

Date: September 18, 2012
Proposed by: DWD
Prepared by: Pam James

ANALYSIS OF PROPOSED UI LAW CHANGE

Provide Reduced Tardy Filing Fee Incentive for Prompt Filing of Quarterly Wage Reports

1. Description of Proposed Change

In order to increase employer compliance with filing quarterly wage reports, the department proposes to increase the tardy filing fee for wage reports with a provision that if the employer sends in the wage report promptly, the tardy filing fee will be reduced. The department proposes to increase the tardy filing penalty to \$20 per employee as reported on most recent filed tax report or \$100, whichever is greater. If the employer files the wage report prior to 30 days after the date the department assesses the tardy filing penalty, the fee will be \$50 for each delinquent report.

2. Proposed Statutory Language

Amend 108.22(1) as follows:

108.22 Timely reports, notices and payments. (1) (a) If an employer, other than an employer that has ceased business and has not paid or incurred a liability to pay wages in any quarter following the cessation of business, is delinquent in making by the assigned due date any payment to the department required of it under this chapter, the employer shall pay interest on the delinquent payment at that monthly rate that annualized is equal to 9 percent or to 2 percent more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year, whichever is greater, for each month or fraction thereof that the employer is delinquent from the date such payment became due. If any such employer is delinquent in making any quarterly report under s. 108.205 (1) by the assigned due date, the employer shall pay a tardy filing fee of ~~\$50 for each delinquent quarterly report.~~ \$20 per employee as reported on the employer's most recently filed quarterly wage report or \$100, whichever is greater, except that if an employer files the report prior to 30 days after the date the department assesses the tardy filing fee, the tardy filing fee shall be \$50 for each delinquent quarterly report. If the employer fails to report after 30 days, and the department determines the employer count reported on the most recent tax report is inaccurate, the department may estimate the employee count and base the penalty on an estimated employee count.

3. Proposer's Reason for the Change

Under current law, the tardy filing fee is \$50. Once an employer is late with filing the report, there is no incentive to file. This proposed law change would encourage filing by creating a non-filing fee assessment that is greater than the tardy filing fee, with the stipulation that if the employer files the report, the non-filing fee will be waived and will be reduced to the tardy filing fee level. Currently, if a claimant files a claim and the employer has not filed the wage report, this causes a delay in getting the initial payment to the claimant. By encouraging prompt wage filing, this will improve benefit processing. The department still may waive the tardy filing fee if the employer demonstrates that it was tardy due to circumstances beyond the employer's control.

4. Brief History and Background of Current Provision

The quarterly wage reporting system was created in 1987 Wis. Act 38. That Act created a progressive tardy filing fee for delinquent quarterly wage reports (1-100 employee, \$15; 101-200 employees, \$40; 201-300 employees, \$65; 301-400 employees, \$90; more than 400 employees, \$115). In 1999 Wis. Act 15, the penalty for employers with 1 to 100 employees was raised from \$15 to \$25 and the penalty for employers with more than 100 employees was made \$75. In 2007 Wis. Act 59, a uniform penalty for all employers for filing tardy quarterly wage reports was created in the amount of \$50 for each delinquent report.

5. Effects of Proposed Change

- a. Policy. This will change our current policy and practice assessing the same fee amount for non-filing and late filing of quarterly wage reports. Under the department's current process, employers who have not filed by approximately 15 days following the due date of their quarterly tax filings get sent an estimate. Any employer who filed between the due date (including grace period) and prior to the date the estimates are sent out, is assessed a tardy filing fee of \$50. The current process sends the estimates and notice of the tardy filing fee. This proposal would provide a tardy filing fee of \$20 per employee as reported on the employer's most recent filed tax report or \$100, whichever is greater. The assessment notice would inform the employer that the tardy filing fee of \$50 per report will apply if they file the wage report within 30 days of the date of the assessment.
- b. Administrative Impact. The system changes are feasible and are estimated to take less than 40 hours. There is a similar process in place when an employer is assessed a penalty, when a zero payroll report is filed, the penalty is removed.
- c. Equitable. The proposal encourages employer compliance with reporting requirements and speeds the benefit claims process for claimants.
- d. Fiscal. No fiscal impact on reserve fund. This proposal would introduce variable penalties on late filing of wage reports by employers determined by how late the filing actually is. Since any fees assessed flow to the administrative operations fund and not the UI Trust Fund, there is no impact on the Trust Fund.

6. State and Federal Issues

- a. Chapter 108. The proposed change affects Wis. Stat. §108.22 that deals with timely reports, notices and payments.
- b. Rules. No administrative rules will need to be promulgated or changed as a result of this proposal.
- c. Conformity. None.

7. Proposed Effective/Applicability Date

The law change should be effective as of the effective date of the legislation.