

Reimbursable Employer Fraud Charging Issue

Date: March 19, 2015

Proposed by: DWD

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ANALYSIS OF PROPOSED UI LAW CHANGE

REIMBURSABLE EMPLOYER FRAUD CHARGING ISSUE

1. Description of Proposed Change

Identity theft is a problem for state unemployment insurance (UI) agencies. Thieves assume the work history of claimants in order to receive UI benefits, which results in fraudulent charges to employers' accounts.

Identity thieves file fraudulent claims posing as claimants who work for employers subject to reimbursement financing as well as employers subject to contribution financing. Currently, charges to employers' accounts for UI benefit overpayments resulting from identity theft are handled differently for contribution and reimbursable employers.

Under Wis. Stat. § 108.04 (13) (d) 3. a., fraudulently obtained UI benefits are restored to the contribution employer's account and the UI benefit charges are transferred to the fund's balancing account. This represents a form of risk sharing among contribution employers.

For governmental units, Indian tribes, and nonprofit organizations that have elected reimbursement financing, the overpayment remains charged to the employer's account until it is recouped by the department. The reimbursable employer bears all the risk in identity theft cases.

The department proposes that the law treat reimbursable employers in a similar manner as provided under Wis. Stat. § 108.04 (13) (d) 3. a. for contribution employers.

The department will set aside \$2 million in the UI Trust Fund (plus interest), to pay for identity theft charges against reimbursable employers. The department projects the \$2 million plus interest will cover UI benefit charges to reimbursable employers due to identity theft for several years. If the balance of the set aside funds is less than \$100,000 the department also proposes that the law provide that all reimbursable employers be assessed to pay the UI benefit charges due to identity theft. The assessment would be similar to the Reimbursable Employer Debt Assessment that is authorized by Wis. Stat. § 108.151(7) to recover bad debt that results from uncollectible reimbursement financing.

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2. Proposed Statutory Language

Create Wis. Stat. § 108.153.

108.0153 Liability of reimbursable employees for identity theft. (1) In this section:

(a) "Payroll" has the meaning given in s. 108.02 (21) (a).

(b) "Reimbursable employer" means an employer under s. 108.02 (13) (a) that is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

(2) Except as provided in par. (6), each reimbursable employer that is subject to this chapter as of the date that a rate of assessment is established under this section shall pay an assessment to the fund at a rate determined by the fund's treasurer under subs. (3) and (4).

(3) On the effective date of this section, the fund's treasurer shall set aside \$2,000,000 in the balancing account. The amount set aside, plus any future interest thereon, shall be used to restore benefit charges to reimbursable employers, under s. 108.04 (13) (d) 4. c. On June 30 of each year, the treasurer shall determine whether the amount set aside, plus interest thereon, is less than \$100,000 and if the amount is less than \$100,000, the treasurer shall determine the rate of an assessment to be levied under sub. (2). Except as provided in sub. (6), the assessment shall become payable by all reimbursable employers as provided in sub. (7), unless the total amount of the assessment for all reimbursable employers would be less than \$5,000.

(4) The rate of assessment under this section for each calendar year shall be a rate, when applied to the payrolls of all reimbursable employers for the preceding calendar year, that will generate an amount equal to the amount that was allocated in the preceding calendar year to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c., but not more than \$200,000 for any year.

(5) Except as provided in sub. (6), the rate of each reimbursable employer's assessment under this section for any calendar year is the product of the rate determined under sub. (4), multiplied by the reimbursable employer's payroll for the preceding calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the department.

(6) If a reimbursable employer would otherwise be assessed an amount less than \$10 for a calendar year, the department shall, in lieu of requiring that reimbursable employer to pay an assessment for that calendar year, apply the amount that the reimbursable employer would have

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been required to pay to the other reimbursable employers subject to an assessment on a pro rata basis.

(7) The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days. Any assessment which remains unpaid after its applicable due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to the provisions under s. 108.22, the department may:

(a) Pursue action authorized under s. 108.15 (6), if the reimbursable employer is subject to reimbursement financing under s. 108.15;

(b) Terminate the reimbursable employer's election of reimbursement financing under s. 108.151 (3) (b), if the reimbursable employer elected reimbursement financing under s. 108.151(2); or,

(c) Pursue action authorized under s. 108.152 (6), if the reimbursable employer elected reimbursement financing under s. 108.152(1).

(8) If the payroll of a reimbursable employer for any quarter is adjusted to decrease the amount of the payroll after a employment and wage report for the reimbursable employer is filed under s. 108.205 (1), the department shall refund the amount of any assessment that was overpaid by the reimbursable employer under this section as a result of the adjustment.

Amend Wis. Stat. § 108.04(13) (d) 4. to authorize the department to Credit Reimbursable Employer's Accounts who are victims of identity theft.

108.04 (13) (d) 4. To correct any erroneous payment not so adjusted from the account of an employer which is a government unit, an Indian tribe, or a nonprofit organization and which has elected reimbursement financing subject to reimbursement financing, the department shall:

a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), credit Credit to the account benefits which would otherwise be payable to, or cash received from, the employee, if recovery of an overpayment is permitted under s. 108.22 (8) (c); or

b. If recovery of an overpayment is not permitted under s. 108.22 (8) (c), restore Restore the proper amount to the employer's account and charge that amount in accordance with s. 108.07(5), if recovery of an overpayment is not permitted under s. 108.22 (8) (c); or

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c. Restore the proper amount to the reimbursable employer's account, if the erroneous payment resulted from a false statement or representation about an individual's identity and the reimbursable employer was not at fault for the erroneous payment and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment.

Amend the definition of payroll under Wis. Stat. § 108.02 (21) (b) to exclude s. 108.153. Payroll under s. 108.153 only applies to the definition of payroll under 108.02 (21) (a).

108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s.~~ ss. 108.151 (7) (a) and 108.153, an employer's payroll for calendar years prior to 2009 includes only the first \$10,500 of wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of such wages, and for calendar years after 2012 includes only the first \$14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

Amend Wis. Stat. § 108.151(3)(b) to enable the department to terminate a non-profit's election of reimbursement financing if it fails to pay assessment.

108.151 (3) (b) The department may terminate any election as of the close of any calendar year if the department determines that the employer has failed to make the required reimbursement payments or no longer satisfies the requirements of sub. (4), or whenever s. 108.16 (8) applies, or fails to pay the required assessments authorized by s. 108.151(7) or 108.153.

3. Proposer's Reason for the Change

If an identity thief files a claim using an employee's identity and the employer reports this timely to the department, there is no fault by the employer. Identity thieves randomly file claims against both reimbursable and contribution employers. This proposal will relieve employers which are subject to reimbursement financing of being solely responsible to pay charges for which they are not responsible.

The proposal will represent risk sharing that is similar to what is provided to contribution employers.

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4. Effects of Proposed Changes

- a. Policy. This proposal will provide for more equitable treatment of reimbursable employers whose accounts are charged as a result of identity theft.
- b. Administrative Impact. The administrative impact of this proposal is likely to be minor.
- c. Fiscal. See Attached Fiscal Estimate.

5. State and Federal Issues

A state's UI law must conform to, and the administration of its law must substantially comply with, applicable federal requirements.

The department is not currently aware of any federal conformity issues with this proposal.

The department recommends that the statutory language associated with this proposal be sent to the U.S. Department of Labor for review.

6. Proposed Effective/Applicability Date

This proposal should be effective beginning on January 1, 2016.

Reimbursable Employers Non-charging When Impacted By Imposter Fraud (D15-04)

Date: 03/17/2015

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Impact: This proposal will result in reimbursable employer imposter benefit payment write-offs of approximately **\$31,080** annually charged to the UI Trust Fund.

Two million dollars will be set aside in the UI Trust Fund and will generate approximately **\$47,500** in interest annually, calculated at an interest rate of 2.375%.

IT and Administrative Costs: The total one-time implementation cost is estimated at **\$53,950**. The one-time IT implementation cost is estimated at \$41,500 and one-time administrative implementation cost is estimated at \$12,450.

Summary of the Proposal:

Under current law, benefit payments due to imposter activity are charged to reimbursable employer accounts and the overpayment remains charged until collected. However, overpayments are almost never collected in imposter cases, as benefits are paid and charged to accounts where no employment relationship exists. This proposal sets aside \$2M in the UI Trust Fund and these funds (plus interest) will be used to pay for the imposter claim charges against reimbursable employers. The interest alone should fund the imposter payment write-offs indefinitely. However, if the set aside funds reach a balance of \$100,000, the proposal provides for an assessment against all reimbursable employers to pay the benefit charges due to imposter activity (similar to the Reimbursable Employer Debt Assessment).

Methodology:

In 2014, resolution code AD135 was created to determine benefit payments that are made by imposters and charged against reimbursable employer accounts. From July 2014 to February 28, 2015, there have been 135 imposter determinations against reimbursable employers, averaging \$370 in overpayments before the imposter activity was detected (one week). Projecting this prorated amount annually, this averages 168 imposter claims against reimbursable employers per year. The UI division has been aggressively monitoring imposter claim activity. Given the improved monitoring, going forward, we estimate one-half or less of the determinations would include overpayments. At an average of 84 cases per year with an average benefit overpayment of \$370, it is projected that \$31,080 annually in reimbursable employer write-offs due to imposter activity would now be charged to the UI Trust Fund.

This imposter activity write-off would be less than the interest generated by the \$2M set aside in the UI Trust Fund. Calculated at an interest rate of 2.375%, \$2M generates approximately \$47,500 in interest annually.

IT and Administrative Costs: IT one-time implementation changes to SUITES, CEDARS and correspondence/reports, are estimated at 500 hours or \$41,500. One-time administrative staffing costs are estimated at \$12,450 or 30% of the total IT implementation cost. The total implementation cost is approximately \$53,950.