during the pandemic, the Department expects that the thousands of hours of manual work to complete the charging changes will not be completed until 2021.

Under ss. 108.02(8), 108.02(22), and 108.18(4), Stats., “an employer’s contribution rate on the employer’s payroll for a given calendar year shall be based on the reserve percentage of the employer’s account as of the applicable computation date,” s. 108.18(4), Stats., which is June 30 of each year. Section 108.02(22), Stats., requires the Department to determine the status of an employer’s account when setting the reserve percentage for contribution purposes as of the computation date.

If the recharging of benefits from employer accounts to the balancing account is not completed by June 30, 2021 for contribution employers, those employers’ contribution rates for 2022 could be set higher than they should be under the charging relief enacted by 2019 Act 185.

Contribution rates that are incorrectly set higher than they should be could adversely affect employers’ abilities to recover financially from the economic downturn caused by the pandemic.

If the recharging of benefits from employer accounts to the interest and penalty appropriation is not completed as soon as possible for reimbursable employers, those employers will continue to receive monthly bills for reimbursements that they should not be required to pay under 2019 Act 185 and that they might not be able to afford to pay due to the economic downturn caused by the pandemic.

Description of the objective of the proposed rule:

To achieve the policy goals of 2019 Act 185, s. 50 and ensure that employer contribution rates are correctly determined for 2022, this emergency rule will set a deadline by which employers must submit the information. This is necessary to ensure that all information regarding the initial claims is submitted in time for processing the recharging of benefits before June 30, 2021.

The emergency rule will determine the information that employers must submit to request charging relief for initial claims filed while Executive Order 72 was in effect and after it expired.

This rule will also determine the treatment of employers in a claimant’s base period who are not the most recent employer of a claimant whose initial claim is related to the public health emergency declared on March 12, 2020, by Executive Order 72.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Currently, unemployment benefits are charged to employer accounts unless a statutory exception applies. 2019 Act 185 directs the Department to charge the benefits for initial claims related to the public health emergency declared on March 12, 2020, by Executive Order 72 to the balancing account or the interest and penalties appropriation.

An employer’s contribution rate on the employer’s payroll for a given calendar year is based on the reserve percentage of the employer’s account as of the applicable computation date, which is June 30 of each year. Ultimately, however, the employer’s reserve fund balance takes into account all charges and credits on a rolling basis so that the employer’s unemployment experience determines the contribution rate.

The new policy to be included in this rule will ensure that employers' contribution rates for 2022 are correctly calculated as of June 30, 2021, while meeting the policy goals of 2019 Act 185. The new policy in this rule will also assist the Department to meet the requirements of 2019 Act 185 more timely for reimbursable employers. The rule will also provide instructions for employers who seek relief of charges due to the public health emergency.

The policy alternative is to do nothing, which could negatively impact many employers subject to contribution financing because their contribution rates might be higher for 2022 than they should be. For most employers subject to contribution financing, this would result in higher contribution rates for 2022, which would not be in accordance with the legislative intent of 2019 Act 185. Doing nothing is unacceptable because this rule can protect employers from unnecessarily high contribution rates.

Statutory authority for the rule, including the statutory citation and language:

The Department has statutory authority for the proposed rule.

“The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter.” Section 108.14 (2), Stats.

Estimate of the amount of time that state employees will spend developing the rule and other resources necessary to develop the rule:

The estimated time is 80 hours.

Description of all entities that may be affected by the proposed rule:

Employers subject to the unemployment insurance law whose employees filed initial claims that relate to the public health emergency declared on March 12, 2020, by Executive Order 72.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

State law must conform to and substantially comply with federal regulations. *See* 20 CFR § 601.5.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The proposed rule is expected to have an economic impact on employers subject to the unemployment insurance law, which may include small businesses, because employers must submit information to the Department to receive charging relief under 2019 Act 185.

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Approval of the agency head or authorized individual:

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Date Submitted