



Unemployment Insurance Advisory Committee

Meeting details

Date: Wednesday, November 18, 2020

Time: 10:00 a.m. to 12:00 p.m.

Location: Zoom

Committee members present

- Robert Battles
- Julia Gorton
- Tammie Hetrick
- Joe Kendo (proxy for Sybill Hyppolite)
- Cindy Richardson
- Josh Swanson
- Jerry VanderWood
- Brenda Wiest

Committee members absent

- Kevin Perkey
- Sybill Hyppolite

ESD staff

- Joy Adams
- Sara Crosby
- Ashlee Delaney
- Nick Demerice
- Stasha Espinosa
- Wendy Goldmark
- Matt LaPalm
- Scott Michael
- Dan Zeitlin

Summary

Meeting Recorded

This meeting was recorded and is available at <https://esd.wa.gov/newsroom/UIAC/recordings>.

Welcome and Opening Remarks

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked Wendy Goldmark to take roll call. All committee members were present, except Kevin Perkey and Sybill Hyppolite. Joe Kendo was proxy for Sybill Hyppolite.

Agenda

Dan Zeitlin reviewed the meeting agenda and asked if anyone had any questions. (See Addendum I.)

Meeting Minutes

Dan Zeitlin requested that everyone review the meeting minutes for November 12, 2020 and provide their feedback. Brenda Wiest made a motion to approve the minutes for November 12, 2020 and Cindy Richardson seconded the motion. Dan asked for all members in favor to say, "Aye". All members responded, "Aye". Dan asked members that disapprove to say, "Nay". No one responded. The November 12, 2020 meeting minutes were approved.

UI Program Update

- When the state experiences sustained high levels of unemployment, claimants who exhaust weeks of unemployment benefits receive an extra 13 weeks of Extended Benefits. And, even higher levels of unemployment trigger an additional 7 weeks.
- Washington's insured unemployment rate (IUR) was high enough in April to trigger 13 weeks of Extended Benefits (EB) and the state's unemployment rate reached a high enough level in June to trigger an additional 7 weeks of EB (EB High) for a total of 20 weeks.
- Claimants must exhaust all other entitlements for which they are eligible, including the extra 13 weeks of federal Pandemic Unemployment Emergency Compensation to receive Extended Benefits.
- Accordingly, regular UI claimants have been eligible for up to 59 weeks of benefits: 26 regular UI, 13 PEUC and 20 Extended benefits. PUA claimants have been eligible for 39 weeks of PUA and an extra 7 weeks with the EB High trigger on.
- Today we are announcing a 3-month average (August, September and October) seasonally adjusted unemployment rate of 7.6%. With the rate below 8%, Washington will trigger off EB High in accordance with federal law. As a result, eligible Washingtonians will be able to receive up to 13, rather than 20, weeks of Extended Benefits.
- Accordingly, the last week that an individual can receive up to 20 weeks of Extended benefits and 46 weeks of PUA is December 6-12. After that point, the most weeks a regular UI claimant can receive is 52 (26 for UI, 13 for PEUC, and 13 for extended benefits) and the most a PUA claimant can receive is 39.

- As a reminder, federal PEUC expires at the end of the year and 100% federal financing of Extended Benefits also expires at the end of the year, at which point the state is responsible for 50% of the financing.
- All these policies are federally driven.

Q: What is the Impact?

The reduction is projected to impact as many as 12,000 claimants who will no longer have the extra 7 weeks of benefits available.

Q: Projection on the impact of expiring federal programs?

- Projecting the need for PUA benefits is challenging. In October, 112,000 individuals were paid PUA benefits with a total of \$112.7 million in benefits paid.
- In October, 101,000 individuals were paid PEUC benefits with a total of \$121 million in benefits paid.

Discussion Topics

Dan Zeitlin opened the meeting discussion with a [slide presentation](#) that outlined the main topics below:

New Emergency Rules

- Backdating Reopened Claims
- Serving Petitions for Judicial Review

Potential UI State Legislation

- Shared Work
- Waiting Week
- Lump Sum Retirement Benefits
- Voluntary Contributions Program
- High Risk Individual Voluntary Quit

Modifying Work Search

- Continue 10/28 Committee Discussion

UI Legislative Proposals Discussion

Dan Zeitlin handed the presentation over to Scott Michael, Legal Appeals and Rulemaking Manager, who led a discussion on UI Legislative Proposals that covered the following:

New Emergency Rules –**More Flexibility for Backdating Reopens**

- With [Governor Proclamation 20-25.8](#) ("Stay Safe-Stay Healthy"), ESD anticipates a surge of people who opened a claim last Spring, returned to work over the Summer, and will now need to reopen their prior claim.

- Current [WAC 192-110-050](#) only permits individuals to backdate a reopened claim for "good cause."
- A change to the rule is needed to allow backdating "for the convenience of the Department," as occurs with initial claims, which permits more flexibility in backdating, for example, due to lack of available staff.

Service of Petitions for Judicial Review

- When a party is dissatisfied with an appeal decision issued by the Commissioner's Review Office, they can file a petition for judicial review in Superior Court.
- Petitions for judicial review need to be served on the Department.
- Current [WAC 192-04-210](#) says petitions for judicial review need to be served by mail or in person.
- Rule change will allow petitions for judicial review to be served by mail or by e-mail.

Shared Work –

[RCW 50.60.110\(1\)](#)

- Shared Work benefits must be charged to the accounts of taxable and reimbursable employers,

[Sec. 2108 of the CARES Act](#)

- Shared work benefits are fully federally funded through Dec. 26, 2020,

Changes made by [Governor Proclamation](#):

- Shared Work benefits non-charged to both reimbursable and taxable employers because they are fully funded by the federal government. State statute change can allow for Shared Work benefits to be non-charged any time they are financed by the federal government.

Changes the state must make to maintain federal conformity, per USDOL

[UIPL 22-12, Change 1 \(Dec. 21, 2012\)](#)

- An employer must have at least two employees enrolled in shared work in order to participate.

[RCW 50.60.020\(5\)](#)

- Permits employers to participate if they have "at least one employee" in the Shared Work plan.

[26 U.S.C. § 3306\(v\)\(6\)](#)

- Shared work employees may participate, as appropriate, in training to enhance job skills if such training program has been approved by the state agency

State law

- No state statute or rule explicitly permitting training; always allowed in practice and policy

Waiting Week –

Federal Background

- [Sec. 204\(a\)\(2\)\(B\) of the Federal-State Extended Unemployment Compensation Act of 1970](#) says the federal government will pay for a claimant’s first week of extended benefits if the state has an unpaid waiting week.
- [Sec. 4105\(b\) of the Families First Coronavirus Response Act](#) waived the waiting week requirement.
- [Sec. 2105 of the CARES Act](#) gave full federal funding for waiting week benefits.

Changes made by [Governor proclamation](#)

- Waived the waiting week

Changes made by [emergency rule](#)

- Waiting week benefits not charged to the accounts of taxable or reimbursable employers.

Possible statutory change

- Waive the waiting week and don’t charge waiting week benefits when the federal government is paying for the benefits.

Lump Sum Retirement Benefits –

Federal background – Retirement Benefits Generally

- [26 U.S.C. § 3304\(a\)\(15\)](#) requires states to deduct retirement, pension, and “any other similar periodic payment” from a claimant’s weekly benefit.
- Retirement/pension payments based on plans from non-base year employers are not deducted from benefits.
- The portion of the retirement/pension payment that is based off employee contributions to the plan are also not deducted from benefits.

[RCW 50.04.323](#) complies with this statute.

Federal background – Lump Sum Payments

- [UIPL 22-87](#) and [UIPL 22-87 Change 1](#) : a state may, but is not required to, deduct lump sum retirement benefits from a claimant’s weekly benefit

[RCW 50.04.323\(3\)](#)

- Lump Sum retirement/pension payments must be prorated over the life expectancy of the claim, and then that prorated amount is deducted from weekly benefits.

For every lump sum payment, Employment Security must determine the following:

- How much did a base year employer contribute to the plan?
- How much did the employee contribute to the plan?
- What is the life expectancy of the claimant?

Workload impacts of adjudicating lump sum payments

- It takes about 1.5 hours of staff time to adjudicate lump sums (separations take about 1 hour of staff time to adjudicate)
- Currently: 3,359 retirements X 1.5 hours (estimate)=5,038.5 hours of work.

Alternative options for managing lump sum payments:

- Do not deduct lump sum retirement/pension payments from benefits at all.
- Deduct lump sum payments from the week the payment was received.
- Deduct lump sum payments from the week after the claimant's last day of work (if that week was claimed)
- Prorate the lump sum payment across a different time span.

Voluntary Contributions Program –

Federal Law: Per [26 U.S.C. § 3303\(d\)](#), states do not violate experience tax rate principles “if they permit voluntary contributions to be used in the computation of reduced rates” so long as the contributions are made within 120 days of the beginning of the year (April 29/30).

Voluntary Contributions Program (VCP): Authorized in state statute, [RCW 50.29.026](#), the VCP allows employers to spend their own money to offset benefit charges to receive a lower tax rate for the next four years.

State limitations:

- Employers must pay a 10% surcharge on the benefit charges they want to offset.
- Employers must have jumped 12 rate classes or more over the previous year.
- Employers must pay enough money to drop at least 4 rate classes.
- Money used to offset benefits charges must be paid by February 15.

Voluntary Contributions Program Potential Amendments –

- Surcharge: Employers pay a 10% surcharge for benefits they want to buy down. *Potential Amendment:* Eliminate the surcharge to lower the cost to employers.
- Rate Class: Only employers that saw an increase of 12 rate classes or more from the previous year can use the program. *Potential Amendment:* Allow employers that saw an increase of 8 rate classes or more to use the program.
- Buy Down Amount: Employers must buy down enough benefit charges to reduce their tax rate by at least 4 rate classes. *Potential Amendment:* Require a reduction of at least 2 rate classes so businesses can pay less up front to reduce their rate.
- Payment Deadline: Payments are due February 15. *Potential Amendment:* Extend deadline to March 31 as allowed under federal law.

High Risk Individual Voluntary Quit –

Voluntary Quit for Quarantine

- ESD emergency rule considers individuals at high risk or caring for others at high risk without the ability to telework potentially eligible for UI due to “lack of work”
- ESD is pursuing formal rulemaking and will engage stakeholders.
- Potential legislation to consider such circumstances as an allowable voluntary quit.
- ESD will provide cost estimate as part of rulemaking and legislative process.

UI Work Search Requirement Discussion

Dan Zeitlin then handed the presentation over to Joy Adams, UI Quality Assurance Manager, who led the discussion on UI Work Search Requirements that focused on the following:

Work Search and Job Search Review –

Claimants must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed.

The evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week.

The Employment Security Department shall implement a job search monitoring program.

Monitoring work search –

RCW requires a job search monitoring program

- JSR unit is staffed with 4 FTE, who complete ~400 job log reviews per week.

Eligibility review in terms of work search occurs throughout the system, not just in the Job Search Review unit.

- Benefit Accuracy Measurement – full review and verification of work searches.
- RESEA – each encounter includes eligibility review, including work search review.
- Adjudication, intake, other agency staff all empowered to set issue when job search information is missing, incomplete, or otherwise raises a flag.

Challenges ESD faces with RCW 50.20.240 –

ESD does not have flexibility to adjust work search requirements to accommodate urgent challenges, local conditions, or innovations in reemployment programs.

If the statute were less prescriptive, the system could innovate to match effective reemployment plans with job seekers’ needs, and match requirements with available capacity in the state.

Potential Bill: Amending RCW 50.20.240 –

- (1)(a) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, the employment security department shall implement ((a))

job search monitoring (~~program~~). The department shall contract with employment security agencies in other states to ensure that individuals residing in those states and receiving benefits under this title are actively engaged in searching for work in accordance with the requirements of this section. The department (~~may use interactive voice technology and other electronic means to~~) must ensure that individuals are subject to comparable job search monitoring, regardless of whether they reside in Washington or elsewhere.

(b) [...] an individual who has received (~~five or more weeks of~~) benefits under this title, regardless of whether the individual resides in Washington or elsewhere, must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week (~~beyond five~~) in which a claim is filed. The evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week, or as otherwise directed by the department.

(c) In developing the requirements for (~~the~~) job search monitoring (~~program~~), the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) An individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190.

Action Items

- 10:25 Provide further projections regarding PEUC/EB, specifically regarding claimants who may run out of benefits in early January and in late February.
- 10:58 Provide more information regarding the cost-benefit dollar amounts of changes to lump sum retirement benefits.
- 11:13 Provide projections regarding voluntary contribution program.
- 11:30 Provide data and specific examples regarding the why behind amending work search/ 5-week issue. Possibly include measures/data from past pilot. Include information/examples of things ESD would propose to include in rule.

Administrative Items and next Agenda Discussion

- UIAC members agreed to move the December 23, 2020 meeting forward to Tuesday, December 15, 2020 from 12:00 to 2:00 p.m. to accommodate holiday schedules. It was also agreed that the committee would need an additional meeting to accommodate all the work still to be done, so a meeting was added on Monday, December 7, 2020 from 3:30 to 5:30 p.m. That meeting was subsequently cancelled.

Public Comments

- Anne Paxton, Unemployment Law Project (ULP) submitted in writing public comments made at the meeting November 12, 2020. (See Addendum II.)

Adjourned

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 11:59 a.m.

Next meeting

The next Unemployment Insurance Advisory Committee meeting scheduled for Monday, December 7, 2020 from 3:30 pm to 5:30 pm via Zoom was cancelled. The next meeting is scheduled for Wednesday, December 9, 2020 from 10:00 am to 12:00 pm via Zoom.

Addendum I

Agenda

Unemployment Insurance Advisory Committee (UIAC)

Wednesday, November 18, 2020 | 10:00 am - 12:00 pm | Via Zoom

Agenda Items

| Time | Topic |
|--|---|
| 10:00 am | Welcome from Dan Zeitlin, Director of Policy, Data, Performance & Integrity (PDPI) Division, Employment Security Department (ESD) <ul style="list-style-type: none"> Agenda Review |
| 10:05 am | Approval of November 12, 2020 Meeting Minutes |
| 10:10 am | UI Legislative Proposals Discussion <ul style="list-style-type: none"> Dan Zeitlin, Director, ESD Scott Michael, Legal Appeals and Rulemaking Manager, ESD |
| 10:55 am | UI Work Search Requirement Discussion <ul style="list-style-type: none"> Dan Zeitlin, Director, ESD Joy Adams, UI Quality Assurance Manager, ESD |
| 11:40 am | Administrative Items and Next Agenda Discussion |
| 11:50 am | Public Comments |
| 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

Public Comment

ULP Public Comment to UIAC November 12, 2020

Thank you, Dan and the ESD team, for your discussion today and the council as well. We're glad to hear the good news about the extension of the emergency rules as well as the automatic transition to extended benefits for people whose PEUC will be running out at the end of the year.

About the tax situation, the Unemployment Law Project has been very concerned about the fact that taxes will be increasing substantially on businesses through no fault of the employers or the employees. And we agree that employers should not be shouldering the entirety of the burden. We support an employee share of taxation, that would be a modest percentage deduction from payroll. There are three states—Alaska, New Jersey, and Pennsylvania—that have improved their benefits distribution with this model. And Washington already has a successful model of this strategy through the Paid Family and Medical Leave program. Employees have shown little resistance to paying for this valued benefit, in part, through a tax on payroll. So we're advocating this as a constructive measure that would be a win/win for both employers and employees.

Another concern I wanted to raise is about the claimant situation on the ground—in particular is the surge in overpayment notices. Often these appear with no explanation that's apparent to the employees and to the claimants and they're causing widespread anguish. We have noted on the Facebook Washington unemployment support group that when you post the question, "Who else got a massive overpayment note this morning?" it is a guaranteed way to get a flood of comments in response. The notices are confusing; they're inexplicable to a lot of claimants and leaving many in despair. And this has been exacerbated by the website difficulties. A lot of people are reporting that they're crashing because they're on an Apple computer, or perhaps because they're using Safari browser. They've frequently been timed out when they've been trying to answer questions about overpayments that are required to be answered in five days.

Thanks very much for the opportunity to comment.

Anne Paxton
Attorney & Policy Director
Unemployment Law Project