

**ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EMERGENCY RULE**

The Wisconsin Department of Workforce Development adopts the following emergency rule *to create* DWD 113.027, relating to waiving interest in limited circumstances for employers subject to reimbursement financing when reimbursements are delinquent due to COVID-19.

The Governor approved the scope statement for this rule, SS 038-20, on May 8, 2020. The scope statement was published in register No. 773A2, on May 11, 2020, and was approved by the Department on May 22, 2020. This rule was approved by the Governor on May 29, 2020.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

On March 12, 2020, by Executive Order 72, the Governor declared a public health emergency to protect the health and wellbeing of the state's residents and directed state agencies to assist as appropriate in the State's ongoing response to the public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. Due to the pandemic, many businesses have temporarily or permanently closed, resulting in significant business income reduction and layoffs.

Under 2019 Wisconsin Act 185, 50% of unemployment insurance benefit claims for initial claims related to the public health emergency declared on March 12, 2020 will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing. The remaining 50% will be reimbursed by the federal government under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The federal government interprets the CARES Act to require employers subject to reimbursement financing to first pay their reimbursements due to the state in full before the federal government will reimburse those amounts. *See* U.S. Department of Labor (US-DOL) Unemployment Insurance Program Letter (UIPL) 18-20 (April 27, 2020). But, the CARES Act provides that states have "flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest...." CARES Act s. 2103(a). US-DOL encourages states to "interpret or amend their state unemployment compensation laws in a manner that provides maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest." UIPL 18-20, p. 2.

Because of the pandemic-related economic devastation, employers subject to reimbursement financing may be unable to pay their reimbursements for unemployment claims in full. And, the requirement to immediately pay their reimbursements to receive the federal funding could further jeopardize the viability of employers subject to reimbursement financing.

Statutes Interpreted

Section 108.22 (1) (cm), Stats.

Statutory Authority

Sections 108.14 (2) and 108.22 (1) (cm), Stats.

Explanation of Statutory Authority

The Department has specific and general authority to establish rules interpreting and clarifying provisions of ch. 108, Stats., unemployment insurance and reserves, and general authority for promulgating rules with respect to ch. 108, Stats., under s. 108.14 (2), Stats.

Interest is assessed monthly on delinquent employer contributions and reimbursements in lieu of contributions. Section 108.22 (1) (a), Stats. The Department may promulgate rules to, in limited circumstances, “waive or decrease the interest charged.” Section 108.22 (1) (cm), Stats.

Related Statutes or Rules

Current s. DWD 113.025 permits the Department to waive or decrease interest in limited circumstances.

Plain Language Analysis

This rule specifies the limited circumstances under which employers subject to reimbursement financing, who are unable to timely pay their reimbursements due to the COVID-19 pandemic, may receive a waiver of interest on their reimbursements. Under this rule interest is waived starting on June 1, 2020.

Summary of, and comparison with, existing or proposed federal statutes and regulations

Federal law requires that state laws conform to and comply with federal requirements. 20 CFR 601.5.

The CARES Act provides that states have “flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest....” CARES Act s. 2103(a). US-DOL encourages states to “interpret or amend their state unemployment compensation laws in a manner that provides maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest.” UIPL 18-20, p. 2.

Comparison with rules in adjacent states

Michigan, Illinois, and Iowa do not appear to waive interest for employers subject to reimbursement financing. Minnesota law permits the compromise of reimbursements due by employers under Minnesota Statutes 2019, s. 268.067(b).

Summary of factual data and analytical methodologies

The Department reviewed Wisconsin statutes, administrative rules, the Governor's Emergency Orders, and recent changes to federal law to determine the options available to provide maximum flexibility to employers subject to reimbursement financing regarding assessment of interest.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

Under 2019 Wisconsin Act 185, 50% of the unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement financing; the remaining 50% will be reimbursed by the federal government under the federal CARES Act. The charging relief for employers under state and federal law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020.

The federal government interprets the CARES Act to require employers subject to reimbursement financing to first pay their reimbursements due to the state in full before the federal government will reimburse those amounts. Businesses may find it difficult to pay their reimbursements timely during the COVID-19 pandemic due to a reduction in business income. Under this rule, businesses subject to reimbursement financing will not be assessed interest for tardy reimbursements.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business

This rule may have a positive impact on small businesses, as defined in s. 227.114 (1), Stats., if a small business is subject to reimbursement financing. Those businesses would receive the benefit of a waiver of interest under this rule if they do not pay their reimbursements timely.

Agency contact person

Questions related to this rule may be directed to:

Janell Knutson, Director, Bureau of Legal Affairs
Division of Unemployment Insurance
Department of Workforce Development
P.O. Box 8942
Madison, WI 53708
Telephone: (608) 266-1639
E-Mail: Janell.Knutson@dwd.wisconsin.gov

Place where comments are to be submitted and deadline for submission

Mark Kunkel, Rules and Records Coordinator
Department of Workforce Development
P.O. Box 7946
Madison, WI 53707
E-Mail: DWDAdminRules@dwd.wisconsin.gov

Comments will be accepted until a date to be determined.

1 **SECTION 1.** DWD 113.027 is created to read:

2 **DWD 113.027 Waiver of Interest for Employers Subject to Reimbursement**

3 **Financing.** The department shall waive interest assessed under s. 108.22 (1) (a), Stats., if all the
4 following conditions are met:

5 **(1)** The employer for which the interest is waived is a reimbursable employer, as defined
6 in s. 108.155 (1) (b), Stats.

7 **(2)** The employer owes reimbursements in lieu of contributions.

8 **(3)** The interest was assessed on or after June 1, 2020.

9 **SECTION 2. EFFECTIVE DATE.** This rule shall take effect on June 5, 2020 or upon
10 publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats., whichever is
11 later.

Dated this ____ day of _____, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By:

Caleb Frostman, Secretary