

**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 February 23, 2021.

**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 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 February 4, 2021, the Governor issued Executive Order 105, declaring another state of emergency and public health emergency. On March 13, 2020, the President declared a national emergency concerning the COVID-19 pandemic. On April 4, 2020, the President declared a major disaster under the federal Stafford Act in Wisconsin due to 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 WI 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 and the federal Continued Assistance Act of 2020. Due to the Department's antiquated computer systems, it will take many months to complete the recharging of benefits from employer accounts. Until the recharging is complete, interest will continue to accrue on reimbursable employer accounts if employers do not pay their unemployment reimbursements timely. The Department previously promulgated emergency rule EmR2011, which waived interest for reimbursable employers. The Joint Committee for Review of Administrative Rules has extended EmR2011 for the maximum period allowed under s. 227.24 (2) (a), Stats. As a result, that rule expires on March 1, 2021. The Department still has not completed the recharging work because it has been required to program new federal unemployment benefit programs that paid additional benefits to unemployed Wisconsin residents.

Because of the pandemic-related economic devastation, employers subject to reimbursement financing may be unable to pay their reimbursements for unemployment claims in full. Under new state and federal laws that provide for the recharging of benefits, those employers may not actually owe the reimbursements. The requirement to immediately pay their reimbursements could further jeopardize the viability of employers subject to reimbursement financing. A

waiver of interest for reimbursable employers is therefore necessary. The Department never contemplated promulgating the waiver as a permanent rule. A permanent rule is not appropriate, as the waiver will no longer be necessary after the threats to public peace, health, safety, and welfare caused by the COVID-19 pandemic have abated.

### ***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.

Emergency rule EmR2011, which expires March 1, 2021, waives interest for reimbursable employers due to the COVID-19 pandemic.

### ***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 March 1, 2021 for reimbursable employers until the Act 185 recharging is finished.

### ***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 federal 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 law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through December 26, 2020. The charging relief for Wisconsin employers under the CARES Act and the Continued Assistance Act is effective for the period March 15, 2020 through March 13, 2021.

Businesses that do not receive charging relief 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:

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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.

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

## DWD 113.027 Waiver of Interest for Employers Subject to Reimbursement

**Financing.** The department shall waive interest assessed on or after March 1, 2021 for delinquent reimbursements due in lieu of contributions if the department has not completed the charging of benefits under the requirements of s. 108.07 (5) (bm), Stats. for all reimbursable employers, as defined in s. 108.155 (1) (b), Stats.

**SECTION 2. EFFECTIVE DATE.** This rule shall take effect on March 1, 2021 or upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats., whichever is later.

Dated this 24th day of February, 2021.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By:

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Amy Pechacek, Secretary-Designee