

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

The Wisconsin Department of Workforce Development adopts the following emergency rule *to amend* DWD 102.01 and *to create* DWD 102.04, relating to employer contribution rates for 2021.

The Governor approved the scope statement for this rule, SS 070-20, on June 5, 2020. The scope statement was published in register No. 774A2, on June 8, 2020. The notice of public hearing and comment period on the scope statement was published on June 15, 2020 in register No. 774A3. The public hearing on the scope statement was held on June 18, 2020. The scope statement was approved by the Department on June 19, 2020. This rule was approved by the Governor on June 23, 2020.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

By Executive Order 72, the Governor declared a public health emergency to protect the health and well-being 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, s. 50, which created s. 108.07 (5) (bm), Stats., the Department of Workforce Development is directed to charge unemployment benefits for initial claims that are related to the public health emergency declared by Executive Order 72, to the balancing account of the Trust Fund for contribution employers. This treatment of claims charging applies to weeks of benefits payable from the week of March 15, 2020 through December 26, 2020.

The Department's antiquated computer systems are ill-equipped to handle the changes in charges from the employers' accounts to the balancing account. Each weekly claim to be charged to the balancing account under new section 108.07 (5) (bm), Stats., requires Department personnel to manually change the benefit charges from the employer's account to the balancing account of the Trust Fund after any federal funds have been appropriately applied. The Department estimates that this manual process will take approximately 15 minutes for each weekly claim. Given the high volume of claims being filed during the pandemic, the Department expects that the thousands of hours of manual work to complete the charging changes will not be completed by June 30, 2020 — and likely will not be completed by the end of 2020.

Under s. 108.18 (4), Stats., "an employer's contribution rate on the employer's payroll for a given calendar year shall be based on the reserve percentage of the employer's account as of the applicable computation date," which is June 30 of each year, as specified in s. 108.02 (8), Stats.

Section 108.02 (22), Stats., requires the Department to determine the status of an employer's account when setting the reserve percentage for contribution purposes as of the computation date.

Because the Department will not be able to complete the manual charging changes required by 2019 Wisconsin Act 185 by June 30, 2020, most employers' contribution rates for 2021 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2021 that are higher than they should be.

If this rule is not promulgated, the Department would be required to halt programming changes related to new federal unemployment benefit programs and reassign and train staff currently processing those claims to assist with the manual benefit recharging efforts to attempt to meet the June 30, 2020 deadline for calculating 2021 tax rates. This rule will protect claimants who need benefit payments and protect employers from unnecessarily high contribution rates. Higher contribution rates for employers and unpaid benefit claims could impede Wisconsin's economic recovery from the pandemic.

Statutes Interpreted

Sections 108.02 (8), 108.02 (22), 108.07 (5) (bm), and 108.18 (4), Stats., which are discussed in the above Finding of Emergency.

Statutory Authority

Section 108.14 (2), 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.

Related Statutes or Rules

Sections 108.02 (8), 108.02 (22), 108.07 (5) (bm), and 108.18 (4), Stats.

Plain Language Analysis

This rule provides that the Department, in calculating an employer's net reserve as of the June 30, 2020 computation date, shall disregard all benefit charges and benefit adjustments for the period of March 15, 2020 through June 30, 2020.

The Department will, in effect, assume that all benefit charges and adjustments were related to the public health emergency declared by Executive Order 72. This assumption applies only for the purposes of setting the contribution rates for 2021. This rule will ensure that employers' contribution rates for 2021 are calculated based on reserve fund balances as of June 30, 2020 so that the policy goals of 2019 Wisconsin Act 185 are met. This rule will only affect calculation of

contribution rates for 2021. Contribution rates for 2022 will be calculated in 2021 after all recharging is complete.

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.

Under the federal Families First Coronavirus Response Act, Public Law 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), a state may receive a share of \$500 million of federal funding for administering the state's unemployment insurance program if the "State has demonstrated steps it has taken or will take to ... non-charge[e] employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers." 42 USC 1103(h)(3)(B). Wisconsin's share of the \$500 million is about \$9.457 million.

Comparison with rules in adjacent states

Illinois does not charge employers for unemployment benefits "for a week of unemployment that begins on or after March 15, 2020, and before December 31, 2020, and is directly or indirectly attributable to COVID-19..." 820 ILCS 405/1502.4(A).

By Executive Order 2020-76, Michigan charges benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

Iowa is currently not charging unemployment benefits related to COVID-19 to employer accounts.

By Emergency Executive Order 20-05, Minnesota will "not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer."

Summary of factual data and analytical methodologies

The Department reviewed Wisconsin statutes, administrative rules, and recent changes to federal law to determine the options available to ensure that employer contribution rates are appropriately determined for 2021.

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

Currently, an employer's contribution rate on the employer's payroll for a given calendar year is based on the reserve percentage of the employer's account as of the applicable computation date, June 30 of each year. Ultimately, however, the employer's reserve fund balance takes into account all charges and credits on a rolling basis so that the employer's unemployment experience determines the contribution rate.

Under 2019 Wisconsin Act 185, s. 50, 100% of the unemployment insurance benefit claims related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the balancing account of the Trust Fund for employers subject to contribution financing. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020. However, charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government.

Because the Department will not be able to complete the manual charging changes required by 2019 Wisconsin Act 185 by June 30, 2020, most employers' contribution rates for 2021 will be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would result, for most employers subject to contribution financing, in contribution rates for 2021 that are higher than they should be.

This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments with a transaction date of March 15, 2020 through June 30, 2020 relate to the public health emergency declared by Executive Order 72. This will have the effect of aligning employer contribution rates for 2021 with the policy goals of 2019 Wisconsin Act 185.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business

The proposed rule is expected to have a positive economic impact on employers subject to contribution financing, which may include small businesses, to provide those employers with contribution rates that align with the policy goals of 2019 Wisconsin Act 185.

Agency contact person

Questions related to this rule may be directed to:

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Place where comments are to be submitted and deadline for submission

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Comments will be accepted until a date to be determined.

1 **SECTION 1.** DWD 102.01 is amended to read:

2 **DWD 102.01 Purpose.** This chapter specifies the initial contribution rates for certain
3 categories of employers. This chapter also interprets ch. 108, Stats., for determining employer
4 contribution rates for 2021.

5 **SECTION 2.** DWD 102.04 is created to read:

6 **DWD 102.04 Employer Contribution Rates for 2021.** Solely for the purposes of ss.
7 108.02 (8), 108.02 (22), and 108.18 (4), Stats., in calculating an employer's net reserve as of the
8 June 30, 2020 computation date, the department shall disregard all benefit charges and benefit
9 adjustments for the period of March 15, 2020 through June 30, 2020.

10 **SECTION 3. EFFECTIVE DATE.** This rule shall take effect on June 29, 2020.

Dated this 25th day of June, 2020.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: _____

Caleb Frostman, Secretary