



DAVE ARMSTRONG

STATE REPRESENTATIVE • 75TH ASSEMBLY DISTRICT

Testimony on Assembly Bill 938 February 8, 2022

Thank you for the opportunity today to speak on behalf of Assembly Bill 938, which includes several commonsense reforms to improve the Unemployment Insurance (UI) program's efficiency and integrity.

UI's primary mission is to assist people who find themselves unemployed through no fault of their own while they actively search for new employment. As you know, if you are fired for misconduct, you are essentially ineligible for UI assistance. AB 938 updates Wisconsin's definition of "misconduct", which has been unchanged for almost a decade. It also clarifies the circumstances under which absenteeism qualifies as misconduct.

According to the US Department of Labor, Wisconsin's rate of improper payments is 15.56%, well above the national average of 9.17%. One of the major reasons for this poor showing is the Department of Workforce Development's failure to adequately enforce the work-search requirement. AB 938 will undo this damage by requiring DWD to randomly audit 50% of all work search actions.

In addition, AB 938 includes provisions to fight waste and fraud, such as requiring DWD to conduct weekly cross-matches among various databases – including prison, employment, and death records – and to implement identify verification methods recommended by the US Department of Labor. Furthermore, AB 938 requires the Legislative Audit Bureau to audit DWD's fraud detection and prevention efforts.

Lastly, I think most legislators can agree that DWD's response to the tsunami of UI claims as a result of COVID-19 was lackluster at best. While the worst appears to be behind us, my office continues to receive occasional contacts from constituents whose claims are caught in the remaining backlog, which is simply unacceptable this far out. To make sure something like this does not happen again, AB 938 requires DWD to expand the UI call centers' capacity and hours in times of greatly increased claim volume relative to the year before or during declared emergencies, and it further authorizes the Secretary of Administration to transfer executive branch agency staff to DWD to assist with UI appeals.

Other provisions in AB 938 include requiring out-of-state residents claiming Wisconsin UI to register with their home states' job exchanges, as well as legislative oversight of any future UI benefit augmentations the federal government may offer to the State of Wisconsin.

I hope you will join me in supporting these commonsense reforms so that DWD can better serve Wisconsin residents in their time of need.



Testimony in Support of Assembly Bill 938

**Wisconsin State Assembly
Committee on Workforce Development**

February 8, 2022

Chase Martin
Visiting Fellow
Opportunity Solutions Project

Chairman Petryk and members of the committee,

My name is Chase Martin, and I am a visiting fellow at Opportunity Solutions Project (OSP). OSP is a non-profit, non-partisan advocacy organization dedicated to advancing policies that reduce barriers to work and protect state benefits for the truly needy.

Thank you for hearing this legislation before your committee. I am submitting this testimony in support of Assembly Bill 938. There are many aspects of this bill that we strongly support, and I would like to highlight several of them.

First, under current law, employees fired for misconduct are prohibited from receiving unemployment benefits until certain requalification criteria are met. They are prohibited from using the wages earned under that employment to calculate the benefits they are entitled to, even if they meet the requalification requirements. The problem with current law is that the definition of what constitutes "misconduct" is too narrow, allowing loopholes for employees who steal from their employers or commit other acts that justify their firing. This bill closes these loopholes by broadening the scope of what is considered "misconduct" under the law.

For instance, this bill eliminates the requirement that the employee must have the intent to permanently deprive the employer of the property or services they stole. It's unacceptable to steal something, even if you intend to eventually return it when you're finished using it. This bill makes that clear. This bill would also consider intentional or negligent conduct that causes the destruction of an employer's records to be misconduct. It would also add to the list of what is considered misconduct the following: the unauthorized possession of an employer's property, theft or unauthorized distribution of an employer's confidential or proprietary information, and use of an employer's credit card or other financial instrument for an unauthorized or non-business purpose without prior approval from the employer.

In addition, this bill also provides that misconduct includes termination resulting from a violation of an employer's reasonable policy regarding absenteeism or tardiness, or the improper use of social media while on the job. This is all behavior that any reasonable person would agree should justify firing an employee for misconduct. Employees fired for these reasons should not be entitled to the same benefits as their hardworking neighbor who loses their job unexpectedly through no fault of their own. This bill would codify this common sense.

Second, this bill requires that claimants residing outside of Wisconsin and claiming benefits for a week other than an initial week register with their local job center website or labor market exchange, and requires the Department of Workforce Development (DWD) to verify that each claimant has complied with that requirement. If reemployment is the true aim of the program, it makes sense to have out-of-state claimants take this minimal step to help them find reemployment. This bill ensures that will happen.

Third, this bill helps promote work search by requiring DWD to conduct random audits of at least 50 percent of all work search actions reported to have been performed by claimants. This reform offers a significant improvement over current law which fails to require a specific number or level of random audits. Giving DWD basic guidelines in this area will go a long way toward ensuring that the DWD performs the level of program oversight expected by the legislature.

Fourth, the bill also adds commonsense identity proofing measures, requiring DWD to make efforts to ensure claimants are who they say they are through multi-factor authentication and other measures. It also helps detect fraud by requiring DWD to perform, on at least a weekly basis, a comparison of readily available databases that track death records, employment records, and prison records against recipients of unemployment insurance (UI) benefits for the purposes of detecting fraud or improper payments.

Fifth, this bill helps the state maintain control over its unemployment insurance program and spending by requiring legislative approval for any new federal unemployment program spending that would increase the amount above what is already required by state law, of either the weekly UI benefit rate payable to claimants or the total amount of UI benefits to which a claimant is entitled. In addition, the bill provides that no benefit augmentation may be effectuated unless it is subject to termination or cancellation by the Joint Committee on Finance.

Lastly, this bill would strengthen mechanisms for recovering fraudulent unemployment payments by requiring the Legislative Audit Bureau to conduct an audit of DWD's efforts to detect and prevent fraud and to recover fraud overpayments in the UI program, the federal pandemic unemployment assistance program, and the pandemic emergency unemployment compensation program.

For all these reasons, we strongly support Assembly Bill 938, and humbly urge this committee and the legislature to support it.

Thank you for your time.

Chase Martin
Visiting Fellow
Opportunity Solutions Project (OSP)

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TO: Assembly Committee on Workforce Development
FROM: Abby Bar-Lev Wiley, Legislative Director, Legal Action of Wisconsin
RE: Impact of AB 938/SB 932 on Legal Action's Clients
DATE: February 8, 2022

Thank you for the opportunity to provide comments on AB 938/SB 932. Legal Action of Wisconsin (LAW) is the largest non-profit law firm providing high-quality, free civil legal aid to low-income people in 39 of Wisconsin's southern counties. Our broad reach and expertise mean that we see what poverty looks like over a wide swath of the state, from urban and rural areas, from farmworkers to construction workers. One of our priority areas focuses on helping clients secure and maintain the government benefits necessary to meet their most basic needs including food, shelter, health, and income. Legal Action has serious concerns about how AB 938/SB 932 would impact our low-income clients.

Requiring more audits will not uncover fraud but will hurt low income individuals

The process of applying for unemployment benefits and understanding the unemployment insurance requirements is often confusing and difficult to navigate. Already existing barriers in the unemployment system became even more apparent during the pandemic as newly unemployed Wisconsin workers struggled to access the unemployment system and understand the filing requirements—but could not receive or guidance in doing so. Unemployed workers want to complete their unemployment insurance applications correctly and need timely help in completing applications or timely feedback when an application is missing certain information.

Wisconsin's current unemployment requirements are already especially burdensome to Legal Action of Wisconsin's migrant and seasonal farmworker clients. Wisconsin's agricultural economy depends on the seasonal flow of migrant farmworkers into the state. Legal Action's migrant and seasonal farmworker clients are not usually computer literate, often lack easy access to technology, and face language barrier issues in accessing benefits and communicating with DWD. The process of applying for unemployment insurance benefits, particularly the work-search requirements, are often confusing and difficult to navigate. In the past, many migrant and seasonal farmworkers received overpayment penalties because of improperly completed work searches. Farmworkers were not trying to commit fraud, but because they were trying to navigate a complex system with little support, they were often confused about the requirements. In nearly all of these overpayment cases, clients asked us "why didn't someone tell me I was doing anything wrong until now?"

Additional filing assistance or timely feedback during the weekly claim filing process could have prevented these overpayments from occurring. It is assistance, not audits, that would prevent application errors caused by misunderstandings regarding unemployment insurance requirements

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or errors in completing the application.¹ Similarly, a story circulated in the news² about a woman who received a one-time \$300 check from a dance class she had taught in the past. At the time she received the check, she was receiving unemployment insurance. Months later, after she found a new job, she received a notice from DWD accusing her of fraud and demanding that she pay back \$4,851, which constituted all of her unemployment benefits with a 40% fine for fraud. The investigation did not catch someone who was fraudulently trying to take advantage of the system. She had simply made a mistake. Legal Action understands from our experience that increasing audits of unemployment claims or work search actions will not necessarily find people who are trying to commit fraud.

Increasing audits also does not help people find family-sustaining employment. Rather, it opens the door for more low-income workers and families to be punished for simply being confused. Many of our farmworker clients are still recovering—mentally, emotionally, and financially—from the increase in work search audits in 2016 that left them in precarious economic situations. An audit of at least 50% of unemployment work-search actions would be a tremendous administrative burden that DWD is unlikely to be able to conduct without new or additional funding streams. More resources devoted to audits means fewer resources devoted to staff that could educate claimants and prevent overpayments from occurring. More resources devoted to audits also would mean fewer resources available to help claimants connect with meaningful job training and employment opportunities.

Identity proofing

AB 938/SB 932 would require DWD to implement new, technology-driven identity-proofing measures for unemployment insurance applicants. Legal Action has serious concerns about how this might impact our clients. Facial recognition technology is increasingly being proposed by states for unemployment insurance identity verification, but the technology is flawed and could significantly negatively impact our clients, particularly Black clients or clients of color. A federal agency researching facial identification technology during the Trump Administration found that the technology is less accurate when identifying people of color, particularly people who are Black, Asian, or Native American.³ Moreover, the technology is unregulated, with no laws governing its use or providing oversight. If this type of technology is used to verify identity for unemployment insurance, it is almost certain that there will be some eligible applicants will be wrongfully denied benefits due to errors with the identity verification system.

¹ Srebel Erica, Wisconsin Law Journal Article, *Migrant workers tripped up by new work search rules, slapped with fraud* (Nov 22, 2017), <https://wislawjournal.com/2017/11/22/migrant-workers-tripped-up-by-new-work-search-rules-slapped-with-fraud/>

² Amanda St. Hilaire, *Fraud or mistake? Claimants Say Unemployment System Punishes Confusion*, Fox6 News (Dec. 2, 2020), <https://www.fox6now.com/news/fraud-or-mistake-claimants-say-unemployment-system-punishes-confusion>.

³ Chad Boutin, News Release, U.S. Dept of Commerce, Natl Inst. of Standards & Technology, *NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software* (Dec. 19, 2019), <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>.

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New administrative burdens would leave applicants in a lurch

This bill proposes additional burdens on unemployment insurance administration than DWD is likely to be able to handle. As a result, rather than improving the unemployment system to make it more efficient and more accessible for low-income people like our clients, AB 938/SB 932 would likely create new and significant delays administering benefits. Many of Legal Action's clients waited months to receive benefits due to DWD administrative delays and errors, particularly clients who face language access barriers. These bills do not propose any new or additional funding streams for DWD to manage the increased workload proposed in the bills, it merely allows the transfer of other-agency employees to DWD while making DWD pay the temporary employees' salaries.

Transferring employees from other agencies to DWD does not resolve the administrative burden felt by the DWD Unemployment Insurance (UI) Division. During the pandemic, DWD transferred employees from other DWD divisions to the UI Division to help manage the workload. Yet even with the transfers, clients' unemployment insurance benefits are still facing delays. For example, we know of at least one client who applied for benefits in March 2020, has been determined to be eligible for those benefits, but has still not received a single dime in unemployment insurance benefits. Additionally, when someone is employed for one job and then transferred to a different job, this often means that no one is completing the duties of the job they were originally hired to do. For example, Legal Action has farmworker clients who filed wage theft claims with DWD's Equal Rights Division over a year ago that are still unresolved because there is a shortage of ERD staff to investigate claims. Asking employees from other agencies across the Executive Branch to temporarily transfer to DWD does not solve underlying issues and leads to problems in other areas of government. Without additional funding to pay for the transferees' salaries, DWD's budget would also be stretched even thinner, and our clients would be the ones impacted.

Changes to the definition of misconduct are unnecessary

With the exception of the removal of intent and permanency from the provision relating to deprivation of the employer of its property, the other proposed changes to the definition of misconduct in AB 938/SB 932 are already acts that would be considered misconduct, as misconduct is defined as:

one or more actions or conduct evincing such *willful or wanton disregard of an employer's interests* as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect of his or her employees, or in carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such disregard, or to show an intentional and substantial disregard of an employer's interests, or of an employee's duties and obligations to his or her employer.

Wis. Stat. s. 108.04(5) (emphasis added).

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The “willful or wanton disregard of an employer’s interests” language encompasses everything contained in the proposed amendments to the statute.

The language regarding intent and permanency related to the deprivation of the employer of his property tracks similar language in Wisconsin’s criminal code relating to what constitutes as theft. It appears that this provision precludes borrowing without the employer’s prior consent but does not require that there be any harm to the employer; an employee could be charged with misconduct if they borrow a stapler for the weekend. This would run directly contrary to Wis. Stat. s. 108.04(5) and the principles originally outlined in *Boynton Cab v. Neubeck*, 237 Wis 249, 259, 260, 296 NW 636 (1941), in which the language requiring “willful and wanton disregards of the employer’s interest” was first expressed. Wisconsin can be proud that its Supreme Court’s definition of misconduct, as the term is used in unemployment law, has been quoted by every jurisdiction in the United States.

The effect of these changes on our clients would be to delay or prevent benefits. The inevitable increase in appeals of benefits denials would add further burdens the unemployment appeal system. However, many clients do not understand their initial denials of benefits, or what an appeal is, or how to do it, and those clients would actually be prevented from receiving benefits for which they are eligible.

Overall, we are deeply concerned that the changes proposed in AB 938/SB 932 would have long-lasting negative impacts on our clients while increasing administrative burdens that slow the process and create additional and unnecessary delays to receiving benefits. Thank you for your consideration.

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**THE LEADING VOICE
FOR WISCONSIN SMALL
AND INDEPENDENT BUSINESSES**

February 8, 2022

**TO: Members
Assembly Committee on Workforce Development**

**FR: Brian Dake
President
Wisconsin Independent Businesses**

RE: 2021 Assembly Bill (AB) 938 relating to: various changes to the unemployment insurance law, requiring an audit to be conducted by the Legislative Audit Bureau, requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits, and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes.

Chairman Petryk and committee members, my name is Brian Dake, President of Wisconsin Independent Businesses. Thank you for the opportunity to testify in support of 2021 Assembly Bill (AB) 938.

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.

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In consultation with our members, WIB has a set of core principles which guide our state unemployment insurance (UI) advocacy efforts. They are:

- reduce the UI tax burden on small employers;
- increase accountability on the part of UI claimants;
- improve program integrity and reduce the incidence of UI fraud;
- provide clarity to the enforcement of existing UI laws and regulations; and
- transition UI claimants to gainful employment quickly.

We support AB 938 because provisions within this omnibus legislation fulfill each of these objectives. In my remarks, I highlight two provisions of particular importance to Wisconsin small, independent business owners.

Updating Wisconsin's Employee Misconduct Statute

To receive weekly UI benefits, claimants must fulfill certain requirements. One of the eligibility criteria is that the terminated employee must have lost his\her job through no fault of their own.

2013 Wisconsin Act 20 defined misconduct for purposes of UI benefit eligibility and enumerated that misconduct specifically includes seven general actions by an employee. A claimant is ineligible for UI benefits for a specified period if the claimant's discharge resulted from:

- a violation of an employer's drug and alcohol policy;
- theft of an employer's property or services;
- conviction of a crime or other offense subject to civil forfeiture, if the conviction makes it impossible for the claimant to perform his\her employment-related duties;
- one or more threats or acts of harassment, assault, or other physical violence instigated by a claimant at the employer's workplace;
- under certain circumstances, absenteeism or excessive tardiness;
- falsifying the employer's business records, and;
- willful and deliberate violation of a written and uniformly applied standard by a claimant for an employer that is licensed or certified by a governmental agency.

The intent of the Employee Misconduct statute was to provide clear guidance to employers and sets clear expectations for claimants. Since its enactment, various provisions of the Employee Misconduct statute have been subject to legal challenge and appellate courts have rendered their verdicts. Business practices have evolved, and new case-specific situations have arisen. For these reasons, we are pleased that AB 938 has updated the Employee Misconduct statute. Of note, this legislation;

- adds unauthorized possession of an employer's property, theft, or unauthorized distribution of an employer's confidential or proprietary information, and use of an employer's credit card or other financial instrument for an unauthorized or nonbusiness purpose without prior approval from the employer to the list of what is considered misconduct;
- replaces the existing misconduct standard for absenteeism and tardiness with a new standard that specifies that misconduct includes both of following: a violation of an employer's reasonable policy that covers employee absenteeism, tardiness, or both and that results in an employee's termination, if that termination is in accordance with that policy and the policy is specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature; and if an employer does not have a policy covering absenteeism that meets the criteria just described, 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; and
- provides that misconduct includes a violation by an employee of an employer's reasonable employment policy that covers the use of social media specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature.

Work Search Authentication

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

2013 Wisconsin Act 36 requires the Department of Workforce Development (DWD) to conduct random work search audits and report annually to the Unemployment Insurance Advisory Council, the number and result of audits conducted in the previous year.

- In 2020, DWD conducted only 766 work search audits due to the pandemic. Those audits resulted in 208 decisions finding that work search requirements were not met.

- In 2019, DWD conducted 31,263 work search audits. Those audits resulted in 7,118 decisions finding that work search requirements were not met.
- In 2018, DWD conducted 32,772 work search audits. Those audits resulted in 6,392 decisions finding that work search requirements were not met.
- In 2017, DWD conducted 33,589 work search audits. Those audits resulted in 7,452 decisions finding that work search requirements were not met.
- In 2016, DWD conducted 16,747 work search audits. Those audits resulted in 3,196 decisions finding that work search requirements were not being met.

Over this five-year period, 22.1% of all DWD work search audits conducted found that claimants failed to fulfill their weekly work search requirements.

AB 938 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 data justifies this enhanced work search authentication is needed to ensure claimants fulfill their weekly work search requirements.

We respectfully ask for your support of AB 938.

Thank you in advance for your consideration.

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Tony Evers, Governor
Amy Pechacek, Secretary-designee

Date: Wednesday, February 9, 2022

To: Chair Petryk, Vice-Chair Dittrich, and Members of the Assembly Committee on Workforce Development

From: Department of Workforce Development Secretary-designee Amy Pechacek

Informational Memo Regarding AB 937, AB 938, and AB 939

Chair Petryk, Vice-Chair Dittrich, and Committee Members, thank you for the opportunity to provide information regarding AB 937, AB 938, and AB 939, three bills under your consideration that propose significant changes to unemployment insurance (UI) law and Wisconsin's UI program. It is my understanding that from questions brought up at yesterday's hearing, clarifying information from the Department of Workforce Development about the impact of the bills would be helpful in advance of tomorrow's executive session.

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. Through the leadership of Governor Evers, resilience of state employers, and dedication of Wisconsin's workforce, the state has bounced back from the economic downturn caused by the COVID-19 pandemic and is now stronger than ever. Given our state's current economic conditions and the lessons learned during the pandemic, the Department does not believe the bills before you today would strengthen the workforce, nor create lasting benefits for employers, job seekers, or current employees.

The preliminary December 2021 jobs report showed a record-low unemployment rate of 2.8% and the number of people counted as unemployed dropped to 86,200—the lowest number of unemployed Wisconsinites in state history. Meanwhile, the 66.4 percent labor force participation rate, which is a measure of the population actively working or seeking work, remains 4.5 percentage points above the national rate and is among the best in the nation.

Yet with this record-breaking recovery has come a labor market quantity challenge, driven by demographic trends that have been building for decades:

- An aging workforce and the volume of Baby Boomers retiring;
- Lower birth rates in the younger generations means there is not an equal workforce replacement rate; and
- Net zero immigration and migration into Wisconsin.

It is important to note that Wisconsin is not alone in facing the worker quantity challenge. It affects the U.S. as a whole and many other industrialized nations. The challenge is particularly acute here in the Midwest, which consistently posts the highest regional labor force participation rate in the nation.

Wisconsin's efforts to effectively address the labor quantity challenge build on DWD's historic success and partnerships with new "talent traction" strategies to remove barriers to employment and bring existing underutilized talent pools fully into the workforce. Key among these efforts is Governor Evers' \$130 million

commitment to invest in solutions to address the workforce challenges we face as a state. These investments build on regional partnerships across the state and include an innovative combination of providing job training, equipment, educational opportunities, affordable childcare for working parents, and mentoring to produce tailored and strategic workforce development solutions.

At the same time, DWD is undertaking comprehensive modernization efforts to improve external customer service access, unemployment insurance infrastructure, fraud prevention, and accounting controls and tools that match job seekers with employers. Challenges highlighted during the pandemic and recovery, which AB 937, AB 938, and AB 939 propose to address, are being remedied through DWD's modernization efforts, including a responsive call center, better usability for job seeker and employer reporting, and verification for UI claims processing. These unprecedented modernization efforts, combined with the administration's workforce development strategies, are producing results that include greater equity and economic opportunity for the people of Wisconsin.

AB 937, AB 938, and AB 939 do not account for the data-driven economic realities of Wisconsin's labor market and the trends that have been decades in the making, including regional economic differences. Further, the bills would add costly and confusing reporting burdens for employers.

Finally, the bills, which include unnecessarily punitive measures would reverse recent progress in bringing harder-to-employ populations into the labor force while not addressing the barriers to employment that disproportionately affect veterans, people of color, individuals who were justice-involved, and individuals with disabilities. AB 937, AB 938, and AB 939 undermine partnerships that have been developed over multiple administrations, diminish efforts to train and connect workers with employers, and impose burdens on business and government that would set back customer-service-driven modernization efforts.

AB 937

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. The bill creates a formula for determining the number weeks a claimant may be eligible for UI benefits depending on the seasonally adjusted statewide average unemployment rate of the first or third calendar quarter preceding the start of the claimant's benefit year depending on when they file their initial claim. This means that for claimants who start their benefit year on or after January 1, the number of weeks that they would be eligible for UI benefits would be determined on the average unemployment rate of July, August, and September of the previous year. Claimants who start their benefit year on or after July 1 would be eligible for the number of weeks as determined by the average unemployment rate of January, February, and March of that year.

This method of calculating maximum UI benefit duration is concerning in that 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.

For example, in March 2020, the unemployment rate was 3.2 percent and the April 2020 unemployment rate was 14.8 percent. Had the bill been in effect at the start of the COVID-19 pandemic, individuals filing for UI in April 2020 would have had their maximum number of benefit weeks calculated based on the average unemployment rate for third quarter 2019 (3.1 percent). Under this hypothetical scenario, individuals that lost their job through no fault of their own in April 2020 would have been eligible for only 14 weeks of UI benefits. In July 2020 (14 weeks from April 2020), the unemployment rate was still at 7 percent. Although many workers had been able to return to work within that time, the public health risks facing certain industries did not allow them to recover as quickly, meaning their workers with certain skills and experience remained out of work through no fault of their own. As evident by our state's labor force participation rate, Wisconsinites are hard workers. However, the unemployment rate did not recover to pre-pandemic levels until October 2021. Fourteen weeks of UI would not have been long enough for individuals to weather the economic recovery and the recovery of jobs.

In addition, AB 937 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. Because the benefit durations for partial claims are determined the same as regular claims, the impact on claimants filing for partial claims would be the same.

DWD estimates that over one third of claimants would be affected by the proposed change. For example, for benefit years beginning in 2018 (covering payments in 2018 and 2019), 35 percent of claimants (36,513) would have been affected, experiencing an UI benefit decrease of \$84.4 million. And, for benefit years beginning in 2019 (covering payments made in 2019 and 2020), 38 percent of claimants would have been affected (43,610), experiencing an UI benefit decrease of \$102.3 million. In addition, the proposed changes would have sizable and negative impact on short and medium run economic activity in Wisconsin. It is estimated that for each dollar paid in UI benefits there is a \$1.70 increase in economic activity. So, using the example of 2018 and 2019 benefit years, this would relate to a reduction of \$143.48 million and \$173.74 million in economic activity in Wisconsin respectively. Given carryover pandemic claims, it is difficult to estimate who in the current claiming population would be impacted.

AB 938

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 future date, this proposed change could delay benefits to Wisconsin citizens, 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 benefits and administrative funding should participation in those federal programs be delayed, like Wisconsin experienced early in the pandemic when legislative delay on the waiting week waiver cost Wisconsin hundreds of millions of dollars in federal reimbursement of those funds. If such a review had been required when DWD was implementing the Federal Pandemic Unemployment Compensation (FPUC) program, just a two-week delay for JFC review of the administration of FPUC funding would have resulted in \$362 million of lost funds.

The other proposed changes in AB 938 are, in many ways, already current DWD practices or would have little of the intended effect on the UI program, such as:

- Regarding the proposal that all out-of-state claimants register with a job center, this is UI's current practice. UI already requires out-of-state claimants to register with a job center.
- The changes to the misconduct and absenteeism under UI law would only result in a minor reduction in UI operation costs (for claims adjudication). In addition, the change would not have much effect in finding individuals ineligible for UI as the change in policy would not add reasons for ineligibility, it would simply shift claim denials from "substantial fault" to "misconduct."
- Identity Proofing - UI already performs substantial identity verification. 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 use targeted identification logic. If extended to every claimant, vendor costs would be increased significantly.
- Work Search Audits - UI currently uses a targeted approach to work search audits. UI has balanced the efficacy of assuring work searches are audited with the available staff time.
 - In addition, work search audits are labor intensive. Every additional audit of two claimant work searches requires 45 minutes of staff time. The proposed requirement would require a substantial investment. Also, additional denials of claims will result in additional appeals.
 - The bill does not allocate any funding to cover the likely significant costs to increasing staff to conduct such extensive auditing, as well as the cost of appeals.

- Regarding the training requirements proposed in AB 938, UI already has external training and training videos in place.
- This provision regarding claimant data matching with death, incarceration, and other databases is unnecessary as UI already matches to three of the four databases mentioned in the bill, with the fourth in the process of being implemented. While UI would not have barriers to complying with the proposed language now, codifying the names of the databases creates a future problem as database types and technology changes.
- Regarding the bill's proposed Legislative Audit Bureau's (LAB) audit of DWD's UI fraud detection and prevention efforts, LAB has conducted extensive audits of all of DWD's UI functions, including fraud detection and prevention efforts. It is unnecessary to legislate the need for an audit. Audits can be accomplished within existing authorities. For example, see LAB Reports 21-11 and 21-9.
- Transfer of staff to DWD to assist UI Operations - Staff transfers can be accomplished, and have been accomplished, within existing authorities. In addition, such mandatory transfers of staff can have a negative impact on the operations of other critical programs. During the height of the COVID-19 pandemic, the administration was able to work with the current flexibilities to strategically transfer staff to assist UI operations while ensuring other critical functions remained online.

Lastly, the bill proposes expanding UI call center operations during a declared state of emergency. As demonstrated throughout the course of the COVID-19 pandemic when DWD did expand the hours of the call center, this is a function the Department has done and is able to do at any time based on the need of the people of Wisconsin. However, DWD was limited by the antiquated IT system that required the mainframe to be unavailable during certain times of day. That is why the Evers Administration's efforts to modernize our UI system continue to be a key solution in ensuring folks are able to get connected and receive support in a timely fashion. Examples of how the antiquated system affected the call center hours are available below:

- UI uses a COBOL Mainframe to process UI claims. The Mainframe is unavailable during certain periods to allow for batch processing and maintenance.
- The required overnight "batch" processing must occur for UI payments to be made.
- Batch processing is required to calculate, process and record payment amounts for claims and generate files for bank processing so that the payments can be deposited into claimants' bank accounts or issued to debit cards.
- When the batch process is running each night, the online mainframe application is not available for making adjustments/corrections to the claims.
- Currently the Mainframe is available for staff to use during the hours of 6:00AM and 6:00PM, Monday through Friday, and from 6:00AM to 3:00PM on Saturday.
- Staff do not process claims on Sundays as that day is reserved mainly for weekly claim taking and preparing files for processing for payment.
- Weekend and evening hours would require staff costs of 40-45 people plus overtime costs. IT changes would be needed for the batch cycle and maintenance windows, and staffing would need to be added for IT and other areas that support the call center for weekend hours.

In addition, the proposed requirement to maintain a call center as well as have extended call center hours during a statewide emergency and/or a 300 percent increase in calls compared to the prior year does not take into consideration increasing use of other technologies to apply for UI and receive help on a claim, such as an improved online filing process and DWD's newly implemented artificially intelligent (AI) chat bot. DWD has made tremendous strides over the past year with the modernization of its call center, including contracting with Nice CXone, a cloud-based Customer Contact Center, to provide call center services. By partnering with this vendor, DWD has been working to implement a call center that offers a way to efficiently track and manage customer contacts while adding additional channels for communication.

To date, DWD has transitioned one third of the UI call center phone numbers to this new solution, which provides increased mechanisms for communicating with claimants and provides an opportunity for the integration of an AI chatbot. The CXone platform provides a sound, proven platform that is engineered to meet DWD's capacity needs as DWD's weekly call volume can be as low as 12,000 calls per week to over 6 million calls per week (experienced at the start of the pandemic). The new call center platform monitors

capacity regularly and has an architecture that allows for a capacity increase to meet DWD's needs at all hours and without having to expand traditional "call center" hours.

AB 939

There are already requirements in place to address to the possibility that job seekers are committing the types of UI fraud that AB 939 proposes to combat. Further, some proposed reporting requirements may not be permissible under federal law. Pursuant to Wis. Stats. s. 108.04(2), UI claimants must be able and available for work, register for work (registration is through the Job Center of Wisconsin), and conduct at least four allowable work search actions per week, among other criteria. All individuals receiving UI must file weekly claims certifications that require claimants to answer several questions, such as whether they are able and available for work, whether they have refused any job offers or referrals to a job, and whether they are actively looking for work. Claimants are responsible for any inaccurate or incomplete information that they provide. Failure to correctly report all work, earnings, or other eligibility requirements could result in overpayments and penalties.

In addition, the required four work search actions each week must be valid, and any required documentation must be provided. Weekly claims certifications that raise any eligibility issues, such as able and available issues, are investigated by DWD's claim specialists. UI laws and policies, including those listed above, are in place to help address the concerns that are the basis of the bill.

Regarding the bill's proposed increase to employer reporting requirements, 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. 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 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 investigates all reports and fraud referrals.

Regarding the job refusal reporting requirement proposed in the bill, employers may already report a job refusal (such as a quit due to "no show") to DWD. When an eligibility issue is raised, a fact-finding investigation is conducted, and the claimant is always given an opportunity to give a statement about the issue. After DWD receives all the information about the job refusal, and if the individual is receiving UI benefits, DWD would adjudicate the issue and determine whether benefits should be denied. A claimant's failure to correctly report work, which includes a new job or job quit, may result in penalties. The claimant could appeal that determination.

The bill's proposed reporting requirements will create unnecessary administrative burdens on employers in Wisconsin. As it is likely that reporting employers would not have the personal identifying information for job applicants that do not attend interviews to effectively allow DWD to match UI records accurately. It is unclear in the bill to what extent employers will submit information on individuals' interest in job opportunities. Employers would not know the job applicant's UI status in some situations covered under the proposed language and reporting individuals' lack of interest in an opportunity may not be an employer's priority for their administrative staff time. In addition, there are confidentiality requirements in both state and federal law which restrict information about "actions taken" and their effect on claimants' eligibility. The proposed language in AB 939 requiring information being reported related to actions may not be permissible under federal law.

Thank you for the opportunity to provide this information.



MEMO

TO: Assembly Committee on Workforce Development

FROM: Chris Reader, Executive Vice President of IRG Action Fund

DATE: February 8, 2022

RE: Support for AB 937, AB 938, AB 939 related to improving the UI System

Chairman Petryk and members of the Committee,

Thank you for holding this hearing today on these Unemployment Insurance (UI) reform proposals. My name is Chris Reader, and I'm the Executive Vice President for IRG Action Fund. IRG Action Fund is the advocacy and lobbying partner to the Institute for Reforming Government, a Wisconsin based think tank.

I come before you today to speak in favor of Assembly Bills 937, 938, and 939. These bills collectively will help fix a broken Unemployment Insurance system. While many of the issues addressed in these bills have been around for years in Wisconsin, the COVID-19 pandemic has put a bright spotlight on the UI system and the pressing need to fix what is broken.

Unemployment Insurance is vital for those who face tough times. The program offers a lifeline as the claimants seek new employment after the emotional, often unexpected, loss of a job. But to be around to help those who need it most, you as policymakers must be ever mindful of ways to adjust the system, protecting its integrity and ensuring funds are available for those who are out of work due to no fault of their own. By protecting the integrity of the UI fund and ensuring funds are rightfully delivered, these bills will also help ensure the state maintains a healthy UI Fund balance, which is necessary to keep Wisconsin employers in the lowest possible UI tax bracket. For those reasons, we support these bills and applaud the authors for bringing them forward.

Assembly Bill (AB) 937 creates a sliding scale for UI benefits. The current UI system doesn't account for changing market dynamics as it should. The available number of jobs is not static, and connected services like UI benefits should also not be static. Today there is a set number of weekly benefits available to claimants, 26, regardless of the current job marketplace. AB 937 brings real world conditions into the UI system, helping ensure that funds continue to be available for those that need them most. It is common sense that the amount of benefits available should adapt to the current market needs. In times of high unemployment, when jobs are scarce, additional weeks of benefits may be needed for individuals seeking their next job opportunity.

But when jobs are plentiful, as they are now with an unemployment rate under 3% and over 130,000 jobs available on the Jobs Center of Wisconsin website, it makes sense to lower the number of weeks of

UI benefits available. The goal is not to force people off of benefits, but rather it is a recognition that there are jobs available right now for those claimants to go after. In the bill, the minimum amount of benefits is 14 weeks. 14 weeks to find a job in what is often described as a worker's marketplace, where employers are desperate for workers and "help wanted" signs, many offering hiring bonuses, are literally in store fronts all over the state. Workers are quitting their jobs left and right today in what has been named "the great resignation" because jobs are plentiful, and job seekers are able to command higher pay and better benefits in today's marketplace. UI should recognize this reality.

Assembly Bill 938 is an omnibus bill that touches on a number of items within the UI system in order to ensure funds are there for those that need them most, as well as make sure the system is working properly for those in desperate need of help. We witnessed way too many cases during the first wave of COVID-19 of individuals not being able to obtain help submitting claims, leaving our fellow Wisconsinites without benefits when they needed it most. To that end, AB 938 requires DWD to operate a call center during times of high demand like what we had from the initial claims stemming from COVID-19 shutdowns, while also allowing the state to transfer employees from other agencies to help with the call center volume.

The bill also protects the integrity of UI by upgrading the definition of misconduct, requiring the Department of Workforce Development to audit at least 50% of work search actions, requiring an upgrade in identity matching for new claimants, and requiring DWD to provide updated training materials, including videos, for employers and claimant. It also directs DWD to compare claimants to databases that track death, employment, and prison records to search for fraud or erroneous payments, gives authority to approve future federal enhanced benefits to the Joint Committee on Finance, and requires the Legislative Audit Bureau to conduct an audit of DWD's efforts to detect and prevent fraud as well as recover fraud related overpayments. These are all common sense ideas to make sure funds are available for those that need them when they lose their job at no fault of their own.

Finally, but certainly not least, before you today is Assembly Bill 939, legislation that cracks down on "ghosting" while still receiving UI benefits. This bill addresses a growing concern that we hear about from employers all over the state, regardless of industry or size. It certainly existed prior to the COVID-19 pandemic, but, like so many other related items, "ghosting" had a bright spotlight put on it during the pandemic. "Ghosting" in this context is when an individual doesn't show up for an interview or new job offer, yet still counts that scheduled interview or job offer as a job search to maintain benefit eligibility.

Here is what we heard from one employer, AriensCo. from Brillion, on this issue and their experience with "ghosting" by job candidates (letter attached):

In a highly competitive talent landscape with attractive unemployment benefits, AriensCo has been impacted by candidates "ghosting" our career opportunities. This consistently occurs for candidates for both professional and production positions.

On the production side within the past year, we have had 53 candidates in 2021 not show up for work on their first day and requiring us to rescind their offers of employment. Additionally, 140 candidates did not show up for interviews in 2021, and there were 401 candidates that applied for positions with AriensCo in 2021 that we could not contact/did not respond to us after applying.



**Statement Before the
Assembly Committee on Workforce Development**

By

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

Tuesday, February 8, 2022

Assembly Bills 937, 938, 939

Chair Petryk, Vice Chair Dittrich, and members of the Committee, my name is Bill G. Smith, State Director for the National Federation of Independent Business (NFIB), and I appear today on behalf of nearly 10,000 Wisconsin member firms. Many of these small businesses continue to struggle with a full menu of economic challenges:

- Labor issues
- Supply shortages
- Inflation
- COVID regulations

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 have been done on a monthly basis.

The January jobs report was recently released, and I would like to share a few highlights with the Committee. According to the small business monthly Jobs Report by NFIB's Research Center, a historic number of small businesses are struggling to increase their workforce. A net 50 percent (seasonally adjusted) reported raising compensation, up two points from December and a 48 year record high reading.

NFIB's Chief Economist said, "Historically large numbers of small businesses are struggling to increase their workforce ... the staffing shortage continues to hold back the small business economy as owners try to retain their current employees and attract applicants for open positions, still at record high levels."

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

**Statement Before the Assembly Committee on Workforce Development
Tuesday, February 8, 2022**

A few more statistics from the Report:

- 23 percent said labor quality was their top business problem
- 11 percent cited labor costs as their top business problem
- 47 percent (seasonally adjusted) reported job openings they could not fill, and although down two points from December, the number of unfilled job openings still far exceeds the 48 year average of 23 percent.

Overall, Mr. Chair, 59 percent of small employers reported hiring or trying to hire in January – and 93 percent of those hiring or trying to hire reported few or no applicants for the positions they were trying to fill. 29 percent said there were few qualified applicants for their open positions, 26 percent reported none.

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 current worker shortage crisis challenging our small business employers.

Assembly Bill 937 would create a linkage between unemployment and insurance benefits and current economic conditions.

Assembly 938 includes several key reforms that would protect the integrity of the UI Trust Fund, improve the efficiency of the administration of benefits, and help promote a UI system that is accountable and fairer to all who access the program.

Assembly Bill 939 preserves the intent of the UI system to provide temporary financial assistance while an individual seeks employment.

Mr. Chair, no one has greater responsibility or ability to lead the economic recovery than Wisconsin's 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 this legislation and public policies that impact our state's vital small business community.

Thank you.