

**D15-02
Combined Wage Claims**

Date: February 19, 2015
Proposed by: DWD
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**ANALYSIS OF PROPOSED UI LAW CHANGE
COMBINED WAGE CLAIMS**

1. Description of Proposed Change

The proposed amendment to Wisconsin law addresses a requirement created by the interaction of two federal mandates. The first federal mandate requires states to pay unemployment insurance (UI) benefits in cases where an unemployed individual has wages and employment in more than one state, commonly referred to as a combined wage claim (CWC). In these situations, if the individual combines their wages to establish a CWC to qualify for UI benefits in Wisconsin, Wisconsin is identified as the "paying state" and the other state is identified as the "transferring state." The second federal mandate prohibits states from providing relief from charges to an employer's UI account when the employer's actions cause an improper payment of UI benefits. The interaction of these two federal mandates has created a new requirement for states.

The requirement is outlined by the United States Department of Labor¹ (USDOL) in UIPL 2-12 Change 2. In UIPL 2-12 Change 2, the USDOL states that the "paying state" is responsible for issuing an appealable determination to an out-of-state employer when it is found that the employer is at fault for not responding timely or adequately to the paying state's request for information. The paying state must also notify the transferring state of the determination when appropriate. This interpretation creates two obligations for state UI agencies:

- The first obligation is to issue an appealable determination against the out-of-state employer. The appealable determination would be a prohibition on providing relief from charges to that employer's UI account due to the fact the employer's actions caused the improper payment.

Wisconsin's definition of "employer" does not include out-of-state employers. As a result, the Department cannot issue an appealable decision against an out-of-state employer. An amendment to Wisconsin's law is necessary to enable the Department to issue an appealable determination against an out-of-state employer.¹

- The second obligation is to advise the state agency that administers the UI program of the "transferring state" of the determinations issued that impact employers in that state. Wisconsin does not need to amend its law to comply with this second obligation.

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2. Proposed Statutory Language

Amend Wis. Stat. § 108.04(13)(f) to provide:

108.04 (13) (f) If benefits are erroneously paid because the employer fails to file a report required by this chapter, the employer fails to provide correct and complete information on the report, the employer fails to object to the benefit claim under s. 108.09 (1), the employer fails to provide correct and complete information requested by the department during a fact-finding investigation, unless an appeal tribunal, the commission, or a court of competent jurisdiction finds that the employer had good cause for the failure to provide the information, or the employer aids and abets the claimant in an act of concealment as provided in sub. (11), the employer is at fault. The department may issue a determination that an out-of-state employer is at fault if all of the following apply:

1. The benefits erroneously paid result from a combined-wage claim.
2. The out-of-state employer's account is potentially chargeable.

The out-of-state employer may appeal the determination pursuant to the requirement of s. 108.10. For purposes of this paragraph "combined-wage claim" shall mean a claim based on wages and employment in Wisconsin and under the unemployment compensation laws of another state that has been approved by the United States Secretary of Labor. For purposes of this paragraph "out-of-state employer" shall mean an employer for whom the claimant lacks sufficient employment in this state to qualify for benefits, but for whom the wages and employment with that employer form part of the basis for the filing of the combined-wage claim.

3. Proposer's Reason for the Change

This proposal is mandated by federal law.

4. Effects of Proposed Changes

- a. Policy. The proposed law change is mandated by federal law and will ensure that out-of-state and in-state employers are treated similarly under Wisconsin law.
- b. Administrative Impact. The number of claims filed in this type of situation is relatively small and the law change will not have a significant impact on UI operations.
- c. Fiscal. See attached fiscal estimate.

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5. State and Federal Issues

The change is mandated by federal law as a result of passage of the *Trade Adjustment Assistance Extension Act of 2011*. It is necessary to amend state law to conform with this federal mandate.

6. Proposed Effective/Applicability Date

This proposal would be effective and applicable with other changes made as part of the agreed bill cycle.

¹ The new federal mandate does not apply if the law in the other state would not otherwise permit or require a charge to an employer's account for benefits paid to a claimant since in such case there are no charges from which an employer could be relieved.

Proposal
Combined Wage Claim Employer Fault (D15-02)

Date: 12/19/2014

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Impact:

This mandated law change will not impact the UI Trust Fund.

The one-time IT estimate is 64 hours or \$5,312. Administrative one-time cost estimate for procedure development and training is 307 hours or \$15,628. The total one-time cost estimate is \$20,940.

Summary of the Proposal:

For unemployment purposes, a combined wage claim (CWC) is a federal mandate that only one state pays benefits if an unemployed worker has covered employment and wages in more than one state. In these situations, Wisconsin is deemed the "paying state" if the claimant elects to be paid UI benefits in Wisconsin. Since the other state transfers wages to the paying state to qualify a claimant for benefits that other state is deemed the "transferring state." Currently, if the paying state requests information from the transferring out-of-state employer to process the UI claim and the out-of-state employer fails to respond timely or adequately, no determination is made regarding employer fault for any improper payment that results. However, that employer will still be reimbursed if any improper payment is recovered by the department.

This federally mandated new law proposal indicates that states *cannot* reimburse an out-of-state employer's UI account if the employer's actions caused an improper payment and that employer is part of a combined wage claim. Wisconsin must now issue an appealable fault determination and that the out-of-state employer's UI account may not be relieved or reimbursed for the improper payment.

Methodology:

Wisconsin unemployment currently has the authority to reimburse or not reimburse an in-state employer account when Wisconsin is the "transferring" state. The federal mandate would result in a policy change only for Wisconsin and no fiscal impact to Wisconsin's UI Trust Fund due to the law change. Since this law change proposal gives Wisconsin the authority to issue an appealable fault determination to a CWC employer in *another* state, any savings by not reimbursing these employer accounts for an improper payment would impact the *other state's* UI Trust Fund.

IT/Administrative Impact:

Affected business area representatives were given a summary of the proposed law change. Each area developed a cost estimate which includes IT and procedure development and training. The one-time IT estimate is 64 hours or \$5,312. Administrative one-time cost estimate for procedure development and training is 307 hours or \$15,628. The total one-time cost estimate is \$20,940.