



## Unemployment Insurance Advisory Committee

### Meeting details

**Date:** Wednesday, August 2nd, 2023

**Time:** 10:00am - 12:00 pm

**Location:** Zoom

#### Committee members and alternates present

##### Employee Representatives

- Sybill Hyppolite, Washington State Labor Council (alternate)
- Cindy Richardson, UNITE HERE Local 8
- Josh Swanson, Operating Engineers 302
- Brenda Wiest, Teamsters 117

##### Employer Representatives

- Bob Battles, Association of Washington Business
- Josie Cummings, Building Industry Association of Washington
- Julia Gorton, Washington Hospitality Association

##### General Public Representatives

- Anne Paxton, Unemployment Law Project

##### ESD staff

- Joy Adams
- Danielle Cruver
- Joshua Dye
- Vaughn Ellis
- Colin Helsley
- Caitlyn Jekel
- Matt LaPalm
- Marypat Meuli
- Scott Michael
- JR Richards

#### Committee members and alternates absent

- Tammie Hetrick, Washington Food Industry Association (employee rep)
- Monica Holland, Northwest Justice Project (alternate public rep)
- Joe Kendo, Washington State Labor Council
- Allyson O'Malley-Jones, Northwest Justice Project (alternate public rep)
- William Westmoreland, Pac Mtn WF Dev Council
- Courtney Williams, Community Employment Alliance (public rep)

- Stephanie Sams
- Dan Zeitlin

## Summary

### Meeting Recorded

This meeting was [recorded](#) and also livestreamed by TVW.

### Welcome and Opening Remarks

- Unemployment Insurance Customer Support Director, JR Richards, welcomed everyone and thanked them for their patience as ESD noticed technical difficulties with accessing the meeting this morning. While Zoom required a passcode for today's meeting, these meetings should not require a passcode, and ESD employees are investigating the reason for this.
- JR then asked committee assistant Colin Helsley to call roll.

### Agenda

JR Richards reviewed the following agenda items (also see Addendum I.)

- Approval of Meeting Schedule
- June Trust Fund Report
- Updated Taxable Wage Base
- Rulemaking Update
- Legislative Proposals
- Overpayment updates

### Meeting Minutes

JR Richards requested that everyone review the June 2023 UIAC meeting minutes and provide their feedback. Brenda Weist made a motion to approve the minutes and Josh Swanson seconded the motion. All in favor said "aye", no members said "nay". The June 14<sup>th</sup>, 2023 meeting minutes were approved.

### June Trust Fund Report

JR Richards handed the meeting over to Vaughn Ellis, Office of Actuarial Services, ESD, to provide the June 2023 Trust Fund report.

Vaughn presented on the following slides:

## September UI Trust Fund Report

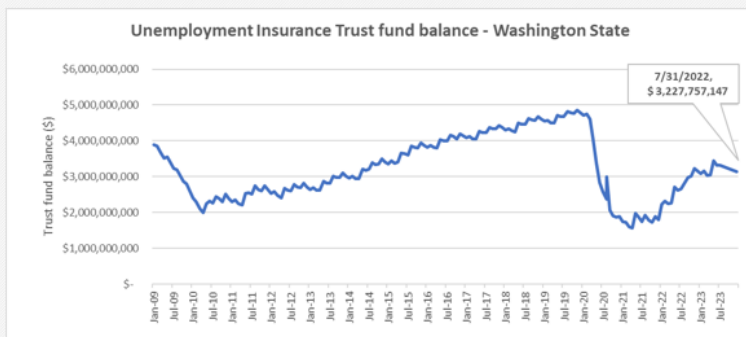


- The [June 2023 report](#) provides the status and updated projections of the state’s unemployment insurance (UI) trust fund for 2022 through 2027.
- The report is based upon the June 2023 economic forecast released by the state’s Economic and Revenue Forecast Council (ERFC).
- The report uses quarterly forecast information and UI tax and benefit data through March (Q1 2023).

## Unemployment Insurance Trust fund



- On July 31st, 2023, the UI trust fund balance was approximately \$3.2 billion



## June UI Trust Fund Report: Key Takeaways



- The unemployment trust fund balance is on a positive trajectory through 2027.
- The projected trust fund balance for 2023 is roughly \$3.8 billion, with 8 months of benefits projected for September 30<sup>th</sup> [2023](#).
- The average projected tax rate for 2023 is 1.43%.
- Total benefit payments for 2023 are projected at roughly \$1.4 billion, equivalent to 2.1 million weekly payments.

## UI Trust Fund Forecast (September 2022)



	Sept 2022 Forecast	June 2023 Forecast
2023 Unemployment Benefit payment projection	\$1.3 Billion	\$1.4 Billion
2024 Unemployment Benefit payment projection	\$1.6 Billion	\$1.6 Billion
2023 Employer Contributions	\$1.8 Billion	\$1.9 Billion
2024 Employer Contributions	\$1.9 Billion	\$1.9 Billion

## Benefit Payments



- The average annual wage is used to calculate unemployment benefit levels for the year (July-June).
- The minimum weekly unemployment benefit, calculated per state statute at 20 percent of the average weekly wage, is \$323 for new claims opened on or after July 2th.
- The maximum weekly benefit, which is the greater of \$496 or 63 percent of the average weekly wage, is \$1019.

### Benefit Payment Amounts

Year:	CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
Amount (in billions):	\$1.6	\$1.0	\$1.4	\$1.6	\$1.6	\$1.7	\$1.6

## Experience Tax Rate



- The experience rate tax is an annual calculation based on the ratio of benefit claims charged to the employer and “taxable wages” reported by the employer over the preceding four fiscal years.
- Per state statute, the taxable wage base is \$67,600 in 2023.

### Average Experience Tax Rates

CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
1.23%	0.92%	1.00%	1.00%	0.90%	0.77%	0.75%

## Social Tax Rate

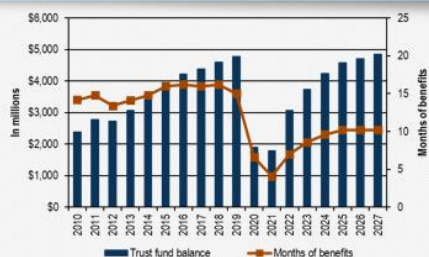


- The “flat social tax” is an annual tax calculation made after September 30 subtracting total experience rated taxes paid by all employers over four consecutive quarters from total unemployment benefits paid to all claimants over those same quarters.
- This amount is then divided by total taxable payrolls and expressed as a percent.

### Projected Flat Social Tax Rates

CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
0.50%	0.50%	0.60%	0.60%	0.60%	0.60%	0.50%

## Projected Trust Fund Balances



Year	CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
Amount (in billions):	\$ 1.8	\$ 3.1	\$ 3.8	\$ 4.4	\$ 4.8	\$ 5.1	\$ 5.3

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Julia Gorton asked whether the solvency tax is still waved, Vaughn answered that it is waved through 2025.

With no further questions on this topic, Vaughn continued to the topic of Updates on Taxable Wage Base and provided information from the following slide.

## Taxable Wage Base



- Beginning January 1, 2024, employers will pay unemployment taxes on the first \$68,500 paid to each employee.
- This value is calculated as 115% of last year's taxable wage base, capped at 80% of 2022 average annual wage for contribution purposes.

Year	Taxable Wage Base
2020	\$52,700
2021	\$56,500
2022	\$62,500
2023	\$67,600
2024	\$68,500

With no questions, JR handed the floor to Scott Michael, ESD's Legal Services Manager and Caitlyn Jekel, ESD's Government Relations Director to present a rulemaking and legislative implementation update.

### Rulemaking Update

Scott presented information from the following slides.

## Rulemaking



### Recent Past

- **Overpayment Waivers** – extended emergency rules to October 25, 2023
- **Expanded Voluntary Quits (HB 1106)** – shared draft rules proposing a definition of “family member” consistent with PFML definitions
- **Transportation Network Companies (HB 1570)** – shared draft rules proposing that “hours worked” for purposes of driving for a TNC should be reported as “passenger platform time” doubled
- **SOC Code Reporting for Tribes (HB 1684)** – shared draft rules allowing tribes to report or not report SOC Codes or job titles on their quarterly reports as they see fit

### Recent Past

- **Public Records Procedures** – shared draft rules allowing persons making public records requests to ask for an internal agency review of the response to their public records requests
- **Failure to Respond** – officially proposed rules setting a possible end date on when someone is denied benefits due to a failure to respond. Hearing is August 10, 2023
- **Public Health Emergencies** – completed rulemaking for when a public health emergency begins and ends mid-week

### Near Future

- **Overpayment Waivers** – expect to see draft permanent rule proposals
- **Conditional Payments** – expect proposed rules defining when a conditional payment of benefits begins and ends
- **Transportation Network Companies (HB 1570)** – workgroup is discussing possible rules related to relief of charges for part-time employers, quits due to workplace safety, quits due to 25% or more reduction in hours or compensation

Julia Gorton asked for clarification on whether the transportation network companies (TNC) workgroup is newly formed. Caitlyn Jekel clarified that this is no longer officially a workgroup, but rather a group of stakeholders (some who were members of the original workgroup) looking at language as we proceed through rulemaking. Julia asked to be included, especially on the part-time piece. Bob Battles also asked to be included in this work.

Scott proceeded to the following slide.

# Implementation



## Transportation Network Company (HB 1570)

Workgroup proposes to add this to the list of approved job search activities on the ESD website:

Approved job search activity	Documentation ideas
Take steps to set up a new account, or activate one you already have, on app-based work platforms (for example: Uber, Lyft, Doordash, Instacart, or other).	Screenshot or picture of the renewal of required license
	Screenshot or picture of completed onboarding document requirements on app-based platform
	Copy of completed vehicle inspection
	Screenshot of contact with an app-based platform for support in onboarding or activating an account
Other activities to demonstrate ongoing and active efforts to work on app-based platforms (for example: Uber, Lyft, Doordash, Instacart, or other).	Screenshots demonstrating ongoing and active efforts to log-in to app-based platforms and be available for work

Scott presented for discussion the language in the above slide proposed by drivers. The language proposes that the above outlined app-based actions should count as approved job search activities. Brenda Weist added that for many drivers who have accepted a new job, onboarding can often take some time and they cannot begin work until they have completed the onboarding requirements. She noted that this is outside the control of the driver, therefore these should be counted as job search activities.

Some further discussion followed, and Scott clarified that under the TNC statute individuals must be actively seeking work, but that ‘work’ does not necessarily have to be covered employment, for example, self-employment or real estate work would be included. Therefore, searching for work as an independent contractor meets the work search definitions.

Julia Gorton also asked for specifics on the screenshot documentation. Scott commented that the goal is to be broadly applicable without being TNC specific even though TNCs are the only platforms currently engaging on this. Julia asked if there is a way to report whether individuals are logged in but rejecting work. Scott answered that yes, this will be looked at.

Caitlyn Jekel added that this language can be brought back to this group for further refinement as needed.

Hearing no further feedback on this language, Caitlyn proceeded to present on the following slide and provided an update on the apprenticeship workgroup.



## Implementation



### Apprenticeship Workgroup (SHB 1458)

- ESD held an initial convening with Registered Apprenticeship representatives
- Demonstration and listening session: Mid August
- 1:1 claimant interviews with 15-20 apprentices
- Soliciting employer feedback
- Report draft to be complete 10/8, due to the legislature 12/1

Bob Battles expressed interest in being kept informed of updates on this and possibly meeting times. Caitlyn responded that ESD will keep this group apprised of the various events attached to this work so that all can see what’s going on and plug in where it makes sense. Sybill Hyppolite also expressed interest in participating in the mid-August listening session and in providing support wherever possible.

The meeting was paused for a ten-minute break.

### Legislative Proposals

After the break, Caitlyn provided updates on ESD’s 2024 legislative proposals, beginning with the following slide.

## 2024 legislative proposals: UI




Relief of Benefit Charges	RCW <u>50.29.021</u>	<p>Proposal to split the list of reasons an employer is able to receive relief of benefit charges into three categories:</p> <ol style="list-style-type: none"> <li>1) Relief that can be given automatically because ESD already has all the information it needs.</li> <li>2) The employer must apply for the relief because ESD needs external info to <u>make a decision</u>.</li> <li>3) Relief that may be given if ESD gets sufficient info from the claimant, even if the employer does not participate.</li> </ol> <p>(Note --There will likely be some overlap between categories 2 and 3)</p>
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Relief of Benefit Charges  (Continued)	<u>RCW 50.29.021</u>	<p>If running this bill, we proposed we also address the 30-day deadline to request relief.</p> <ul style="list-style-type: none"> <li>• Clarify in statute that employers can extend the 30-day deadline to ask for relief of benefit charges for good cause.</li> <li>• RCW 50.29.021 does not contain a good cause extension to the 30-day deadline to ask for relief of benefit charges, but the Department adopted one via rule (<u>WAC 192-320-065(2)</u>). Proposal would extend this rule formally into statute.</li> </ul>
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Without hearing feedback or questions on this proposal, Caitlyn advanced to cover the following.

## 2024 legislative proposals: UI



Voluntary Contribution Statute	RCW 50.29.026	<p>Voluntary contribution statute gives employers the option to get a lower tax rate by paying off the benefit charges up front in a lump sum.</p> <p>If no changes are made to the existing statute, then starting in 2026:</p> <ul style="list-style-type: none"> <li>• The payment would be due February 15, instead of March 31.</li> <li>• The employer would have to pay a 10% surcharge in addition to the cost of the benefit charges, instead of no surcharge now.</li> <li>• The employer would be able to participate only if they jumped up 12 rate classes, instead of 8 rate classes now.</li> <li>• The minimum payment would have to be enough to drop the employer down at least 4 rate classes, instead of 2 rate classes now.</li> </ul>
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## 2024 legislative proposals: UI



**Additional considerations:**

- Managing remaining pandemic-era debt, including interest and collections activities
- Training Benefits Program (RCW 50.22.150)

Sybill Hyppolite expressed disappointment in hearing that despite ESD’s efforts, there will still be individuals who will not have their overpayment debt relieved. She also asked whether there is a sense of how many people this will be. JR Richards answered that at this time there is no estimate on this. JR also shared that ESD will continue to take the broadest approach allowed within the law to continue this work. Sybill also asked when an assessment will be done on how many people do not qualify for an overpayment waiver. JR answered that ESD is keeping close track of reasons for approval and non-approval of waivers (although information on individual claims cannot be provided) and will continue to update this group as there is more information from the work.

Caitlyn then concluded by providing information on the Training Benefits Program – a mechanism for individuals who meet certain criteria to have extended unemployment insurance benefits paid to them throughout the time that they are in an approved training plan deemed necessary to resume gainful re-employment. An analysis of the program is conducted every five years. Based on findings from past analysis, incentivization for greater participation from those most likely to benefit from the program is under consideration. There is still a question if this is timely for the 2024 legislative session. ESD will continue to provide updates.

### **Overpayments Project Update**

JR began this segment by providing an overview of the two major overpayment populations: those who apply for the waiver and are denied, and those who have an overpayment and despite ESD’s best efforts in outreach, are not engaging with the overpayment waiver process. The Department of Labor requires that ESD look at each overpayment case on an individual basis. In order for this to be accomplished, claimants must submit their specific circumstances for review. A waiver can only be granted if a claimant is considered not at fault *and* collection of the overpayment is contrary to equity and good conscience.

Some examples of what is considered fault are: fraud, misrepresentation, nondisclosure, and discharge due to misconduct. As a matter of policy, ESD expanded the other personal factors that will be looked at when assessing whether a claimant is at fault. For example, medical or health emergencies, limited English proficiency, and confusing or conflicting information from the department.

ESD also expanded in policy what will be looked at when assessing equity and good conscience. So, in addition to ability to pay, other examples would be health problems, and disability of a claimant or someone in their care. The intention is to be as permissive as possible while also meeting the obligation to DOL to consider each waiver individually, and while applying the fault and equity and good conscience factors.

Scott Michael added that through emergency rule, ESD opened up the categories of people who are eligible for waivers. While these people may not be granted a waiver, they are still eligible to apply.

Josh Swanson noted an increased amount of overpayment expectations, especially related to identity fraud which occurred during the pandemic. He also noted increased pressure due to the rise in audits being conducted by ESD after the pandemic. Scott responded by acknowledging the significant surge in identity fraud and benefits being obtained fraudulently in 2020. This caused ESD to take a closer look at identity fraud procedures in an attempt to combat further fraud. He noted that if someone is denied benefits because they did not prove their identity or they missed a request for information, but they can provide that information as part of their appeal, ESD has the capacity to redetermine that case.

JR added that ESD is open to alternate paths in resolving these cases and is in regular conversation with OAH throughout this process. She also offered to connect further with Josh, hear more specifics about what members of Operating Engineers 302 are experiencing, and see what can be done to help support them, because what benefits those members will benefit the employer community at large.

Scott expressed appreciation for this offer as the rise in audits has become time consuming for members, and also expressed hope that most of those cases can be dealt with before going to OAH.

JR then presented on the bullet points from the following slide.



The slide features a dark blue header with the text "Overpayment waiver updates" in white. To the right of the header is a blue square containing a white logo of three horizontal wavy lines. Below the header is a light gray background with a bulleted list of updates.

- **@20200 individual waivers received**
  - **@ 244 call-in**
- **Increased outreach campaign**
- **Staff hired and in training**
- **Development and testing**
  - **full capacity for waiver adjudication anticipated for September.**

### **Approval of Meeting Schedule**

JR then asked the committee for feedback on a proposed meeting schedule. After some discussion, it was decided that the below meeting schedule would be proposed to committee members via email. This schedule has since been approved by committee members. It can also be found in Addendum II of these minutes, and on the ESD UIAC webpage: <https://esd.wa.gov/newsroom/UIAC>

- September 11, 2023 – 10am to Noon
- October 18, 2023 - 10 am to Noon
- December 6, 2023 - 10 am to Noon
- January 26, 2024 – 2 to 3pm
- February 23, 2024 – 2 to 3pm
- March 29, 2024 – 2 -3pm (legislative wrap-up)
- May 15, 2024 – 10am to Noon
- June 26, 2024 – 10am to Noon

Josh Swanson asked a follow up question on audits, noting that many members report not receiving messages from ESD, or receiving letters within days of the appeal process. JR asked if she could follow up with Josh on this topic individually in order to allow time for public comment and because the appeals expert was not on this call. Josh agreed.

### **Future Agenda Topics**

JR gave an overview of the following future meeting topics, then opened the meeting for public comment.

## Future Meeting Topics



- Legislative Session Updates
- Rulemaking Updates
- Overpayments Project Updates
- Appeals Backlog Updates
- Other?

### Public Comments

JR reminded meeting participants that if they would like their comments captured in the meeting minutes to please email them to [Camille.galeno@esd.wa.gov](mailto:Camille.galeno@esd.wa.gov)

### Action Items

- ESD to investigate and remedy the cause of the Zoom passcode requirement.
- Proposed meeting schedule to be emailed to committee members for approval.
- JR Richards to reach out to Josh Swanson for further discussion of ESD audits.

### Adjourned

JR Richards thanked everyone for joining today and ended the meeting.

### Next meeting

September 11, 2023, from 10:00 a.m. to 12:00 p.m. via Zoom.

Addendum 1

Agenda

Unemployment Insurance Advisory Committee (UIAC)

Wednesday, August 2, 2023 | 10:00 am - 12:00 pm | Via Zoom | 212 Maple Park Ave SE, Olympia, WA 98501

Time	Topic
10:00 am	Welcome from JR Richards, Unemployment Insurance Customer Support (UICS) Director, Employment Security Department (ESD) <ul style="list-style-type: none"> <li>o Agenda Overview</li> </ul>
10:05 am	Approval of June 14 <sup>th</sup> , 2023 Meeting Minutes
10:10 am	Approval of Meeting Schedule
10:15 am	June Trust Fund Report Updated Taxable Wage Base <ul style="list-style-type: none"> <li>- Ellis Vaughn</li> </ul>
10:30 am	Rulemaking Update <ul style="list-style-type: none"> <li>- Scott Michael</li> </ul>
10:55 am	BREAK
11:15 am	Legislative Proposals <ul style="list-style-type: none"> <li>- Caitlyn Jekel</li> </ul>
11:50 am	Overpayment Project Updates <ul style="list-style-type: none"> <li>- JR Richards</li> </ul>
11:55 am	Public Comment
12:00 pm	Adjourn

For more information, please visit the UIAC website at <https://esd.wa.gov/newsroom/UIAC>

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Addendum II



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**Unemployment Insurance Advisory Committee**

**Aug 2023 – June 2024 Meeting Dates**

<b>Date</b>	<b>Location</b>	<b>Host</b>	<b>Notes</b>
Aug 2, 2023 10:00 AM – 12:00 PM	Zoom	ESD	Recorded meeting
Sept 11, 2023 10:00 AM – 12:00 PM	Zoom	ESD	Recorded meeting
Oct 18, 2023 10:00 AM – 12:00 PM	Zoom	ESD	Recorded meeting
Dec 6, 2023 10:00 AM – 12:00 PM	Zoom	ESD	Recorded meeting
Jan 26, 2024 2:00 PM – 3:00 PM	Zoom	ESD	Recorded meeting
Feb 23, 2024 2:00 PM – 3:00 PM	Zoom	ESD	Recorded meeting
Mar 29, 2024 2:00 PM – 3:00 PM	Zoom	ESD	Recorded meeting
May 15, 2024 10:00 AM – 12:00 PM	Zoom	ESD	Recorded meeting
June 26, 2024 10:00 AM – 12:00 PM	Zoom	ESD	Recorded meeting