



# WISCONSIN LEGISLATURE

P.O. BOX 8952 · MADISON, WI 53708

April 1, 2013

Ms. Janell Knutson, Chairwoman  
Unemployment Insurance Advisory Council  
Department of Workforce Development  
201 E. Washington Ave, Room E300  
Madison, WI 53708-8942

Dear Chairwoman Knutson,

As you know, all economic indicators show Wisconsin is creating jobs. We were very encouraged by the recent announcement by the Department of Workforce Development confirming that initial estimates of job losses were inaccurate, and that Wisconsin actually posted year-over-year job gains during every month of 2012. This confirms what we are hearing from constituents and job creators all over Wisconsin: Optimism is improving and businesses are slowly hiring again.

However, in spite of that optimism, important challenges remain. The recent recession showed that the solvency of the Wisconsin Unemployment Insurance Trust Fund was not up to the challenge. Because of this, as of today, the fund is still in deficit to the federal government by more than \$900 million. This deficit is the 7<sup>th</sup> highest in the nation. This is an improvement as the fund at one point was nearly \$1.5 billion in debt.

This deficit has real-world consequences for Wisconsin employers. At the end of 2012, the state was paying \$60,000 per day in related interest. The non-partisan Legislative Fiscal Bureau estimated that more assessments will be necessary in 2013 and 2014. These are essentially punitive taxes that are going to Washington bureaucrats instead of toward hiring new workers or infrastructure investments.

Another key concern is that many small businesses are facing continuing challenges due to Wisconsin's cumbersome and outdated unemployment insurance laws. Most individuals that make unemployment claims are honest, hardworking people who lost their job through no fault of their own. Unfortunately, some claimants abuse and scam the system, essentially punishing everyone else for their behavior.

Assembly and Senate Republicans have spent the past weeks and months talking to constituents and getting their input about wasteful or fraudulent UI claims at their businesses. Stories ranged from a former employee collecting UI while incarcerated in a state

prison to an individual who received UI benefits despite getting dismissed for sleeping on the job. Most troubling: A number of employers indicated that they don't even bother to contest UI benefits anymore because the standards at the hearings are unattainably high. This is a recipe for substantial fraud.

Therefore, we, the undersigned, urge the Unemployment Insurance Advisory Council to carefully review the attached Unemployment Insurance reform package. This package was put together with the goal of strengthening the solvency of Wisconsin's UI Trust Fund, rooting-out waste, fraud, and abuse within the UI system, and preserving benefits for needy applicants.

In particular, some of the major reforms to Wisconsin's Unemployment Insurance laws include the following:

- Quit Exceptions. Under current law, there are 18 quit exceptions to claim UI benefits. This package would cut those exceptions to seven.
- No checks for law breakers. According to the non-partisan Tax Foundation, Wisconsin is one of only 5 states in which the company can be charged for benefits even if the employee is charged for misconduct under current law. This package strengthens the "willful misconduct" provision and creates a "substantial fault" provision to help prevent law breakers from claiming unemployment insurance benefits.
- No benefits for criminals behind bars. This package adopts Minnesota law in prohibiting prison inmates from collecting UI.
- Ends extended training under federal law. Federal funding has expired for certain training programs previously authorized under 2009 Act 11, forcing the Wisconsin UI Trust fund to foot the bill. This package proposes repealing this program, as other retraining programs have been implemented.

In addition to making changes to reform UI law, this package proposes several changes specifically to strengthen Wisconsin's UI Trust fund, including the following:

- Authorizing a one-time GPR transfer to protect Wisconsin small businesses from another federal assessment. Wisconsin businesses paid the federal government \$36 million for interest on the loan in 2012. Although the trust fund solvency is improving, this proposal would protect small businesses from essentially another tax levied next year.
- Authorizing the temporary transfer of state dollars to improve the federal UI tax rate in Wisconsin.
- Adopting reforms that would create a relationship between Wisconsin's unemployment rate and benefits. Several states, including North Carolina, Florida, and the federal government tie available benefits to the unemployment rate.

As mentioned above, protecting legitimate UI claims is very important. To protect UI claimants and working families throughout Wisconsin, the proposed package includes a cost-of-living

increase for the maximum and minimum amount of Unemployment Insurance benefits that can be claimed. Some claimants would see their first increase since 2009.

Finally, please note that, unlike recent UI reform packages adopted in neighboring states, this proposal preserves the current maximum of 26 weeks during periods of high unemployment. This stands in stark contrast to Michigan, which recently cut 6 weeks of available UI benefits, and Illinois, which cut one week.

Please find attached a brief description of each component of the UI reform package. We look forward to your prompt attention to this important issue, and would appreciate a response no later than Thursday, May 2<sup>nd</sup>. As with any other unelected body, the Legislature reserves the right to act independently from any recommendations made by the Unemployment Insurance Advisory Council.

We look forward to your input on strengthening Unemployment Insurance laws in the State of Wisconsin.

Sincerely,



Dan Knodl  
State Representative  
24<sup>th</sup> Assembly District



Frank Lasee  
State Senator  
1<sup>st</sup> Senate District



Jim Steineke  
State Representative  
5<sup>th</sup> Assembly District




Dale Kooyenga  
State Representative  
14<sup>th</sup> Assembly District



Joe Sanfelippo  
State Representative  
15<sup>th</sup> Assembly District



Dave Murphy  
State Representative  
29<sup>th</sup> Assembly District



Dean Knudson  
State Representative  
30<sup>th</sup> Assembly District



Tyler August  
State Representative  
32<sup>nd</sup> Assembly District



John Jagler  
State Representative  
37<sup>th</sup> Assembly District



Joan Ballweg  
State Representative  
41<sup>st</sup> Assembly District



Travis Tranel  
State Representative  
49<sup>th</sup> Assembly District



Jeremy Thiesfeldt  
State Representative  
52<sup>nd</sup> Assembly District



Michael Schraa  
State Representative  
53<sup>rd</sup> Assembly District



Pat Strachota  
State Representative  
58<sup>th</sup> Assembly District



Dan LeMahieu  
State Representative  
59<sup>th</sup> Assembly District



Duey Stroebel  
State Representative  
60<sup>th</sup> Assembly District



Robin Vos  
State Representative  
63<sup>rd</sup> Assembly District



Tom Larson  
State Representative  
67<sup>th</sup> Assembly District



Jeff Stone  
State Representative  
82<sup>nd</sup> Assembly District



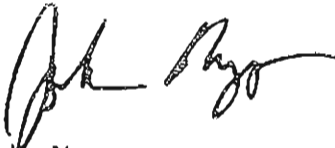
Mike Kuglitsch  
State Representative  
84<sup>th</sup> Assembly District



John Spiros  
State Representative  
86<sup>th</sup> Assembly District



John Klenke  
State Representative  
88<sup>th</sup> Assembly District



John Nygren  
State Representative  
89<sup>th</sup> Assembly District



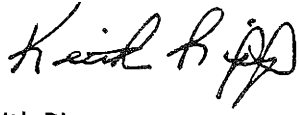
Chris Kapenga  
State Representative  
99<sup>th</sup> Assembly District



Leah Vukmir  
State Senator  
5<sup>th</sup> Senate District



Rick Gudex  
State Senator  
18<sup>th</sup> Senate District

A handwritten signature in black ink, appearing to read "Keith Ripp". The signature is fluid and cursive, with the first name "Keith" written in a larger, more prominent script than the last name "Ripp".

Keith Ripp  
State Representative  
42<sup>nd</sup> Assembly District

## **Item #1 Willful Misconduct Disqualification Standard**

We consistently hear from businesses throughout the state that Wisconsin's misconduct statute is too broad and causes benefits to go to those who should not qualify. Wisconsin is one of a handful of states that has such a generous definition of misconduct.

Request:

Pass DWD proposal D12-01 as drafted that would create two different tiers of misconduct. In addition, add language to the substantial fault definition that would include refusing to take a drug test that was in the employer's policy manual.

## **Item #2 Standardized DWD Handbook for Employers**

Small employers do not have the resources available to hire a full time HR Department, which can lead to misconceptions of how UI law is structured and administered.

Request:

Require DWD to create and publish a handbook for employers that clearly outlines the purpose of UI, and under what circumstances it is granted. In addition, provide language defining what would cause an employee to not receive UI. The contents of this manual are not to replace any existing HR manuals, or in any way invalidate others. This is to be used as a tool to ensure both employee and employer are on the same page when it comes to UI, and to provide a line for both to sign to acknowledge receipt of the document. This will not absolve an employer of their duties during hearings, but could be used as evidence of prior acknowledgement of Wisconsin law. Provide the necessary legal disclaimers.

## **Issue #3 Quit Exceptions**

Wisconsin currently has 18 different avenues for an employee to quit and still receive UI.

Request:

Adopt all provisions outlined in DWD proposal D12-19 to eliminate 10 of the quit exceptions.

## **Item #4 Job Search Requirements**

Wisconsin has one of the lowest job search requirements in the nation for recipients on UI.

Request:

Adopt D12-02 as approved by the UIAC that would increase the number of work search requirements from 2 to 4 per week.

## **Item #5 DWD Overpayments**

In the past when overpayments were paid out, the Department has issued a corrective payment from the balancing account if necessary and credited the balancing account when payments were received although there was not clear statutory authority for the Department to do so. In addition, there is some ambiguity on the Department's ability to collect overpayments. This issue has arisen that since more payments will be made, the risk of more errors increases.

Request:

Adopt D12-06 as proposed by DWD to ensure that DWD has the clear authority to collect UI overpayments when an error occurs to make sure claimants do not receive additional funds due to inadvertent Department mistakes.

## **Item #6 SSDI and UI Payments**

Claimants can theoretically receive UI and SSDI payments at the same time. To understand why such "double-dipping" may constitute fraud, please note the following general requirements for each program:

- To receive unemployment insurance benefit payments, claimants must state that they are able to work.
- To receive disability insurance benefit payments, claimants must state that they are unable to work.

Request:

Adopt D12-05 as approved by the UIAC that would prohibit this practice.

## **Item #7 Pin Numbers**

The Handbook for Claimants (UCB-10) is very clear that claimants should not give their personal identification number (PIN) to anyone and should change their PIN if they believe someone else knows it. Situations have arisen where claimants who are accused of fraud can claim that someone else filled in their paperwork without their knowledge, causing a continuation of benefits.

Request:

Adopt D12-03 as proposed by DWD to make it clear it is the responsibility of the claimant to keep their pin confidential.

## **Item #8 Claimant Fails to Provide Information to Department**

Current law imposes no lasting consequence for the claimant's failure to provide information in a timely manner to the Department.

Request:

Adopt D12-08 as proposed by DWD that would create consequences for claimants.

## **Item #9 Increase Department Collection Abilities**

The identification of financial institutions and assets for levy purposes has historically been done by collectors using manual investigation and search techniques. In recent years, other state agencies such as the Department of Children and Families (DCF) and Department of Revenue (DOR) have successfully implemented the Financial Record Matching Program to help identify the debtor's assets and bank accounts.

Request:



Adopt D12-10 as approved by the UIAC that would increase the accuracy and effectiveness of searches for collection efforts.

### **Item #10 Increase Weekly Benefits**

The Wisconsin Legislature has raised UI benefit rates roughly every two years since the 1970's. The last increase in rates was the second week of 2009.

Request:

Adopt D12-31 as proposed by DWD that would increase the maximum benefit rate to \$370 (+\$7) per week, and the minimum to \$55 (+\$1).

### **Item #11 Amending the Suitable Work Requirement Re-eligibility**

Generally claimants who fail to accept suitable work are deemed ineligible to receive benefits. Under current law, to again be eligible for benefits, four weeks needs to elapse from when they did not accept the suitable work and the claimant has earned wages equal to at least four times the employee's weekly benefit rate.

Request:

Adopt D12-30 as proposed by DWD that would increase the penalty for not accepting suitable work to a requalification standard of ten times the weekly benefit rate.

### **Item #12 Increasing Employer's Ability to Reoffer Employment**

There are limited actions available to an employer to contact an individual who is claiming UI against their fund balance to re-offer them suitable employment similar to their previous job.

Request:

Require DWD to provide a claimants contact information to the employer account they are drawing against.

### **Item #13 Backdate Claims Due to Phone System Down**

Claimants can get a waiver under certain circumstances when the DWD phone system for filing a claim was down. The laws governing this exception were put into place prior to the online database system.

Request:

Adopt D12-20 as proposed by DWD that would eliminate the phone system waiver.

### **Item #14 Increase Department Collection Tools**

DWD's debt collection abilities are not consistent with what is available to other state agencies.

Request:

Adopt D12-10, D12-17, and D12-23 as approved by the UIAC.

## **Item #15 Technical Administrative Proposals Impacting Employers**

Technical changes to improve operation of the UI program.

Request:

Adopt D12-28, D12-04, D12-15, and D12-27 as approved by the UIAC.

## **Item #16 Cafeteria Benefit Plans**

Employer paid cafeteria benefit plans are not included in determining an employer's taxable wage base, but can be included to determine a claimant's base period wages.

Request:

Adopt D12-16 as approved by the UIAC that would create consistent treatment of these benefit plans to not include them in base wage calculations.

## **Item #17 ALJ Reform**

Some ALJ's don't have the tools necessary to adequately decide UI cases, and are at times not following Department interpretation and guidelines when it comes to decisions.

Request:

1. Require DWD to create and implement a searchable database of cases determined by ALJ's. The database should be searchable by topic, and have a code citation index. Use is to be limited to other ALJ's and other personnel as determined by the Department.
2. Require DWD to mandate training and continuing education for all ALJs.

## **Item #18 Prisoners Collecting UI While on Work Release**

This was brought to our attention by an employer in the Oshkosh area participating in the Department of Corrections Work Release program. An inmate who was transferred to another facility was allowed to collect UI until he found work from a new work release program.

Request:

Employment by an employee that is in the work release system would fall under the definition of non-covered employment. This would prohibit an employee from collecting UI and would provide an additional incentive for employers to hire these individuals to help transition them back into society.

## **Item #19 Online Employer Complaint System**

Employers currently find it too difficult to report changes to various forms they receive or to file a fraud complaint.

Request:

Require the Department to create an online portal for employers to log in and file a complaint online in addition to other methods available.

## **Item #20 FUTA Tax Credit Payoff Guarantee**

"Taxable" employers are subject to a federal unemployment tax (FUTA), which is currently 6.0% of the first \$7,000 of employee earnings. FUTA allows a 5.4% tax credit for employers in good standing with their state unemployment program, so most employers have a net FUTA rate of 0.6%. However, the credit is reduced, or in other terms the net rate increases each year Wisconsin has an outstanding loan to the Federal Government.

The count date for eliminating the FUTA tax credit reduction occurs on Nov. 9<sup>th</sup>. If the trust fund is positive on this date, the FUTA credit reduction resets to a net FUTA rate of 0.6%. If not, the rate will increase, regardless of the fund solvency throughout the next year.

In 2014, the FUTA credit reduction will total \$143 million in business taxes. It is possible that on Nov. 9<sup>th</sup> of 2014 the fund could be nominally negative (< \$50 million), still triggering the FUTA credit reduction for another year.

Request:

According to DWD staff, the state can loan money to the UI fund to make the account balance. Give DOA the ability to provide a loan of no more than \$50 million from existing state revenues to the UI trust fund to ensure solvency on the Nov. 9, 2014 count date. This would be expressly listed as a loan, and would include terms for payment of the original funds (no interest) of future trust fund dollars. Include JFC review prior to transfer. Keep any provision consistent with DOL requirements for repayment.

## **Item #21 Reporting of Individual Business Reserve Fund Balance**

The current ratio system that determines the experience rating for a business is complicated and is frequently misunderstood by employers.

Request:

Require the Department to clarify and provide definitions on reports or in educational material to employers that clearly define how reserve fund balances operate.

## **Item #22 Random UI Search Audits**

The Federal Government requires DWD to do random search audits of all claimants in the Emergency Unemployment Compensation (Federal extensions).

Request:

Adopt this federal provision into state statute. Also require that once a year in one of DWD's fraud reports that the Department report how many audits were performed, what percent of claims this was, and the outcomes of the random audits.

## **Item #23 Timing of Required Department Reports**

The Department is required to provide three reports to the legislature, with deadlines close together.

Request:

Provide the Department greater flexibility with these reports by spacing out the required statutory deadlines.

### **Item #24 Extended Training Benefits**

Act 11 (2009) extends UI benefits to a claimant who is enrolled in approved training for up to 26 weeks after a claimant exhausts regular UI benefits, EUC08 benefits, EB benefits and Trade Act (if applicable) benefit weeks.

The cost of this extended training benefit was funded via American Recovery and Reinvestment Act of 2009 money, which have subsequently ended, and the program liabilities are now all burdened via the state UI trust fund.

Request:

Repeal the program.

### **Item #25 Temporary Agency Work Search**

Individuals can claim UI against a temp. agency under certain circumstances. Under current law, the recipient is not required to check with the temp. agency as part of their required work search.

Request:

Require workers who are drawing against the account or whose last employer was a “temporary help company” to contact their temp. company once a week in order to receive benefits.

### **Item #26 Standardized Witness Forms for Employers**

Situations have arisen where police reports and business documents have not been allowed as evidence during UI hearings.

Request:

Require the Department to create a standardized sworn affidavit witness form for hearings. This would allow for businesses to properly document an incident of an employee that would be presumed admissible during hearings. This will not absolve an employer of their duties during hearings. Also provide any necessary legal disclaimers.

### **Item #27 SAFI Reimbursement for Businesses**

Currently, all businesses are taxed to pay the interest payments on the remaining balance borrowed by the state. Federal law forbids using regular state UI taxes to pay this interest.

Request:

Provide \$19 million in 2013 and \$7 million in 2014 of GPR to pay the SAFI assessment on businesses.

## Item #28 Treatment of Legal Holidays for UI

Claimants can claim UI on a holiday (such as Thanksgiving) for the purposes of benefits for that week, even with the business being closed.

Request:

Consider all State and Federal legal holidays as non-working days for the purpose of UI if in the normal course of business the employer is closed.

## Item #29 Employer Notification of Work Search

The new database infrastructure for DWD will require a claimant to fill out information for which businesses they applied for. However, there currently is no way for an employer to be notified if someone listed them as applied for a job.

Request:

Require the Department to allow an employer to sign up to receive an electronic notification if someone lists their business as applied for a job.

## Item #30 Link Eligibility Weeks to Unemployment Rate

The recession exposed the need for Wisconsin to build up its trust fund balance to avoid the need to borrow money from the Federal Government again.

Request:

Link UI benefits to the unemployment rate of Wisconsin, as other states have proposed and the federal government does when it provides extended benefits.

Unemployment Rate	Weeks of Eligibility
8% or higher	26 week
7.50% - 7.99%	24 week
7% - 7.49%	22 week
6.50% - 6.99%	20 week
6% - 6.49%	18 week
5.50% - 5.99%	16 week
5% - 5.49%	14 week
4.99% or less%	12 week

A claimant entering UI would look at what the current quarter's unemployment rate as determined by the Department to determine their number of weeks of eligibility.

### **Item #31 Increase Lowest Reserve Percent**

Special assessments that are triggered during a negative fund balance do not delineate between light and heavy users of the system. In addition, there are concerns that businesses may be using UI as part of their business model for employee salaries.

Request:

Increase the lowest rate percent from -6% or less and create a -6%, -7%, and -8% and more tiers. Increase corresponding rates to a schedule A max of 12% total (Basic rate + solvency rate) for -8% or more.

### **Item #32 Increase Fraud Workers**

There is a shortage of federal reimbursement to adequately combat fraud in Wisconsin's UI system.

Request:

Create 3 additional FTE positions for fraud investigation. Encourage the Department to create more positions if they can leverage additional Federal dollars.

### **Item #33 Lost Licenses**

Under current law, an employee who is at fault for losing their license, which is needed for them to perform their work (such as a CDL for a truck driver), has the ability, under certain circumstances, to qualify for UI.

Request:

Repeal this provision.