



CORY TOMCZYK

STATE SENATOR • 29TH SENATE DISTRICT

Senate Committee on Economic Development & Technical Colleges
Tuesday, May 16, 2023

Testimony on SB 231

Unfortunately, we all know someone in our lives who has been out of work and had to experience unemployment. Under current law, a person who is collecting unemployment insurance (UI), the person must search for new employment and must make four work search actions each week. These actions can include: submitting a resume for an available job, networking, completing an online work search profile, or emailing a prospective employer.

This summer, the work search requirements for receiving UI benefits are being reinstated and because of business closures due to COVID shutdowns, there has been a significant uptick in work searches, which also led to an increased amount of “ghosting.”

Ghosting is when a person searching for work does not respond to an interview request by an employer or simply does not show up to a scheduled interview. During a time where businesses are desperate for workers and are doing everything in their power to keep the doors open, getting ghosted wastes valuable time on the part of the business owner. It also defrauds the system that is meant to get individuals back into the workforce and off government assistance.

SB 231 creates a process for employers to report to DWD when ghosting occurs. They can report when a person declines an interview or job offer, when they fail to respond to a request for a job offer, or does not show up to an interview without rescheduling. If the department finds that the report is credible, the individual would not be eligible for UI benefits for that week. The bill allows one verified claim before UI benefits are withheld – a sort of “one strike” policy.

SB 231 requires DWD to maintain a portal that is accessible to employers to file claims and submit a report to the Legislature outlining investigations done by the department and what actions were taken.

As a business owner, I know how difficult it can be to keep positions filled and go through the hiring process. As a taxpayer, I want to know that unemployment claims are being used by people who cannot find stable work and are trying to do the right thing. I urge you to support this commonsense bill.



JON PLUMER

STATE REPRESENTATIVE • 42nd ASSEMBLY DISTRICT

Senate Committee on Economic Development and Technical Colleges May 16, 2023

Good Morning Chairman Feyen and Committee members. Thank you for holding a hearing and offering me the opportunity to testify in support of Senate Bill 231, which makes necessary and overdue changes to some of Wisconsin's unemployment insurance laws.

The unemployment insurance program, overseen by the Department of Workforce Development, is designed to provide temporary financial assistance while an individual searches for new employment. Currently, individuals on unemployment must make four work search actions each week. These actions can include submitting a resume for an available job, networking, completing an online work search profile, and emailing a prospective employer.

In the immediate aftermath of pandemic-era closures, Wisconsin saw an increased volume in work searches, with many people looking for new jobs after closures and lay-offs. Along with this uptick in work searches, we unfortunately saw an increase of "ghosting", a practice in which an employer will contact a prospective employee for an interview, only to have that individual either not reply or not show up for the interview. This has made it extremely difficult for employers to find capable workers, and has wasted business' valuable time and resources.

To help remedy this issue, Senate Bill 231 will create a process for employers to report to the Department instances in which an individual declines an interview or job offer, an individual fails to respond to an interview request or job offer, an individual fails to attend a job interview without rescheduling, or a former employee is not available to return to work. DWD would be required to investigate this claim to determine whether or not it has merit. If a report is found to be credible, an individual would be ineligible for unemployment benefits for the given week. This bill does not penalize the first such verified claim.

SB 231 would also require DWD to maintain an online portal for employers to file these claims, and must submit to the legislature a report that would include information on investigations and actions taken. I am grateful to the Senate author, Sen. Tomczyk, for co-authoring this legislation. Thank you for your time today, and thank you for your consideration of this bill.

Date: Tuesday, May 16, 2023

To: Chair Feyen, Vice-Chair Stafsholt, and Members of the Senate Committee on Economic Development and Technical Colleges

From: Department of Workforce Development Secretary-designee Amy Pechacek

Written Testimony Regarding SB 231, SB 232, SB 233, SB 234, SB 235, and SB 237

Chair Feyen, Vice-Chair Stafsholt, and Committee Members, thank you for the opportunity to provide written testimony for information only on SB 231, SB 232, SB 233, SB 234, SB 235, and SB 237, which propose changes to Wisconsin's unemployment insurance (UI) law and UI program. With more than 130 years of experience analyzing labor market data for employers, policymakers, educational institutions, and job seekers, the Wisconsin Department of Workforce Development is focused on creating and sustaining a thriving economy.

Wisconsin's economy broke numerous records during 2022 and that trend has continued through early 2023. Wisconsin's unemployment rate reached a new record low of 2.5% in April, with a record low number of people unemployment. The state also posted a record high number of jobs, eclipsing the pre-COVID-19 peak of January 2020. Meanwhile, the state's labor force participation rate of 64.6% remains a full 2 percentage points higher than the national average. At the same time, initial and existing weekly unemployment insurance claims are continuing at seasonal, historic lows. Of the \$344.5 million unemployment insurance payments made in 2022, only 0.4% were found to be fraud overpayments. Participation in Registered Apprenticeship and Youth Apprenticeship are running at record highs. To say that Wisconsinites are not working and are sitting on the sidelines is simply not true.

Wisconsin, like the rest of the Midwest, the nation, and much of the world, is facing a worker quantity shortage. The workforce quantity shortage is a global issue due to demographic trends decades in the making. Baby boomers are retiring, which was exacerbated by the pandemic, birth rates have never been lower, and in the last decade, there has been net zero to negative migration to Wisconsin. DWD has taken a proactive rather than punitive approach to these challenges, working to remove employment barriers and connecting employers with underutilized talent pools.

The Governor's budget supports proactive approaches to workforce needs. He announced a \$200 million investment to continue the successful Workforce Innovation Grant Program to provide long-term solutions for businesses and, in particular, the healthcare industry to find workers and individuals to obtain family-supporting jobs. The Governor's budget includes a paid Family Medical Leave Program, investments in childcare statewide, continued expansion of the apprenticeship program to retain and train the state's emerging workforce, further investment in job centers at correctional institutions, and other groundbreaking ideas to build the 21st-century workforce and infrastructure Wisconsin needs.

The long-standing process for new legislation regarding both unemployment insurance and worker's compensation programs is to circulate drafts of proposed policy changes through their respective advisory councils—the Unemployment Insurance Advisory Council and the Worker's Compensation Advisory Council. Additionally, regarding UI law, the Department generally sends all changes to the U.S. Department of Labor

for conformity review moving forward. Please note that to DWD's knowledge, the proposed bills did not undergo these processes, nor was DWD staff consulted on the need for the policy change.

Had DWD staff been consulted, the Department would have stressed the need for support of DWD's proactive approach to workforce development, supported by its dedicated staff and modernization efforts. In fact, those modernization efforts to date include:

- A cloud-based omni-channel contact center;
- Virtual customer service agents that are available 24 hours a day, 365 days a year, to answer common questions in English and Spanish;
- Implementation of an online chatbot that can answer common questions in English, Spanish, and Hmong;
- Fraud detection through LexisNexis and the National Association of State Workforce Agencies' Integrity Data Hub;
- An online filing process and document upload that uses AI to enter data instead of manual data entry;
- Secure online messaging with adjudicators; and
- Translation of the UI application into plain language.

Additionally, while this legislation purportedly responds to the recent statewide referendum regarding Wisconsin's preference to require work search for welfare benefits, it nevertheless misses the mark. The referendum does not apply to unemployment insurance; unemployment insurance is not a welfare program and UI claimants are already required to conduct four work search actions weekly.

While DWD appreciates efforts to bolster Wisconsin's workforce, the proposed bills are not in touch with DWD's current operations or labor trends. The focus on changes to unemployment insurance does not take into account the significant progress DWD has made in terms of modernization and accessibility of the UI program. DWD is better equipped than ever before to handle an influx in UI claims and calls, which is evident given that Wisconsin ranked fifth in the nation in terms of timeliness in administering UI benefits from July to December 2022. Just last month, 87.81% of claimants received their benefits in three days or less of the weekly claim filing date. Some of these bills also have the potential to delay or deny Wisconsin's benefits in times when they need it the most, with the potential to disproportionately impact rural areas and certain industry sectors that do not have as many job opportunities.

SB 231

This bill is redundant as employers are currently able to report suspected claimant fraud, including fraud related to work search activities such as attending interviews, turning down job offers, and failing to return to employment or turning down employment offers to DWD. DWD already relies on employers to verify information provided by claimants and to bring other eligibility issues to our attention. They may call or write to DWD at any time to raise an eligibility issue, using the Employer Assistance Line and the online Help Center. Any employer that suspects that someone on UI is committing fraud can also report it on DWD's website. DWD reviews all reports and fraud referrals.

It is worth noting that there are confidentiality measures in place that protect identities of claimants required by federal and state law. DWD could provide data on work search investigations to the legislature, but it could not be made available to the public.

SB 232

DWD has significant concerns about this proposal due to the anticipated reporting burden for employers, potential costs, bureaucratic requirements, and lack of sustainable funding. While DWD already is performing several key functions noted in the proposal, other requirements in the bill appear to be based on an inaccurate read of Wisconsin's real labor market challenges.

DWD is already effectively serving job seekers, employers, and employees as DWD's primary responsibilities include providing job services, training, and employment assistance to people looking for jobs while working with employers to find the necessary workers to fill current job openings. DWD's six divisions, Employment and Training Vocational Rehabilitation, Unemployment Insurance, Worker's Compensation, Equal Rights,

and Administrative Services, coordinate closely to connect job seekers with employment opportunities; ensure that Wisconsin's diverse workforce is equipped with in-demand skills; and administer funds, including the over \$1.2 billion Unemployment Insurance Trust Fund.

Wisconsin's proactive approach to workforce development already delivers results. Wisconsin's innovative responses and recent investments in workforce development are effectively connecting job seekers with employers and engaging previously underrepresented and underemployed populations with jobs. The Division of Employment and Training's Bureau of Job Service currently functions as a "Reemployment Division," working in the community, connecting online, supporting Department of Corrections job labs, providing services in hard-to-reach locations through the mobile career lab, and working in schools and libraries to help people get their next job. The Job Center of Wisconsin website currently hosts approximately 35,000 resumes and functions to connect job seekers and employers.

Other ways DWD is already performing the functions proposed in the bill include:

- DWD's work to prevent layoffs at Wisconsin companies. Through the Work-Share Program, instead of laying off workers, a qualified employer can plan to reduce work hours for at least 20 employees, thus aiding the employer to retain its valued, skilled and/or trained employees.
- DWD's Job Service administers the Re-employment Services and Eligibility Assessment (RESEA) program. The program serves 25,000 to 35,000 UI claimants a year with an employment plan, job search assistance, work search review, employment counseling with Job Service licensed career counselors, referrals to training programs, and career exploration.
- Implementing the requirement for Work Registration. UI claimants are required to register for work (including the completion of a resume) with the Wisconsin Job Service online within 14 days of their initial application for UI benefits.
- Administering Re-employment Services, which are also already a requirement. Again, claimants that are registered with Wisconsin Job Service are required to seek work as well as complete an online orientation and assessment.
- DWD's Job Service efforts to undertake a comprehensive program evaluation of the RESEA program. The evaluation will identify the interventions to provide the best possible employment outcomes and reduce the duration of benefits. The evaluation will continue through 2024.

Creating new and burdensome reporting requirements for employers, erecting more barriers for job seekers, diminishing access to funds invested for people experiencing job loss, and creating more challenges for those suffering from substance abuse disorder as proposed would hinder the state's economic progress, not help. At the same time, establishing complex programs with unsustainable funding, creating additional bureaucratic mandates, shuffling existing division responsibilities, and changing the name of a DWD division would only increase costs with no clear benefits.

SB 233

This bill would change the maximum number of weeks that a regular UI claimant who lost their job through no fault of their own could receive benefits. Currently, the maximum number of weeks of regular UI benefits payable to an eligible claimant who is totally unemployed and who earns sufficient wages to qualify for those benefits is fixed at 26 weeks. Under the bill, the maximum number of weeks available to claimants is determined monthly, based upon the unemployment rate using the most recently available federal data. Once a claimant begins a benefit year, the claimant's maximum number of weeks of regular benefits is fixed for that benefit year.

This method of calculating maximum UI benefit duration is concerning because the unemployment rate is volatile and can rise very quickly. During a recession, it can easily increase multiple percentage points month to month. The bill mechanisms will not be responsive to, or reflective of, current economic situations as it looks back to a previous economic situation to determine benefits. It then fixes the maximum duration a claimant can receive benefits for the rest of that year, further perpetuating the disconnect between the duration of benefits and the current economic situation.

Additionally, SB 233 is not sensitive to local employment rates. A brief look at county-by-county unemployment rates shows that unemployment is higher in the northern part of the state and lower in and around Dane County. The bill could disadvantage individuals in rural areas with fewer local job opportunities by reducing the number of benefit weeks to claimants with eligible employment. The bill is also not sensitive to unemployment rates by industry sector. Re-entering the job market may be easier in some sectors (and in certain times of the year) than others.

Ultimately, the bill is financially untenable and operationally infeasible. Federal unemployment rates are subsequently benchmarked and retroactively adjusted by the U.S. Bureau of Labor Statistics. The unemployment rate in a given month could be retroactively adjusted months later. This bill does not address the ramifications of those adjustments, such as if claw-backs or new payments would be issued, making this change impractical.

SB 234

The Workforce Innovation and Opportunity Act, as amended during the Obama Administration, is marquee federal legislation to improve workforce services for job seekers, including youth and those with historical barriers to unemployment, into high-quality job and careers, as well as helping employers hire and retain workers. WIOA also requires States and local areas to enhance coordination and partnerships with local entities and supportive service agencies for strengthened service delivery. DWD's WIOA programs are successfully administered in conjunction with its partners, the Workforce Development Boards, the Wisconsin Technical College System, the Department of Public Instruction, the Department of Children and Families, the Wisconsin Economic Development Corporation, employers, employees, job seekers, students, among other partners.

Building off its WIOA programs' successes, DWD already uses the approaches learned through WIOA in other training programs when applicable. For example, DWD has used its WIOA-trained staff to administer the Workforce Innovation Grants under Governor Evers's Workforce Solutions Initiatives. However, not all programs fit into WIOA's structure, and, in fact, some of DWD's state programs have their own statutory requirements that do not necessarily align with the WIOA requirements. For example, the Wisconsin Fast Forward grant program, a long-standing state-funded workforce training program, is designed to award funds to businesses from all Wisconsin industry sectors that reimburse the costs of customized occupational training for unemployed, underemployed, and incumbent workers. The customized, business-driven training will qualify workers for full-time employment, higher level employment, or increased wages. It is available to all industry sectors and companies of any size. The Wisconsin Fast Forward program has its own reporting structure, performance metrics, and compliance requirements set under state law and regulations that would need to be modified under the proposed bill. DWD would like to continue to operate Wisconsin Fast Forward, and other non-WIOA workforce training programs, with flexibility and innovation to best meet local workforce needs.

SB 235

SB 235 is either DWD's current practice, or would not have the intended impact of bolstering Wisconsin's workforce, such as:

- Transfer of Employees to DWD: The existing interagency staff transfer process and intra-agency temporary assignment of staff sufficiently serves DWD's operations. DWD monitors its workload and vacancies to determine if the Department needs to submit a request for interagency staff transfers or to re-assign its staff. Regardless, solely focusing on transferring staff specifically for the UI Division's operations is outdated given the significant recent modernization efforts.
 - Again, the Department is better equipped than ever before to manage an influx in UI claims and calls, which is evident given that Wisconsin ranked fifth in the nation in terms of timeliness in administering UI benefits from July to December 2022. Just last month, 88.64% of claimants received their benefits in three days or less of the weekly claim filing date.
- Education and Informational Materials: UI already has external training and training videos available. There would be a cost involved with providing additional training requirements and complying with the proposed change, for which the bill does not allocate any funding.

- Database Comparisons: This is unnecessary given DWD's multifaceted, modernized approach to detecting and preventing fraud. Not only does the division cross match with death, employment, and inmate records, DWD is also a part of the National Association of State Workforce Agencies' Integrity Data Hub. The data hub provides access to cross-matching verification options, and nationwide databases, to name a few. DWD's Annual Fraud Report contains more detailed information about our detection tools.
- Identity Proofing: DWD is confident in UI's current system using LexisNexis to verify the identity of each claimant. If the identity proofing measures require uploading of identifying documents, this would be a barrier to users, and additional staff time could be needed to help claimants with additional technological requirements. An initial estimate is that the proposed identity proofing standards would require a significant cost investment in annual vendor costs and technology development costs. Current UI processes already use targeted identification logic to verify the identity of every claimant.

Regarding the changes outlined in SB 235 related to the UI call center, DWD notably upgraded the call center that has significantly improved accessibility and quality of customer service. DWD transitioned to its cloud-based contact center on its NICE CXone platform. The current contact center is enhanced with the following benefits:

- Modern web-based call delivery system that allows agents to work wherever they have an internet connection, providing greater flexibility for agents in taking and responding to calls;
- Scalability of solution in real time to address changing demands (both up and down);
- Ability to customize in-house call processing in real-time;
- Omnichannel approach that allows DWD to introduce other communication channels (e.g., chat, text messaging);
- Better ability to monitor interactions with customers; and
- Enhanced real-time reporting, including number of unique callers.

Call center hours have been extended with the help of advanced technology. Virtual agents are available 24 hours a day, 365 days a year, to answer claimants' common questions in English and Spanish. There is also an online chatbot that can answer questions in English, Spanish, and Hmong. UI staff are then available for extended hours Monday through Friday 6:15 a.m. to 5:30 p.m. and Saturday 7 a.m. to 1:30 p.m. to answer constituents' further, more complex questions. Prior to the pandemic, staff hours were historically Monday through Friday from 7:45 a.m. to 4:30 p.m. and were then extended during the pandemic.

DWD already closely monitors call volume and wait times for the call center. The monitoring mechanisms in place account for predictable increases due to seasonal and/or holiday trends versus unpredictable spikes. This proposed legislation does not account for these predictable trends; therefore, it would inefficiently assign staff.

This bill also does not factor in significant strides DWD has made in terms of modernization and accessibility to ease the unemployment insurance administration process, such as online filing process, secure online messaging with adjudicators, and translation of the UI application into plain language, which has significantly eased the claimant's experience. The Department is better equipped than ever before to manage a sudden influx in UI claims and calls with its new cloud-based contact center.

SB 237

The bill proposes that UI benefit augmentations, such as the federal programs that provided critical supports for Wisconsinites during the pandemic, will require review by the Joint Committee on Finance (JFC). If federal programs and extended benefits are needed at a future date, this proposed change could delay benefits to Wisconsin citizens in times of high need, negatively affecting Wisconsin's economy by withholding funding that could be used by claimants for good and services.

Additionally, depending on how the federal programs are structured, there is the potential for the state of Wisconsin to lose federal benefits and administrative funding that other states will receive should participation in those federal programs be delayed.

The other proposed changes in SB 237 are either already DWD's current practice, or would not have the intended impact of bolstering Wisconsin's workforce, such as:

- The changes in the definitions of "misconduct" and "absenteeism": the bill would not create additional bases for ineligibility, it would simply shift the reason for claim denials from "substantial fault" to "misconduct." The changes to the misconduct and absenteeism under UI law would only result in a minor reduction in UI operational costs (for claims adjudication). This reclassification would not have tangible benefits to employers either, because in the case of the current or the proposed law, the employer does not pay when the claimant is found ineligible.
 - Additionally, removing "intent" from the definition of misconduct could jeopardize the Department's ability to comply with the federal conformity requirements to receive federal funding.
- Registering out-of-state claimants at their local job center: this is UI's current practice. UI already requires out-of-state claimants to register with their closest public employment office and submit proof of said registration to DWD.
- Work search audits: The division has a well-established work search auditing program. UI claimants who are required to search for work must submit their work search record each week a claim is filed. These records are subject to random or targeted audits for program integrity purposes. These audits can uncover mistakes made by claimants or instances of intentional fraud, as well as provide an opportunity to educate claimants on what constitutes a valid work search action and what information is needed by the division to verify work searches. In 2022, DWD completed 22,012 work search audits. The audits resulted in 9,045 adverse decisions with benefits denied, including when claimants failed to conduct four valid work search actions. An additional 27,404 adverse determinations were issued for failure to answer the work search question or failure to provide required information on the weekly claim before the claim paid.
 - In addition, work search audits are labor intensive. Every audit of two claimants' work searches requires 45 minutes of staff time. To optimize results, UI targets its audits to efficiently and effectively review certain work search activity.
 - As claimants complete four work search actions per week, auditing 50% of actions would result in millions of audits per year. This would require a large increase in staffing and substantial investment, and the bill does not allocate any additional positions or funding. Also, an increase in denials of claims will result in additional appeals, which would also require more staff. This bill is financially untenable, operationally infeasible, and unnecessary as DWD is confident in the efficacy of its approach using both random and targets audits identify falsified work search actions.

Thank you for the opportunity to provide this information.



May 16, 2023

TO: Members
Senate Committee on Economic Development and Technical Colleges

FR: Brian Dake
President
Wisconsin Independent Businesses

RE: 2023 Senate Bill (SB) 231 relating to: various changes to the unemployment insurance law; 2023 Senate Bill (SB) 232 relating to: various changes to the unemployment insurance law, federal Reemployment Services and Eligibility Assessment grants, and granting rule-making authority; 2023 Senate Bill (SB) 235 relating to: various changes to the unemployment insurance law and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes; and 2023 Senate Bill (SB) 237 relating to: various changes to the unemployment insurance law and requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits.

Chairman Feyen and committee members, my name is Brian Dake, President of Wisconsin Independent Businesses. Thank you for the opportunity to testify in support of the Senate Bill (SB) 231, Senate Bill (SB) 232, Senate Bill (SB) 235, and Senate Bill (SB) 237.

By way of background, Wisconsin Independent Businesses (WIB) was formed in 1977 to provide small, independent business owners with an effective voice in the legislative and regulatory activities of state government. Today, we proudly represent more than 2,000 small business owners throughout Wisconsin. Most of our members (approximately 85%) own and operate businesses that fit within the legal definition of a small business – fewer than 25 employees and annual gross revenues of less than \$5 million.

WIB...Helping you where you need it.

In 2011, we surveyed WIB members about unemployment insurance (UI). From their responses, we developed a set of objectives to guide our advocacy efforts. They are:

- reduce the state UI tax burden on small businesses;
- increase UI claimant accountability;
- reduce the incidence of UI fraud;
- bring clarity to the enforcement of UI laws and regulations; and
- transition UI claimants back to work quickly.

If enacted into law, these four bills would fulfill these important objectives.

2023 Senate Bill (SB) 231

“Ghosting” is a dubious practice in which a prospective employee does not show up for a scheduled job interview or respond to an offer of employment from an employer. While employers cannot legally compel a prospective employee to sit for a job interview or respond to a job offer, “ghosting” by a UI claimant could be a fraudulent act.

SB 231 sets forth a process whereby a Wisconsin employer may voluntarily report a potential instance of “ghosting” to the Wisconsin Department of Workforce Development (DWD) for further investigation. If the Department determines a UI claimant was engaged in “ghosting,” he/she would be ineligible for UI benefits for the week in which the “ghosting” occurred.

2023 Senate Bill (SB) 232

Wisconsin employers are assessed state UI taxes on the first \$14,000 in wages paid to each employee. The state UI tax rate an employer pays is determined by two factors. They are:

- UI tax schedule in effect for a given rate year which is determined by the state UI Trust Fund (Fund) balance. The higher the Fund balance, the lower the UI tax schedule that is in effect.
- Employer’s experience with the UI system. The more current or former employees of an employer collect in UI benefits, the higher the tax rate that employer pays.

UI claimants who quickly transition back to gainful employment have a limited impact on an employer’s UI tax rate. Conversely, an employer’s UI tax rate increases significantly when a UI claimant draws months of weekly UI benefits.

SB 232 includes several provisions which should result in more UI claimants transitioning back to gainful employment quickly which in turn would lessen the UI tax burden on Wisconsin small businesses.

Of note, the bill:

- specifies that after collecting three weeks of UI benefits, a UI claimant would be required to include in their weekly work search actions at least two direct contacts with potential employers; and
- requires DWD to provide each UI claimant with at least four potential employment opportunities each week. To fulfill their weekly work search requirement, a UI claimant would be required to apply for the specific positions provided by DWD.

According to the National Safety Council (NSC) – a non-profit, non-partisan organization which advocates for workplace safety – 65% of workplace accidents happen because employees are under the influence of alcohol and drugs and between 38% and 50% of worker's compensation claims stem for alcohol or drug-related accidents.

To improve and enhance workplace safety, WIB lobbied in support of a provision within 2015 Wisconsin Act 55 which required DWD to create an occupational drug testing program for certain UI claimants. The basic parameters of this program are as follows:

- When a UI claimant applies for UI benefits, DWD would determine whether the claimant is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing;
- If the claimant's only suitable work is in an occupation that regularly conducts drug testing, DWD must screen the claimant to determine whether the claimant should be required to submit to a drug test; and
- If the claimant refuses to submit to a drug test or tests positive for a controlled substance for which the claimant does not have a valid prescription, the claimant is ineligible for UI benefits. A claimant who tests positive may maintain eligibility for UI benefits for each week in which they are in full compliance with a state-sponsored substance abuse treatment program and a state-sponsored job skills assessment.

The implementation of the occupational drug testing program was contingent on the promulgation of rules by DWD. On January 16, 2020, the Wisconsin Unemployment Insurance Advisory Council (UIAC) approved a draft scope statement for the administrative rule related to the occupational drug testing program. However, DWD has not yet promulgated rules to implement the occupational drug testing program.

SB 232 would require DWD to immediately promulgate the administrative rule to implement the occupational drug testing program.

2023 Senate Bill (SB) 235

Two recent reports from the United States Government Accountability Office (GAO) validate our advocacy efforts focused on reducing UI fraud.

In June 2022, the GAO issued a report to Congress entitled “Unemployment Insurance Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks” in which it advised federal lawmakers that the UI program has been added to its “High Risk” designation list. This extraordinary designation is conferred upon federal programs in need of transformation and/or vulnerable to waste, fraud, abuse, and mismanagement.

In December 2022, the GAO issued a report to Congress entitled “Unemployment Insurance Data Indicate Substantial Level of Fraud during the Pandemic; DOL Should Implement an Antifraud Strategy.” While the GAO chastised DOL for not implementing an overall UI antifraud strategy, their report provided federal lawmakers with a listing of actions taken by DOL to assist states combat UI fraud. The report noted:

- DOL provided funding to procure and implement an identity verification solution, which became available to states in July 2020. This service provides new datasets to conduct enhanced UI claimant identity verification by states to prevent fraudulent claims from being paid based on false identities. It also contains a cross match with the Social Security Administration (SSA) Death Master File to identify the use of a deceased person’s Social Security number being used to file for benefits.
- DOL provided funding to procure and implement a bank account verification service, which became available to states in February 2022. This service aids states in proactively identifying and authenticating bank account information provided by a UI claimant by validating the account status and ensuring said claimant is the owner or authorized user prior to initiating the UI benefit payment.
- DOL is currently working with the SSA to establish a secure data exchange that allows states to cross match UI claims data with incarceration records. While some states have access to various local, state, or federal incarceration cross matches, DOL encouraged all states to regularly cross match UI claims against prisoner records to ensure UI benefits are only paid to eligible individuals.

This GAO report also footnoted an August 11, 2021, Unemployment Insurance Program Letter (UIPL) from DOL in which the agency “strongly encouraged all states to implement NIST-compliant identity proofing, specifically IAL 2 and AAL 2, before claimants start filling out the UI claims application and for re-accessing their account.”

DWD has just begun modernizing its UI information system. With funding and tools available from DOL, the time is now for the State of Wisconsin to adopt the UI fraud prevention recommendations from the GAO and DOL. Passage of SB 235 would ensure that happens.

2023 Senate Bill (SB) 237

To remain eligible for state UI benefits, claimants must conduct at least four weekly work search actions and report them to DWD when filing their weekly UI claim.

State law also requires DWD to conduct random work search audits and report annually to the UIAC on the number and the results of work search audits conducted in the previous year. An analysis of this data for a seven-year period beginning in 2016 is very revealing.

Year	Audits Conducted	Decisions Where Work Search Requirements Were Not Met
2016	16,747	3,196
2017	33,589	7,452
2018	32,772	6,392
2019	31,263	7,118
2020	766	208 (pandemic)
2021	1,261	962 (pandemic)
2022	22,012	9,045
Total	138,410	34,374

Over this seven-year period, 24.8% of all DWD work search audits conducted found that claimants failed to fulfill their weekly work search requirements. In 2022, 41% of all DWD work search audits conducted found that claimants failed to fulfill their weekly work search requirements.

SB 237 would require DWD to conduct random audits for at least 50% of all work search actions reported to have been performed by claimants. The DWD work search audit data justifies the need for enhanced work search authentication to ensure UI claimants fulfill their weekly work search requirements.

With the support of WIB, state lawmakers modernized Wisconsin’s Employee Misconduct statute ten years ago. 2013 Wisconsin Act 20 defined misconduct for purposes of UI benefit eligibility and enumerated that misconduct specifically includes seven general actions by an employee. These statutory changes provided clear workplace misconduct guidance to employers and employees.

Over the last decade, various provisions of the Employee Misconduct statute have been subject to legal challenge, business practices and operations have changed, and new instances of employee misconduct have arisen. For these reasons, we are pleased that SB 237 would update the Employee Misconduct statute. Of note, this legislation would:

- replace the existing misconduct standard for chronic absenteeism or excessive tardiness with a new standard whereby misconduct includes both of the following: a violation of an employer's reasonable policy that covers employee absenteeism, tardiness, or both and that results in an employee's termination; and if an employer does not have a policy covering absenteeism, tardiness, or both, absenteeism on more than two occasions within the 120-day period preceding an employee's termination, if the employee does not provide to the employer both notice and one or more valid reasons for the absenteeism;
- add unauthorized possession of an employer's property, unauthorized distribution of an employer's confidential or proprietary information, and use of an employer's credit card for an unauthorized or nonbusiness purpose without prior approval from the employer to the list of what is considered employee misconduct; and
- specify a violation of an employer's reasonable employment policy that covers the use of social media constitutes employee misconduct.

Conclusion

We respectfully ask for your support of SB 231, SB 232, SB 235, and SB 237.

Thank you in advance for your consideration.

WMC

Wisconsin's Chamber

TO: Members, Senate Committee on Economic Development and Technical Colleges

FROM: Rachel Ver Velde, Senior Director of Workforce, Education and Employment Policy

DATE: May 16, 2023

RE: Support for Senate Bills 231, 232, 233, 234, 235 and 237, changes to the unemployment insurance law and workforce metrics

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to submit testimony in support of Senate Bills 231, 232, 233, 234, 235 and 237. Thank you, Chairman Feyen, for holding this hearing and highlighting a key concern of employers throughout Wisconsin.

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. That mission includes making sure Wisconsin's employers have a capable and willing workforce.

Unfortunately, employers in Wisconsin have severe worker shortages and an inability to fill key positions. According to WMC's most recent *Wisconsin Employer Survey* conducted in January 2023, the biggest challenge facing Wisconsin employers is the workforce shortage, with 85% of employers indicating that they are struggling to hire workers. Moreover, 66% of these employers responded that the workforce shortage is the top public policy issue facing Wisconsin.

The problem is only made worse because too many people have simply dropped out of the workforce and are no longer looking for work. Wisconsin's labor force participation rate is currently 64.6%, which is better than the national average. But, it is significantly lower than our state's peak of 74.5% in 1997. And, even more concerning, it is a full point lower than at the height of the pandemic in April 2020.

This labor participation rate is unsustainable for employers in Wisconsin, especially when coupled with low birth rates and stagnant in-migration. If we want to continue to be a leader in manufacturing, agriculture and other industries, we must have a strong workforce. That is why it is important that government policies do not keep or place individuals on the sidelines.

Senate Bill 231:

WMC members continually have individuals miss interviews or fail to respond to interview requests. It is common for employers to have half or even less of their scheduled interviews actually show up. Unemployment insurance claimants are saying they are fulfilling their work search requirements in order to keep benefits, but they are not actually looking for a job. This legislation creates a needed curb on this practice by saying if the claimant does this more than twice in a month, they lose their weekly benefit.

Senate Bill 232:

WMC is glad to see this bill rightly change the focus of unemployment insurance to reemployment. It is important that individuals have access to career coaching and an individualized employment plan in order to set them up for future success. It is particularly important for employers that individuals receive soft skills training, as is proposed in this legislation. Too many employers say their applicants lack the soft skills that will allow them to be productive workers. WMC is also very supportive of requiring the Department of Workforce Development to immediately implement state law regarding unemployment insurance drug testing.

Senate Bill 233:

WMC members are very supportive of tying the number of weeks of eligibility for unemployment insurance to the state unemployment rate. This important reform will encourage more individuals back in the workforce, particularly when the need is greater, and employers are struggling to find workers.

Senate Bill 234:

It is important to have a standard set of metrics for all of Wisconsin's workforce development programs. With multiple agencies overseeing a multitude of programs, it is important that the legislature, business community and public can evaluate the effectiveness of each program. This legislation's commonsense requirement to report this data will allow evaluation of the quality of each program and which programs are the best to utilize.

Senate Bill 235:

The pandemic showed that it is vitally important that there is flexibility in staffing at the Department of Workforce Development (DWD). WMC believes that this bill makes commonsense changes to allow employees from other agencies to help alleviate unemployment insurance backlogs at DWD. WMC is also supportive of the requirement to double check a claimant's identity, including weekly crosschecks with prison, employment, and death databases.

Senate Bill 237:

WMC members are very supportive of work search audits and additional oversight for enhanced federal benefits. The pandemic supplemental unemployment benefits provided a financial incentive for workers to remain on the sidelines, instead of filling desperately needed jobs. Employers were extremely disappointed that Governor Evers vetoed legislation to end the \$300 per week extra unemployment benefit last session. That would have provided meaningful relief to our economy. In August of 2021, we had an unemployment rate of 3.9%. When the \$300 per week benefit finally phased out in September, 36,435 fewer people collected unemployment benefits by December – a 30% drop in just four months. Those people didn't stay home once the extra benefits ended, they went back to work: Wisconsin added 34,854 workers during the same timeframe. Imagine how much more productive our economy could have been if we would have stopped paying people not to work sooner.

WMC urges members of the Senate Committee on Economic Development and Technical Colleges to support Senate Bills 231, 232, 233, 234, 235 and 237. The reforms in these bills are vitally important for the health of Wisconsin's workforce and will allow employers to stay and expand in Wisconsin. These reforms will encourage people into the workforce and allow them to experience the dignity of work.



**Statement for the
Senate Committee on Economic Development
And Technical Colleges**

By

**Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin**

Tuesday, May 16, 2023

Senate Bills 231, 233, 235, 237

Chair Feyen, members of the Committee, on behalf of over 10,000 Wisconsin member firms located throughout Wisconsin, I report to you today that many of these firms are struggling with a full menu of economic challenges:

- Inflation
- Supply issues
- Economic Uncertainty
- Labor issues

Since 1974, NFIB's Research Foundation has collected Small Business Economic Trends data with a quarterly survey of our members, and since 1986, these quarterly snapshots of the small business economy that have been done on a monthly basis emphasizes the small employer labor market.

According to NFIB's Chief Economist, "The labor force participation rate remains below pre-COVID levels, which is contributing to the shortage of workers available to fill open positions."

The bills before the committee today for your consideration would help provide unemployed individuals with incentives and encouragement to join or return to the workforce, while also responding to the worker shortage currently challenging our small business employers.

**National Federation of Independent Business in Wisconsin
10 East Doty Street, Suite 519 – Madison, WI 53703 - 608/255-6083 – www.nfib.com/wi**

**Statement for the Senate Committee on Economic Development
And Technical Colleges -- continued
Tuesday, May 16, 2023**

Senate Bill 231 would respond to a common concern from small business employers that too often applicants for jobs fail to show for interviews or report for work when hired.

Senate Bill 233 would create a linkage between unemployment insurance benefits and current economic conditions.

Senate Bill 235 would improve participation in the labor market by allowing some flexibility and improving the administration of benefits, especially during periods of high employment.

Senate Bill 237 would provide important updates to the misconduct statute, creates legislative oversight of enhanced federal benefits and improves the monitoring of the requirements for work search.

The unemployment insurance program is not a welfare program. It is a program designed with the intent to provide temporary financial assistance to those individuals who lose their job through no fault of their own.

Unemployment insurance is an important program, funded by employers, that helps protect communities and small businesses from hardship generated by economic downturns. It provides timely financial assistance to unemployed workers, but it was not intended nor should it provide a disincentive for individuals from seeking and obtaining employment.

Mr. Chair, 59 percent of small employers are currently hiring or trying to hire, according to NFIB's Main Street Jobs Report, 42 percent reported raising compensation, and although down four points from February, a net 22 percent plan to raise compensation in the next three months.

Nationally, the labor force participation rate is almost a full percentage point below where it was in February 2020, and while Wisconsin is at 64 percent labor participation rate, slightly above the national average, it is important government do what it can to improve and assist greater participation of workers in the labor market.

Clearly, the labor market continues to be a big challenge for small business employers. NFIB supports passage of these bills because they will help put jobs back on Main Street by providing assistance to UI claimants, creating incentives for individuals to join or return to the workforce, and improve the labor participation rate of the state's workforce.

**Statement for the Senate Committee on Economic Development
And Technical Colleges -- continued
Tuesday, May 16, 2023**

No one has a greater responsibility or ability to lead the economy of our state than our small business owners.

The Legislature has a special obligation, we believe, to ensure that public policies help promote and encourage the creation and growth of small business, and also to sustain the small business community throughout our state.

I hope you found the economic data – specific to small business – that I shared with you to be helpful as you consider public policies that impact our state’s vital small business community, and I respectfully urge your support for passage of Senate Bills 231, 233, 235, and 237.

Thank you.



TESTIMONY IN SUPPORT OF UNEMPLOYMENT INSURANCE REFORM

**Wisconsin Senate Committee on Economic
Development and Technical Colleges**

May 16, 2023

Brian Sikma
Visiting Fellow
Opportunity Solutions Project

Chairman Feyen, members of the Senate Committee on Economic Development and Technical Colleges, my name is Brian Sikma and I'm a visiting fellow with the Opportunity Solutions Project where I advocate for legislation that fosters re-employment and workforce growth. I am testifying in support of the legislation you are considering today.

Out of respect for your time, I'll limit my remarks to several key highlights of these bills.

There are six open jobs in Wisconsin for every one person applying for unemployment benefits.¹ Wisconsin doesn't have an unemployment problem—it has a labor force shortage.² Brands that are household names and recognized as industry leaders across the globe are headquartered here and stake their reputations on the world-class work ethic of the Wisconsin worker. But a state known for making the goods that Americans rely on every single day is at risk of falling behind.

Just over 37,000 people in Wisconsin are applying for unemployment benefits, with nearly 20% of them staying on unemployment until their benefits are exhausted despite hundreds of thousands of open jobs in the state.³

Right-sizing unemployment benefit duration, as SB 231 proposes, is the best way to promote a rapid return to work for unemployed workers. Under current law, unemployed workers are eligible for six months of regular unemployment benefits regardless of the job market. But look around right now: There are tens of thousands of family-supporting jobs open in our state. From the construction and building trades to manufacturing and even the service industry there are jobs available for any skillset and level of experience. Some industries even offer union or employer-sponsored training through apprenticeship and other on-the-job programs that allow a new entrant to the industry to jump start his or her career.

Under the legislation, when the job market is strong and unemployment is very low, workers would be eligible for 14 weeks of benefits. That's smart, because we all know seasonal weather patterns impact some industries and a review of U.S. Department of Labor data shows those seasonal unemployment spikes last for around 10 or 12 weeks in Wisconsin. That means this bill wouldn't interfere with seasonal trends.

But unemployment doesn't pay as much as a job. It simply can't financially. States that adopted indexing models in their UI programs see workers return to work nearly 30% faster than they do in states that have 26 weeks of unemployment benefits available.⁴ Indexing benefits in Wisconsin would also help lower unemployment taxes paid by employers and it would boost the state UI trust fund's solvency.⁵

If passed, SB 231 would make Wisconsin a national leader in protecting employers from the frustrations of bad-faith work searches by UI claimants. While the vast majority of unemployment claimants search for re-employment as required by both state and federal law, the COVID-19 pandemic highlighted the growing problem of some claimants "ghosting" employer job offers and

scheduled interviews. Although done by a minority of claimants, this action to bypass current requirements that claimants accept an offer of suitable employment creates unnecessary hassles for Wisconsin employers. Utah, Montana, North Dakota, and Arkansas prohibit UI claimants from “ghosting” employers while they conduct required work search activities.⁶ The concept is simple: If someone isn’t willing to show up for an interview or respond to an offer of employment, they aren’t going to receive UI benefits for that week.

The unemployment program doesn’t exist to pay people to not find a job.⁷

It should be noted that the language contained in SB 231 allows claimants to appeal any penalty for ghosting if they believe the determination was reached in error.

There is no elected official in state government who understands the economic development needs and job market of your Senate district like you do. That’s why SB 237 is so important—a requirement that future federal expansions of the unemployment program receive legislative sign-off before going into effect.

What happens in each of your districts—with the employers and workers that you talk to on a regular basis—is often far ahead of decisions made in Washington, D.C. Too often a one-size-fits-all approach emerges from hasty decisions made amid a bevy of political calculations and macro-economic estimates. That’s what happened in 2020 when the pandemic struck and federal policymakers decided to flood states with nearly \$800 billion in federal unemployment benefits that expanded both the size and scope of the program.⁸

This decision wasn’t based on the specific needs of Wisconsin’s economy or the ability of job creators to re-open their doors to provide the goods and services that their communities, their state, and the nation needed. It was a quick fix that, in typical D.C. fashion, threw more taxpayer money at a problem and hoped that eventually “dollars spent” would equal “problem solved.”

Worst of all, this decision was made without your input and without your oversight. The Legislature is a co-equal branch of government responsible for tax, spend, and oversight functions as well as general lawmaking. The fact that almost \$4.8 billion in federal unemployment insurance benefits were spent in Wisconsin without the input of the Legislature is, frankly, offensive.⁹ Bureaucrats in Washington, D.C., or Madison don’t know what’s best for Wisconsin employers, workers, and communities because they don’t have the same obligation or responsibility that each member of this Legislature bears.

Finally, between the work-search audit requirement of SB 237 and the identity verification and claimant eligibility cross-checks of SB 235, waste, fraud, and improper payments in the UI program will decrease. Wisconsin overpaid regular state UI claims by \$244 million between 2020 and 2021—the worst overpayments in state history and that doesn’t even count the federal UI benefits that were misspent.¹⁰ Perhaps unsurprisingly, some of these overpayments occurred after Gov. Tony

Evers' administration suspended certain program integrity measures, including some identity verification checks and out-of-state IP address flagging, blaming the COVID-19 influx of UI claims for the need to waive anti-fraud efforts.¹¹ Codifying requirements that all claims be screened for key fraud indicators *before* benefits are paid will save taxpayer money and preserve benefits for those who truly need them.

Over a dozen states have passed bipartisan legislation since 2020 implementing program integrity best practices like those contained in these two bills.¹² These measures help state workforce agencies protect the UI program from waste and fraud and are a success story that illustrates how bold efforts in state capitols across the country can solve a problem of national magnitude.¹³

During the Great Depression, Wisconsin became the birthplace of state-run unemployment insurance programs. New Deal reformers quickly seized on the idea and made the policy part of the landmark Social Security Act of 1935. In codifying this safety net for employment, they preserved the flexibility of states to design their programs in a way that fosters immediate support for the needy and re-employment as soon as possible.

Outlining the broad contours of his agenda, President Franklin D. Roosevelt declared that “work and security...are the spiritual values, the true goal” of government policy.¹⁴ Through a job, the former provides the latter. Renaming the unemployment insurance program the “Reemployment Assistance Program,” as SB 232 does, clarifies the original purpose and mission of this program.

Clarification is certainly needed. Last month the U.S. Department of Labor reported that a majority of unemployed individuals do not apply for unemployment benefits because they aren't sure if the program applies to them. Emphasizing that the program exists to support a transition to the next job is a great step in communicating the program's purpose for a new generation of workers.¹⁵

With over 233,000 open jobs in Wisconsin according to the most recent U.S. Department of Labor data, SB 232's clarification of work search requirements will ensure that unemployment insurance claimants and the Department of Workforce Development (DWD) are working efficiently and effectively to find re-employment.¹⁶

In order for work search to be meaningful it must be specific, employer-focused, and verifiable. SB 232 accomplishes all three of these goals by requiring UI claimants, starting in their third week of benefits, to complete two of their required four weekly work-search actions via direct engagement with a hiring employer. This is a win-win for employers and workers. It allows newly unemployed workers time within the first two weeks to develop a work-search plan and resume while ensuring that the goal of work-search efforts remains productive and meaningful contact with employers seeking workers. If the period of unemployment continues, claimants are still able to fulfill half of their work-search actions by participating in DWD's current menu of job search and skill development and training opportunities.¹⁷

DWD currently prioritizes workers finding a new job, as evidenced by the Job Center of Wisconsin, the department's digital re-employment service. SB 232 enhances this tool by requiring DWD to proactively match job openings reported by employers with the skills of recently unemployed workers. This is a model adopted by both South Carolina and Iowa.¹⁸ It should be noted that while SB 232 requires unemployed workers to apply for specific jobs, the decision to hire or not hire remains with the employer and no worker is penalized for not being hired.

In 2019, the U.S. Department of Labor published a final rule authorizing states to drug test certain UI claimants as a condition of receiving benefits.¹⁹ This new rule reversed previously vague federal guidance to states about their ability to implement drug testing in unemployment compensation programs. Wisconsin's statutory UI drug testing requirement has never been implemented by DWD.²⁰ SB 232 wisely overhauls this statute by implementing more direct language that DWD would need to adhere to in its promulgation of rules, and removing unilateral waiver authority from the DWD secretary, since the U.S. Department of Labor has now expressly authorized these drug testing programs.

Thank you for your time today and I'm happy to answer any questions you may have.

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