



Unemployment Insurance Advisory Committee

Meeting details

Date: Wednesday, Dec 6th, 2023

Time: 10:00am - 12:00 pm

Location: Zoom

Committee members and alternates present

Employee Representatives

- Sybill Hyppolite, Washington State Labor Council
- Brenda Wiest, Teamsters 117

Employer Representatives

- Bob Battles, Association of Washington Business
- Josie Cummings, Avista Corp
- Julia Gorton, Washington Hospitality Association

General Public Representatives

- Anne Paxton, Unemployment Law Project

ESD staff

- Joy Adams
- Joshua Dye
- Vaughn Ellis
- Colin Helsley
- Caitlyn Jekel
- Matt Klein
- Scott Michael
- JR Richards
- Stephanie Sams

Committee members and alternates absent

- Tammie Hetrick, Washington Food Industry Association (alternate employer rep)
- Monica Holland, Northwest Justice Project (alternate public rep)
- Joe Kendo, WA State Labor Council (employee rep)
- Allyson O'Malley-Jones, Northwest Justice Project (alternate public rep)
- Cindy Richardson, UNITE HERE Local 8
- Josh Swanson, Operating Engineers 302
- William Westmoreland, Pac Mtn WF Dev Council

Summary

Meeting Recorded

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

Welcome and Opening Remarks

ESD Unemployment Insurance Customer Support Director, JR Richards, welcomed everyone and asked committee assistant Colin Helsley to call roll.

Meeting Minutes

JR Richards requested that everyone review the October 2023 UIAC meeting minutes and provide their feedback. Brenda Weist made a motion to approve the minutes and Julia Gorton seconded the motion. All in favor said “aye”, no members were opposed. The October 18th, 2023 meeting minutes were approved.

Agenda

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

- Approval of meeting Oct. 18 meeting minutes
- Legislative reports
- Legislation and Rulemaking
- MWBA Report
- Trust Fund Report
- Appeals updates with ESD and OAH
- Workload in Tax and Wage
- Overpayments update
- 2024 UIAC meetings
- Public comment
- Adjourn

Legislation and Rulemaking

JR Richards handed the meeting over to Caitlyn Jekel, Government Relations Director, ESD, to provide a Legislation and Rulemaking update. Caitlyn presented information from the following slides:

Legislation



Agency request legislation:

- **Pandemic-era overpayment interest:** not charge interest on any overpayments that were paid for weeks claimed from February 2020 through September 2021, lapsing the pause on Jan 1, 2025. *Pending.*
- **Relief of Benefit Charges:** employers may receive relief without being required to file an application for relief under various circumstances. *Approved.*
- **Voluntary Contribution sunset:** remove sunset to temporary changes to voluntary contributions program in 2021, which removed the 10% surcharge and opened the program to more employers. *Approved.*

Legislation



Bills we are tracking:

- SB 5777 - Concerning unemployment insurance benefits for striking or lockout workers (prefiled).
- Creating a wage replacement program for certain Washington workers excluded from unemployment insurance (2023).

Julia Gorton asked Caitlyn to clarify what the change would be related to striking workers. Caitlyn answered that currently, individuals who are on strike are not eligible for unemployment insurance during strike and that this change would be establishing that eligibility criteria. Julia then asked whether it is a socialized or charged benefit in the proposal. Caitlyn answered that it is a socialized benefit.

Anne Paxton asked whether this currently applies to lockouts as well as strikes. Scott Michaels answered that under current law as it pertains to lockouts, individuals who are locked out are generally eligible for benefits, with a small exception being employers who are part of a multi-party bargaining unit where one employer has been struck and the other employers lock their employees out as part of that bargaining process. Under the proposed bill, such locked out employees would all be entitled to benefits.

Bob Battles asked whether any conformity issues are anticipated and if this would expand the voluntary quits list. Scott answered it's not a voluntary quit and that various states have ways in which they disqualify striking workers, and if this bill were to pass, Washington would be joining a small group of states that allow benefits to striking workers after a certain number of weeks. Scott also provided a link in the meeting chat to a comparison chart from the US DOL on how different states treat striking workers. <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/nonmonetary.pdf> (pages 5-21 to 5-25).

Bob asked how this would not be categorized as a voluntary quit since striking is an employee choice. Scott noted that if a person voluntarily quits without good cause, then they are disqualified for 7 weeks and have to return to work and earn 7 times their weekly benefit amount. Scott continued that this bill is structured to only disqualify workers for the first week of a strike and that it's classified in a different statute separate and apart from voluntary quits. Caitlyn Jekel added that as far as benefit charging is concerned, it would likely be structurally aligned with benefit charge relief for other things that would be akin to voluntary quit.

Seeing no further questions on the topic of striking workers, Caitlyn then moved to the slide's second bullet regarding creating a wage replacement program for certain Washington workers excluded from unemployment insurance. Caitlyn stated that this policy is still proceeding forward and that ESD is tracking it.

Caitlyn then provided an opportunity for committee members to speak to any other bills coming this year associated with unemployment insurance. Hearing none, Caitlyn handed the floor to Stephanie Frazee, Legislation and Rules Coordinator, ESD to provide a rulemaking update. Stephanie presented on the following slides:

Rulemaking



- **SOC Code Reporting for Tribes (HB 1684)** – Formally adopted rules allowing tribes to report or not report SOC Codes or job titles on their quarterly reports as they see fit. Rules became effective November 27, 2023.
- **Transportation Network Companies (HB 1570)** – Formally adopted rules stating that “hours worked” for purposes of driving for a TNC should be reported as “passenger platform time” doubled. Rules become effective December 21, 2023.

Rulemaking



- **Cross-Program Payment Allocation** – Pre-proposal inquiry filed. Drafting rules to address how employer payments are allocated across UI, WA Cares, and PFML.
- **Overpayments Correction** – Began expedited rulemaking to update an outdated cross-reference. Objection was submitted, and we are now working on officially proposing the rule change.
- **Expanded Voluntary Quits (HB 1106)** – Officially proposed rules with definitions of “family member” consistent with PFML definitions and incorporating updates from the bill that are effective September 3, 2023. Hearing is December 8, 2023.

Rulemaking



- **Wildfires and Other Disasters** – Filed emergency rules in response to wildfires in the state. Emergency rules expire December 23, 2023. Working on officially proposing permanent rules.
- **Overpayment Waivers** – Extended emergency rules a second time, until February 3, 2024. Hearing was held for permanent rulemaking on November 21, 2023. Working on formally adopting rules.
- **Conditional Benefit Definition** – Rules defining the circumstances under which the Department pays benefits on a conditional basis. Hearing was held on November 21, 2023. Working on formally adopting rules.

MWBA Report

With no questions raised on rulemaking, JR Richards gave the floor back to Caitlyn Jekel to present the last segment regarding legislative reports, specifically the Minimum Weekly Benefit Amount analysis. Caitlyn presented on the following slide and stated among other things, that the report would be focused more directly on the outcomes experienced by claimants. Caitlyn added that final revisions will be sent to committee members by email for feedback.

Legislative reports: MWBA analysis



- Preparing simplified report for 2023 reflective of committee recommendation.
- Seeking peer review on researchers' analysis of causality for further engagement with UIAC.

Julia Gorton thanked Caitlyn and asked what the peer review process looks like. Caitlyn answered that the analysis would be shared with others in the research community for feedback to inform the approach moving forward. Julia asked if comments and concerns raised about the report by UIAC members will be included when it is sent out for review. Caitlyn answered that the questions raised in these meetings will be informative to the process and therefore likely put forward.

Anne Paxton asked if this would include any kind of compilation of the objections that were made, specifically to the analysis of causality. Caitlyn answered that a description of the intended approach with peer review, the underlying methodology, and the ongoing research by the department will be kept in the report, but that focus at this juncture will be on those components of the report that have raised concerns among committee members. Anne asked whether this means it's being tabled. Caitlyn answered yes and added "It is our intention that the report that we publish is reflective of the

perspectives that have been shared here. It's important to us that the nature of the relationship with this advisory committee in that report is honored and appreciated, and so we will share it with you. If there's further conversation necessary, or engagement on the way that this next version of the draft is, we can put this on the agenda again.” Anne thanked Caitlyn.

JR Richards then handed the floor to Vaughn Ellis, Actuary Analyst, ESD who presented information from the following slides regarding the November trust fund report.

Unemployment Insurance Trust Fund



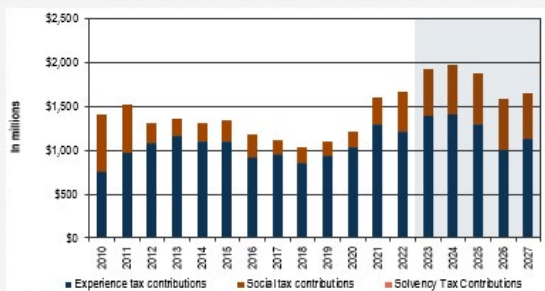
On Nov. 30, the UI trust fund held approximately \$3.7 billion, in line with end of year projections.



Employer Contributions



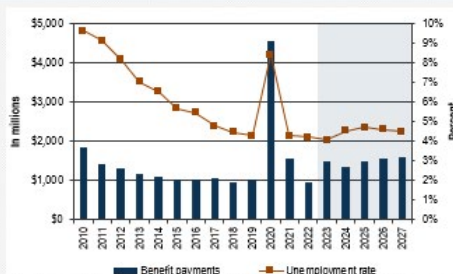
Projected Employer Contributions	September 2023	November 2023
2023	\$1.9 Billion	\$1.9 Billion
2024	\$2.0 Billion	\$2.0 Billion



Benefit payments



Projected Benefit Payments	September 2023	November 2023
2023	\$1.4 Billion	\$1.5 Billion
2024	\$1.5 Billion	\$1.3 Billion



No questions were raised.

Appeals Updates

Brendon Tukey, Division Chief, OAH then presented updates on appeals using the following slides.

UI Appeals Update (2019-2023 Overview)



	CY2023 (As of Nov 30)	CY 2022	CY 2021	CY 2020	CY 2019
Intake	36,708	62,679	88,775	60,584	29,671
Closed Appeals	55,766	75,653	74,825	35,789	31,184
Inventory Change	-19,058	-12,974	+13,950	+24,795	-1,513
Default Rate	36.10%	35.48%	35.09%	36.10%	35.61%

UI Appeals Update (Timeliness Progress)



Average-Time-in-Hearing Status (the number of days it takes OAH to hear a case after it's appealed):

§Peaked in March 2023 at 232 days

§As of last week (Nov 29 to Dec 2) has dropped to 100 days

§A net decrease in average processing time of 132 days

Sybill Hyppolite asked what the pre-pandemic average time and hearing status was. Brendon answered that it varied but that about 30% of the time the 60% within 30 days goal was achieved, and that processing time on average was much lower, often 50 days or below, and certainly much lower than the 100 days which is common right now. He added that the goal is to do better than pre-pandemic times.

Brendon continued to the next slides and provided further updates.

UI Appeals Update (BAPs)



§The BAPs Emergency Rule went into effect April 2022 and became permanent December 2022.

§Over the first 18-Month of the program:

- §10, 881 Cases were scheduled for BAPs – 485 converted to full hearings.
- §10,397 Cases resolved w/in BAPs – 12% of all closed appeals w/ 3-to-5% of ALJs.
 - 674 withdrawn.
 - 105 redetermined by ESD prior to order.
 - 7 dismissed for lack of jurisdiction or extended absence.
 - 9,611 Initial orders issued.

§322 PFR's filed – an appeal rate of 3.4%. (full hearings avg'd 10% over this period)

§Still a work in progress – in October began a pilot project to add Late Filed Appeals to BAPs.

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UI Appeals Update (Spanish Language)



§In 2022 began a pilot project in holding select UI hearings in Spanish (no interpreter used)

§Converted to a full-time operational program in July 2023

§3 ALJs currently conducting hearings in Spanish (5-15 per week)

§230 hearings held in Spanish to date

§Very positive feedback from all involved.

Regarding the above slide, Anne Paxton thanked Brendon for the information and asked how records of appeals are being handled. Brendon answered that if there is an appeal, a court certified interpreter listens to the hearing, interprets it, and creates an audio record of that interpretation, which the CRA judge can review along with the written record, which is in English.

Anne then referenced the overview slide and asked if there is any information on default rates such as number of employer defaults vs. claimant defaults, or any information about the issues involved. Brendon answered that he can provide exact numbers in writing but that the highest default rates tend to be single party claimant appeals that don't have an associated overpayment.

Seeing no further questions, Brendon stated he is happy to provide further information and follow up to anyone who may want it and provided the committee his email: Brendon.tukey@oah.wa.gov.

The meeting was then paused for a 10-minute break and resumed at 11:02am.

Workload in Tax and Wage

Upon return, Mathew Bowen, Management Analyst, Tax & Wage, ESD provided information on workload in Tax and Wage using the following slide.

Workload in Tax and Wage



Workload challenges example: New Employer Registration

- Increase in workload last two years
 - @10,000 more new business each year compared to pre 2020
- Decrease in staffing to support workload
 - 25% reduction

Workload approach

- Focus on biggest impact to employers
- Process improvement
- Technology improvements



Anne Paxton asked what is the source of the 25% reduction in staffing in the face of the large increase in new businesses. JR Richards answered that this was not an intentional decrease, but that those are positions that are now open and are not being filled due to funding changes.

Overpayment Update

Seeing no further questions JR used the following slides to provide an update on overpayment waivers.

Overpayments Update



Overpayment Waiver Applications

- 43,064 waiver applications submitted (as of 12/5/23)
- 28783 total waivers approved totaling 31.0M
 - 7,421 individual waivers approved totaling 17.6m
- 544 waiver denied totaling 1.3M

*This slide has been updated to include the number of individual waivers approved as of December 5th, 2023.

Sybill Hyppolite asked about how to help get the message out to further awareness about overpayment waivers as there are about 15,000 folks unaccounted for, and also asked what the current outreach process is with those who have not yet responded to ESD notifications. JR answered that there is a communications team working on ways to do additional outreach with UIAC committee members. She also explained that there have been multiple waves of email communication and one wave of paper communication, as well as use of media (news articles). Responsiveness to these different forms is evaluated, and feedback is used to determine which populations to target. JR added that leveraging stakeholders and community partners will be a part of ESD's next steps in outreach to those who are eligible to apply. Sybill responded that she looks forward to helping with this effort soon and noted

that some collections calls were being made. JR explained that ESD is meeting the legal requirements for collections but not engaging in additional forms at this point. She added that adding information on overpayment waivers to automatic collections letters is being looked at. Sybill asked if callers are currently being redirected to apply for overpayment waivers. JR answered yes.

Meeting Cadence

JR Richards presented the proposed meeting cadence and topics from the following slide to the committee for consideration.

Proposed meeting cadence			
January 26 ^a	<ul style="list-style-type: none"> One-hour legislative session meeting Rulemaking update 	August 7 ^a	<ul style="list-style-type: none"> Legislative & rulemaking updates June Trust Fund report Legislative and budget submissions to OFM/Gov office: Likely committee action State Quality Service Plan update
February 23 rd March 29 th	<ul style="list-style-type: none"> One-hour legislative session meeting Rulemaking update 	September 18 th	<ul style="list-style-type: none"> Legislative & rulemaking updates Trust Fund report Minimum Weekly Benefit Amount report Tax rate notices to employers
May 15 th	<ul style="list-style-type: none"> Governor’s budget Trust Fund Report Legislative session prep Rulemaking update 	October 30 th	<ul style="list-style-type: none"> Legislative & rulemaking updates State Quality Service Plan submission to USDOL Minimum Weekly Benefit Amount report Legislative reports
June 26 th	<ul style="list-style-type: none"> Legislative & rulemaking updates Budget overview Updated taxable wage base OAH appeals update 	December 11 th	<ul style="list-style-type: none"> Legislative session prep Rulemaking update Governor’s budget Trust Fund report OAH appeals updates

Julia Gorton expressed support for this plan.

Bob Battles expressed support while also noting some possible conflicts in September with policy summits. Bob asked if all meetings will be virtual or if any will be in-person. JR answered that this is open for consideration. Bob put forth the idea of hybrid meetings with either option available, Brenda Wiest agreed with Bob’s statements.

Sybil Hyppolite also expressed support for the proposed cadence and stated she is open to more in-person meetings.

JR stated that as some committee members were absent at this meeting, there will not be a vote on this yet, and that she will send out the above proposed cadence by email for all to consider before the next meeting.

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.

No public comments were made.

Scott Michael Leaving ESD

Scott Michael announced to the committee that December will be his last month at ESD and therefore that this would be his last UIAC meeting. Scott stated that it has been a privilege and an honor to work with this committee and informed attendees that he has accepted a new position with the Attorney General's office representing Labor and Industries. Committee members thanked Scott for his partnership with the committee and wished him well.

Adjourned

JR Richards thanked everyone for joining and ended the meeting.

Action Items

- (JR or Scott Michael) Email the following link provided by Scott to committee members - USDOL comparison chart on how different states deal with UI eligibility for striking and locked out workers:
<https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/nonmonetary.pdf> (pages 5-21 to 5-25)
- (JR) Connect with Sybill Hyppolite on overpayment waiver outreach.
- (JR) Email proposed meeting cadence to committee members.

Next meeting:

January 26, 2023, from 2:00 to 3:00 p.m. via Zoom.

Addendum 1

Agenda

Unemployment Insurance Advisory Committee (UIAC)

Wednesday, Dec. 6, 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"> o Agenda overview
10:05 am	Approval of Oct. 18, 2023 meeting minutes
10:10 am	Minimum Weekly Benefit Amount report update, Caitlyn Jekel
10:25 am	Legislation and Rule Making, Caitlyn Jekel & Stephanie Frazee
10:35 am	Legislative session prep, Caitlyn Jekel
10:45 am	Trust Fund Report, Vaughn Ellis
10:55 am	BREAK (10 min)
11:05 am	Appeals Updates with ESD and OAH, Brendon Tukey and Cyndee Cole
11:25 am	Workload in Tax and Wage, Mathew Bowen
11:35 am	Overpayments Update, JR Richards
11:40 am	2024 UIAC meetings, JR Richards
11:50 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



**Unemployment Insurance Advisory Committee
Aug 2023 – June 2024 Meeting Dates**

Date	Location	Host	Notes
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