

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date April 27, 2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter DWD 123 - Benefit Reports Filed by Employers	
4. Subject Benefit charges for initial claims related to the public health emergency declared by Executive Order 72.	
5. Fund Sources Affected <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis. Stat. § 20.445(1)(gd)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$ minimal; none for some businesses	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Currently, unemployment benefits are charged to employer accounts unless a statutory exception applies. 2019 Wis. Act 185, sec. 50, which created s. 108.07(5)(bm)1., Stats., directed the Department to provide employers charging relief for unemployment benefits for initial claims that are related to the public health emergency declared on March 12, 2020 by Executive Order 72, for benefits payable between March 12, 2020 and December 31, 2020. 2021 Wis. Act. 4, sec. 5, which created s. 108.07(5)(bm)1m., Stats., extended the charging relief from December 31, 2020 to March 13, 2021, and requires the Department to presume that all initial claims for benefits through that date relate to the public health emergency unless the most recent separation from unemployment is due to a labor dispute, voluntary termination of work, discharge for misconduct, or discharge for substantial fault. For those employers who do not meet the presumption that the claim is related to the public health emergency, this emergency rule sets a deadline by which employers must submit the information required by section 108.04 (2) (d), Stats. The deadline is the latter of May 14, 2021, or 30 days after the Department sent a notification to the employer of an initial claim for benefit years beginning on or after March 15, 2020 through March 13, 2021. The deadline is necessary to ensure that all information regarding the initial claims is submitted in time for processing the recharging of benefits before June 30, 2021, which is the computation date that the Department must use to determine contribution rates for 2022. This rule also determines the treatment of employers in a claimant's base period who are not the most recent employer of a claimant whose initial claim is related to the public health emergency declared on March 12, 2020, by Executive Order 72. The Department will apply the employer charging provisions of 2019 Wis. Act 185 and 2021 Wis. Act 4 to all base period employers for the claim. Finally, this rule requires the Department to interpret the provisions of s. 108.07 (5) (bm), Stats., by applying the provisions of s. 108.07(5) (bm), Stats., to additional initial claims filed on or after March 15, 2020 for a benefit year that	

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began before March 15, 2020 so that the legislative intent of 2021 Wis. Act 4 is properly applied.

In order to meet the June 30, 2021 completion date, the Department needs the requested information from employers to determine whether or not they are entitled to charging relief unless the claims fall within the charging relief presumption. This rule sets a deadline to submit requests for charging relief to ensure that all recharging work is completed by the June 30, 2021 deadline.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Employers subject to the provisions of the Wisconsin unemployment insurance law may be impacted by the proposed rule if they are required by the rule to submit a form to request relief of charging. The Department held a hearing on the scope statement but no comments were submitted.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.
None.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule may affect small businesses, as defined in s. 227.114 (1), Stats., if the small business is subject to the Wisconsin unemployment insurance law. Those businesses may receive a benefit under this rule if their employees filed claims for unemployment insurance benefits during the period of March 15, 2020 through March 13, 2021 for those claims that do not meet the presumption for charging relief because they can timely request such relief as instructed by the rule.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This emergency rule is expected to have a positive economic impact on employers, if those employers are required to submit information to the Department to request charging relief, do so by the deadline set by this emergency rule, and receive charging relief as a result.

The policy alternative is to do nothing, which could negatively impact employers not subject to the presumption but who can demonstrate that they are entitled to charging relief. For those employers, their contribution rates might be higher for 2022 than they should be.

16. Long Range Implications of Implementing the Rule

This rule is intended to provide emergency relief to employers during the pandemic and assist with the recovery efforts in the state.

17. Compare With Approaches Being Used by Federal Government

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 U.S.C. § 1103(h)(3)(B). Wisconsin's share of the \$500 million is about \$9.457 million.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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.

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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.”

19. Contact Name

Janell Knutson

20. Contact Phone Number

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This emergency rule is expected to have a positive economic impact on employers, which may include small businesses, if those employers are required to submit information to the Department to request charging relief, do so by the deadline set by this emergency rule, and receive charging relief as a result.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Under 2019 Wis. Act 185, s. 50 and 2021 Wis. Act 4, 100% of the unemployment insurance benefits for initial claims for benefit years beginning on or after March 15, 2020 through March 13, 2021 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. Fifty or twenty-five percent of the unemployment insurance benefits for initial claims related to the public health emergency declared on March 12, 2020 by Executive Order 72 will be charged to the interest and penalty appropriation for employers subject to reimbursement financing; the remainder will be paid by the federal government. The charging relief for employers under state law is effective for state unemployment insurance benefits paid for the period of March 15, 2020 through March 13, 2021. However, charges for the first week of unemployment and for benefits paid under work share plans will be charged to the federal government during that period.

Section 108.04 (2) (d), created by 2019 Wis. Act 185, requires claimants and employers to indicate whether a claim for regular benefits is related to the public health emergency declared on March 12, 2020, by executive order 72. 2021 Wis. Act 4 extends the relief from benefit charging for employers from December 31, 2020 to March 13, 2021, and specifies that the Department must presume that all initial claims through March 13, 2021 are related to the public health emergency and are, thus, entitled to recharging relief unless the separation is due to a labor dispute, misconduct, substantial fault, and, in most cases, a voluntary termination of work. In those cases where the presumption does not apply, this rule is necessary for the Department to properly and timely apply s. 108.07 (5) (bm), Stats., which provides for the charging of certain benefits to the balancing account or interest and penalty appropriation. Further, under s. 108.07 (5) (bm) 2. b., Stats., employers will not receive relief from benefit charges unless they timely and adequately provide the information necessary for the Department to determine how to charge the claim. Because the claim charging provisions of s. 108.07 (5) (bm), Stats., will involve manual processes, the Department needs enough time to complete the work before the June 30, 2021 computation date, which will determine contribution rates for 2022.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

None.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The rule is an emergency rule, so it is only effective for a limited time.

5. Describe the Rule's Enforcement Provisions

The Department of Workforce Development administers the unemployment insurance program by, among other things, determining contribution rates for employers and determining the amount of reimbursements payable by employers

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subject to reimbursement financing.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
