



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #742

### **Suitable Work Definition (DWD -- Unemployment Insurance)**

[LFB 2015-17 Budget Summary: Page 558, #4]

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#### **CURRENT LAW**

Under section 108.04(8)(d) of the state statutes, Unemployment Insurance (UI) claimants may refuse suitable work for good cause and maintain eligibility for UI benefits if DWD determines that the claimant's refusal involved work at a lower grade of skill or significantly lower rate of pay than recently experienced by the individual, and the claimant had not had reasonable opportunity (up to six weeks) to find a new job substantially in line with the individual's prior job skill and rate of pay.

#### **GOVERNOR**

Specify that DWD must, by administrative rule, define a tiered system of what constitutes "suitable work" when a recipient of unemployment insurance is conducting a job search. The bill would require DWD to specify different levels of suitable work based upon the number of weeks that a claimant has received benefits in a given benefit year.

#### **DISCUSSION POINTS**

1. The state's UI law establishes an Unemployment Insurance Advisory Council (UIAC) to advise the Department on matters related to unemployment. The Council is composed of five employer and five employee representatives who are appointed by the Secretary of DWD to serve six-year terms. The UIAC is required to advise DWD in carrying out the purpose of the Wisconsin unemployment insurance law. The Council can submit its recommendations for changes in UI law to the Legislature and report its views on any other pending legislation which relates to UI. The Council generally presents an "agreed upon" bill for consideration by the Legislature in the fall of

each odd-numbered year. Historically, the Council's recommended changes in UI law presented to the Legislature have been adopted with few, if any, amendments. In 2013, the Governor and subsequently Joint Finance and the Legislature made significant changes to the state's UI law through the budget process. The Governor's initial recommendation, followed by the Legislature's amendments to modify UI law through the 2013 budget (Act 20) was a significant departure from the process as described above for how the Council's recommended changes to UI law had historically been presented to the Legislature. The suitable work provision in the Governor's 2015 recommended budget also bypasses the UIAC process. This proposal has not been considered previously by the UIAC.

2. Wisconsin's unemployment insurance law includes several provisions which may render some individuals ineligible to receive some or all of the regular benefits which they would otherwise receive. One of those provisions is the suitable work disqualification. The suitable work disqualification is for refusing an offer of suitable work made by a prospective employer and received by a claimant or employee. The job offer must be a bona fide attempt to secure the individual's service. It must be an unconditional offer of work that the individual has the opportunity to accept or reject, and all the specifics of the job (wage, hours, duties, and other conditions) must be explained or available. The availability for suitable work does not apply to an individual who is enrolled in training approved by the Department.

3. A claimant may refuse suitable work for good cause and maintain eligibility for UI benefits. An individual would have good cause if DWD determined that the new work involved wages, hours, or other conditions that were significantly lower or less favorable than similar work in the locality, and the claimant had not had reasonable opportunity (up to six weeks) to find a new job substantially in line with the individual's prior job's skill level and rate of pay. The initial six weeks of a claimant's job search is typically referred to as the "canvassing period." If it is determined that an employee without good cause, fails to accept suitable work when offered or fails to return to work when recalled, the employee is ineligible to receive any benefits unless he or she requalifies. In order to requalify, a claimant must earn six times the weekly benefit rate he or she would have received had the refusal of suitable work not occurred.

4. Under current administrative rule (DWD 127.01), a claimant is eligible for UI benefits for any given week when the Department finds that the claimant has completed at least 4 actions to search for suitable work within that week. Upon request of DWD, a claimant shall provide verification of conducting at least 4 work search actions that are reasonably designed to secure work. The reasonableness of a search for work, in part, depends on the employment opportunities in the claimant's labor market area. According to the rule, a work search which may be appropriate in a labor market area with limited opportunities may be totally unacceptable in an area with greater opportunities. Unreasonable limitations by a claimant as to salary, hours, or conditions of work indicate that a claimant is not making a reasonable search for suitable work. The Department expects claimants to conduct themselves as would a prudent person who is out of work and seeking work.

5. The bill requires that DWD, by administrative rule, specify different levels of suitable work based upon the number of weeks that a claimant has received benefits in a given benefit year. In the opinion of the Department, the proposal would not affect the existing six-week canvassing

period and the administration submitted an erratum to further clarify this point. Further, the administrative rule process includes an opportunity for hearings, public input, and legislative review. The Committee could approve the Governor's recommendation, as corrected to more clearly define that the levels of suitable work to be established by DWD would come after the initial six-week canvassing period [Alternative 1].

6. On the other hand, the state's UI system already has two statutorily defined levels of suitable employment. Furthermore, it has been argued that the consensus building process utilized by the UIAC has helped depoliticize UI policy discussions and increase program stability. The Committee could choose to delete the provision and the UIAC could provide further analysis of the proposal for possible inclusion in the Council bill for the 2015-16 legislative session [Alternative 2].

7. All 50 states, as well as three territories, require that an individual be actively seeking work or making a reasonable effort to obtain work. Several states tie a refusal of an offer of work to the length of time the claimant has been unemployed. Of the Upper Midwestern states, Michigan, Indiana and Iowa all have adopted some version of a "tiered" definition of suitable work.

8. In Michigan, during the first half of the claimant's eligible weeks of unemployment benefit payments, the claimant is required to accept any suitable work offer if the pay is at least 70 percent of his or her last gross pay. After collecting half of the claimant's entitled weeks, a claimant must apply for, and accept work that is outside his or her past training and experience if the pay is at least: 120 percent of his or her weekly benefit amount, the average wage (as determined by the state) for the particular work in the locality where the work is offered, and at or above the state minimum hourly wage (currently \$8.15 an hour).

9. In Indiana, a claimant must be willing to expand their work search beyond the recipient's normal trade or occupation and to accept work at a lower rate of pay in order to remain eligible for benefits as the length of unemployment grows. During week's five to eight of receiving unemployment insurance benefits, a claimant must accept work that pays at least 90% of the previous wage. After eight weeks of collecting benefits, a claimant must accept work that pays at least 80% of the previous wage.

10. In Iowa, a claimant need not accept work which does not meet certain wage criteria. The wage criteria are based upon the claimant's average weekly wage for work covered by unemployment insurance during the high quarter in the claimant's base period. The gross weekly wage offered by the prospective employer must equal or exceed the following percentage of a claimant's average weekly wage in order to be considered suitable work: 100 percent for work offered during the first five weeks of the unemployment claim, 75 percent for work offered during the 6<sup>th</sup> to 12<sup>th</sup> weeks of the unemployment claim, 70 percent for work offered during the 13<sup>th</sup> to 18<sup>th</sup> weeks of the unemployment claim, and 65 percent for work offered after the 18th week of the unemployment claim.

11. DWD has stated that it is not aware of any federal conformity issues with defining suitable work as directed in the bill. The Department did indicate that the provisions within the budget bill pertaining to defining "suitable work" would be sent to the U.S. Department of Labor for review.

## **ALTERNATIVES**

1. Approve the Governor's recommendation, as amended to more clearly define that the tiered levels of suitable work to be established by DWD would come after the initial six-week canvassing period.

2. Delete provision. (The UIAC could review and develop a proposal to establish different levels of suitable employment to be included in the Council's next recommended bill.)

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