

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 September 16, 2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapters DWD 102 (Contribution Rates); DWD 113 (Settlement of Disputes and Compromise of Liabilities); and DWD 123 (Benefit Reports Filed by Employers)	
4. Subject Relating to protecting Wisconsin employers from the adverse financial effects of COVID-19.	
5. Fund Sources Affected <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input checked="" 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 checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input checked="" type="checkbox"/> Decrease Existing Revenues <input checked="" 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 checked="" 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 and local government units.	
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, 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, which is 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. To correctly set contribution rates, recharging work must consider applicability of federal programs that reduce the benefit charges to employers in addition to the recharging relief provided by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Federal law changes provide federal funding (in whole or in part) that affect recharging in the following programs: waiver of waiting week; work share; and regular unemployment for reimbursable employers. The new policy to be included in this rule will ensure that employers' contribution rates for 2022 are calculated based on reserve fund balances as of June 30, 2021 without taking into account charges related to the public health emergency declared on March 12, 2020 by Executive Order 72 (the "public health emergency"), so that the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 are met. This rule will only affect calculation of contribution rates for 2022. The policy alternative is to do nothing, which would negatively impact some employers subject to contribution financing because their contribution rates will be higher for 2022 than they should be. This would result in higher contribution rates for 2022, which would not be in accordance with the legislative intent of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Under 2019 Wisconsin Act 185, 50% of the unemployment insurance benefit claims related to the public health emergency will be charged to the appropriation in s. 20.445 (1) (gd), Stats., for employers subject to reimbursement	

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financing. The federal Coronavirus Aid, Relief, and Economic Security (“CARES”) Act and Continued Assistance for Unemployed Workers Act provide for 50% federal payment of unemployment insurance benefits chargeable to reimbursable employers for weeks of unemployment for March 15, 2020 through April 3, 2021. The federal American Rescue Plan Act provides for 75% federal payment of unemployment benefits chargeable to reimbursable employers for weeks of unemployment for April 4 through September 4, 2021. Federal law also provides for 100% federal funding for the first week of unemployment and for work share benefits for certain periods.

This emergency rule provides a temporary interest waiver for employers subject to reimbursement financing so that employers are not charged interest until the Department completes the charging relief project and for a limited time thereafter so that employers may review their bills and pay their bills over time. Under this rule, interest is waived starting October 1, 2021 for reimbursable employers until the emergency rule expires.

Currently, unemployment benefits are charged to employer accounts unless a statutory exception applies. 2019 Wisconsin Act 185 directed the Department to provide employers charging relief for unemployment benefits for initial claims that are related to the public health emergency, for benefits payable from March 15, 2020 to December 31, 2020. 2021 Wisconsin Act 4 extended the charging relief until 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 30th day 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 before the Department concludes the automated processes for relieving employer accounts of benefit charges.

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. The Department will apply the employer charging provisions of 2019 Wisconsin Act 185 and 2021 Wisconsin 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 began before March 15, 2020 so that the legislative intent of 2021 Wisconsin Act 4 is properly applied.

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 Wisconsin unemployment insurance law may be impacted by the proposed rule. The Department held a preliminary public hearing and comment period on the scope statement. Two 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 contribution financing. 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 because charges

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associated with those claims will not be included in the employers' contribution rate calculations for 2022.

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

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.

The effect on the State's economy as a whole is that employers subject to contribution financing may have lower tax rates for 2022, which may make funds that would be used to pay contributions available for other uses in the economy. Employers subject to reimbursement financing will not be assessed interest, which may make funds that would be used to pay interest available for other uses in the economy.

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

The benefits of implementing this rule are that employers subject to contribution financing will have contribution rates for 2022 that will more accurately reflect the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4, resulting in lower contribution rates. Employers subject to reimbursement financing will not be assessed interest on a temporary basis, which will save them money. This emergency rule is expected to have a positive economic impact on all employers, if those employers must 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 alternative to implementing the rule is to do nothing, which would result in contribution rates for 2022 that would be incorrectly high for most employers subject to contribution financing and which would not result in a waiver of interest for employers subject to reimbursement financing. This could also negatively impact employers not subject to the presumption of benefit charging relief 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 without the rule.

16. Long Range Implications of Implementing the Rule

The long range implications of this rule are that the State's economy may be improved by permitting employers subject to reimbursement financing to retain and spend their funds other than on interest assessments. For employers subject to contribution financing, they may receive emergency relief during the pandemic and economic recovery.

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.

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 § 2103(a). U.S. Department of Labor encourages states to "interpret or amend their state unemployment compensation (UC) 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."

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U.S. Department of Labor Unemployment Insurance Program Letter 18-20 (April 27, 2020), p. 2.

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 charged benefits to the unemployment insurance non-chargeable account, unless the employer was determined to have misclassified workers.

Iowa did not charge unemployment benefits related to COVID-19 to employer accounts until June 12, 2021.

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.”

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).

19. Contact Name

Janell Knutson, Director, UI Bureau of Legal Affairs

20. Contact Phone Number

608-266-1639

This document can be made available in alternate formats to individuals with disabilities upon request.

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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 subject to the Wisconsin unemployment insurance law, 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. The emergency rule is expected to have a positive economic impact on employers subject to unemployment insurance contribution financing by providing those employers with contribution rates that align with the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4. Businesses subject to unemployment insurance reimbursement financing would receive the benefit of a waiver of interest and potentially additional time to pay their reimbursements under this emergency rule.

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

2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 provide 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 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 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 Wisconsin Act 185, requires claimants and employers to indicate whether a claim for regular benefits is related to the public health emergency. 2021 Wisconsin 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.

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.

Because the Department had to implement a variety of new federal benefit programs, it was unable to complete the charging changes required by 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4 by June 30, 2021. Without an emergency rule, most employers' contribution rates for 2022 would be based on benefit charges that should have been charged to the balancing account instead of the employers' accounts. This would have result, for most employers subject to contribution financing, in contribution rates for 2022 that are higher than they should be.

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This rule, in effect, directs the Department to assume that all benefit charges and benefit adjustments for the period of March 15, 2020 through March 13, 2021 relate to the public health emergency. This will have the effect of aligning employer contribution rates for 2022 with the policy goals of 2019 Wisconsin Act 185 and 2021 Wisconsin Act 4.

Finally, reimbursable employer businesses that do not receive full charging relief under state and federal law (because, for example, the claims were for weeks of unemployment after the state law relief period ended) 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 and would therefore be given extra time to pay their bills.

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 administers the unemployment insurance program by, among other things, determining contribution rates for employers, determining the amount of reimbursements payable by employers subject to reimbursement financing, and assessing interest when employers do not pay their reimbursements in lieu of contributions.

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

- Yes No
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