

Date of Proposal: October 4, 2012
Proposed by: DWD
Prepared by: Pam James

ANALYSIS OF PROPOSED UI LAW CHANGE

Exclude Cafeteria Plan Benefits from Base Period Wages

1. Description of Proposed Change

The proposed change would exclude cafeteria plan benefits within the meaning of 26 USC 125 from the calculation of base period wages.

2. Proposed Statutory Language

Amend 108.02 (4m) (a):

(4m) BASE PERIOD WAGES. "Base period wages" means:

(a) All earnings for wage-earning service which are paid to an employee during his or her base period as a result of employment for an employer, except any payment made to or on behalf of an employee or his or her beneficiary under a cafeteria plan, within the meaning of 26 USC 125, if the payment would not be treated as wages without regard to that plan and if 26 USC 125 would not treat the payment as constructively received;

Delete 108.02 (4m) (g):

~~**(g)** All salary reduction amounts that are not wages and that would have been paid to an employee by an employer as salary during the employee's base period but for a salary reduction agreement under a cafeteria plan, within the meaning of 26 USC 125.~~

3. Proposer's Reason for the Change

Currently employers do not include cafeteria plan benefits for employees in taxable wages per Section 108.02 (26) (c) 3 and therefore these amounts are not taxed. However these amounts are included in base period wages per section 108.02(4m)g for benefit calculation purposes. If a claimant raises an issue, they will get included for his/her benefit calculation.

4. Brief History and Background of Current Provision

5. Effects of Proposed Change

- a. Policy. This change will bring consistency and clarification regarding these cafeteria benefit plan to our policy to not pay benefits on wages that are not taxed.

- b. Administrative Impact. There are no system changes required for this change.
- c. Equitable. The change will result in more equitable decisions in that claimants are currently being treated inconsistently in the calculation of their base period wages. The employer does not include the amount in the wage report, however a claimant can raise the issue and get these amounts included in base wages for benefit calculation purposes. Two claimants with the exact same wages and benefits could be paid different benefit amounts.
- d. Fiscal. This change will have a minimal fiscal impact of reducing benefits paid. No measurable effect on the Trust Fund is anticipated. Since this proposal only represents a small fraction of claimants there will be no measureable impact on the Trust Fund.

6. State and Federal Issues

- a. Chapter 108. The proposed change affects Wis. Stat. 108.02(4m)g that deals with definition of Base Period Wages and Wis. Stat. 108.02(26)(c)3 that deals with the definition of Wages and specific wage exclusions.
- b. Rules. No administrative rules will need to be promulgated or changed as a result of this proposal.
- c. Conformity. Section 108.02(26)(c)3 conforms with FUTA section 3306(b)5(G)

7. Proposed Effective/Applicability Date.

To be determined.