

**D15-08
Concealment**

Date: March 19, 2015
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE

DEFINITION OF CONCEALMENT

1. Description of Proposed Change

The department proposes amending the current definition of conceal, Wis. Stat. §108.04(11)(g). The current definition was created by 2007 Wisconsin Act 59, along with other measures to prevent unemployment insurance benefit fraud. The Labor and Industry Review Commission interprets the statute to not only require an intent to mislead, but also that the department must prove that the claimant provided false information with the intent to receive benefits to which they knew they were not entitled. This proposal clarifies that concealment does not require such knowledge. The proposal also creates a rebuttable presumption that the claimant misled the department when providing the false information and provides for rebuttal by submission of competent evidence.

2. Proposed Statutory Language

Wis. Stat. § 108.04(11)(g) is amended to read:

10804 (11) (g) For purposes of this subsection, “conceal” means to ~~intentionally~~ mislead ~~or defraud~~ the department by withholding or hiding information or making a false statement or misrepresentation. “Conceal” does not require an intent or design to receive benefits to which the claimant knows he or she is not entitled.

Wis. Stat. § 108.04 (11) (h) is created to read:

108.04 (11) (h) As a condition of eligibility for benefits under this chapter, a claimant has a duty of care to provide an accurate and complete response to each department inquiry. In response to the department’s questions in the benefit claims process, a claimant’s false statement or representation creates a rebuttable presumption that the claimant misled the department. A claimant may rebut the presumption by competent evidence that the claimant did not mislead the department. Competent evidence does not include evidence that a claimant provided false or misleading answers due to any of the following:

D15-08
Concealment

1. A claimant's failure to read or follow instructions or other communications by the department related to a claim.

2. A claimant's reliance on the statements or representations of persons other than a department employee authorized to provide unemployment insurance advice to claimants regarding the current claim.

3. A claimant's limitation or disability, where the claimant has not brought such limitation or disability to the attention of a department employee authorized to provide service to claimants before issuance of the initial determination and has not provided competent evidence of the disability or limitation.

3. Proposer's Reason for the Change

After the Legislature enacted the definition of "conceal" in 2008, the appeal tribunal and commission have interpreted the definition of concealment more narrowly than originally intended. The changes to the definition of "conceal" under this proposal are intended to cover a claimant's falsifications or failures to report facts related to his or her unemployment. The revised definition will not result in a finding of concealment as a result of an honest mistake or inadvertence. The proposal provides a rebuttable presumption that reporting incorrect information is concealment.

4. Effects of Proposed Changes

- a. Policy. This proposal clarifies what constitutes an act of concealment for claimants filing unemployment insurance benefit claims.
- b. Administrative Impact. This proposal clarifies what constitutes an act of concealment and will provide for more consistent determinations by adjudicators, the appeal tribunal and the commission.
- c. Fiscal. See attached fiscal estimate.

5. State and Federal Issues

This proposal poses no known federal conformity issues. The Department recommends that this proposal be sent to the U.S. Department of Labor for conformity review.

6. Proposed Effective/Applicability Date

This proposal should be effective for initial determinations made after the first Sunday after publication of the Act in which it is enacted.

Date: 03/18/2015

Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Trust Fund Impact: We are unable to quantify the fiscal impact to the UI Trust Fund. However, the impact is expected to be small but positive.

IT and Administrative Impact: There is no expected IT impact and limited administrative impact.

Summary of the Proposal: This law change proposal modifies the definition of conceal and gives specific examples of evidence that cannot be used to rebut the presumption of concealment when a claimant provides false or misleading information to the department. The intent is to add clarity and consistency to concealment determinations from the initial determination level through the LIRC level.

Methodology: This law change proposal is not expected to increase the number of concealment determinations found at the initial determination level. However, since the definition of conceal is more clearly defined with specific examples of what does not constitute competent evidence to rebut the presumption of concealment within the statute, it may result in more consistency at all levels, which may lead to fewer overturned concealment determinations. Since this would result in fewer overturned benefit reductions and penalties due to fraud, it would have a small but positive impact on the UI Trust Fund.

IT and Administrative Costs: No IT changes are needed to implement this law change proposal, thus there is no expected IT impact. This law change proposal adds clarity and consistency to current department policies in determining concealment. There are minimal administrative changes needed and thus minimal expected administrative impact.