TESTIMONY

OF

DOUGLAS J. HOLMES

PRESIDENT

UWC – STRATEGIC SERVICES ON UNEMPLOYMENT

& WORKERS' COMPENSATION

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Chairs Hackett and Frazier and members of the Ohio Unemployment Modernization Council, thank you for the opportunity to provide testimony.

My name is Tony Fiore and I'm an attorney with Kegler Brown Hill + Ritter. I've serve as legal counsel and support for UWC since 2008. I'm here on behalf of Doug Holmes, President of UWC - Strategic Services on Unemployment & Workers' Compensation (UWC) and the National Foundation for Unemployment Compensation and Workers' Compensation. UWC is the national association representing business specifically with respect to unemployment and workers' compensation.

This testimony is submitted at the request of the Ohio Chamber of Commerce and the National Federation of Independent Business (NFIB) to provide commentary from a national perspective and to make recommendations for your consideration as you address UI modernization in Ohio.

Before the Pandemic, what types of unemployment benefits were available in Ohio?

Since the 1930s Ohio has been certified as meeting federal requirements for the administration of the Federal/State Unemployment Compensation program.

The employer-funded program imposes a Federal Unemployment Tax of 6.0% on the first $7,000 of wages per year but also provides for an offset credit of 5.4% against the tax rate for states that meet federal requirements. Therefore, most employers pay 0.6% or $42/employee in FUTA tax. The offset credit is reduced by 0.3% or $21/employee when

the state carries an unemployment loan debt. Revenue from the FUTA tax is maintained in federal accounts and available under federal law to be appropriated for administration of the state unemployment compensation program. Regardless of fund solvency, UI benefits will be paid out to eligible claimants and any funds fraudulently obtained may be recovered through overpayment collections or mutualized across all employers.

Verification processes that existed in Ohio (and other states) to prevent fraudulent filings.

There are a number of points during the application and payment process at which there is an opportunity to identify and prevent fraud.

Thirty or more years ago, individuals were uniformly required to file applications in person at local offices. They were required to provide at least two government issued identification cards to verify identity (typically a social security card and a driver's license). If the individual could not provide these documents, the individual was not permitted to file the application and was told to come back with the documents.

Ohio and other states moved to telephone and then to on-line application The initial inquiry about verification relied on certification by the individual applicant. Agencies could require subsequent documentation and verification through crossmatches against the wage record data base and analytics developed to identify applicants that were more likely to be claiming fraudulently, but these take time, resources and system connectivity to reduce or eliminate fraudulent claims.

Another safeguard is notice to employers and the opportunity to verify identity and deny the claim. A believe recent problem a client of ours experienced having only 25 employees, but having to respond to hundreds of fraudulent claims may be one of the early upgrades that have been addressed.

Claimants would then need to certify that they are able to work, available to work and actively seeking work to continue receiving benefits.

Unemployment Compensation During the Pandemic

As it became clear in 2020 that the Coronavirus spread would become a global pandemic the Trump administration and congressional leadership discussed the size and scope of emergency response. As businesses were being forced to close through mandated shutdowns and loss of customers the general federal policy sought to make individuals whole on a temporary basis for the loss of wages during the pandemic. Employers would be provided with grants to avoid lay-offs and individuals would be provided payments to replace income.

The existing Federal/State UI system provided a national delivery system for partial wage replacement, but there was no national system through which to provide support to workers who were not covered under the UI system because they were independent contractors or working as "gig" workers.

After considerable discussion, a policy decision was reached to 1) supplement the amount of partial wage replacement provided through the UI system, and 2) create a new program for those who were otherwise not eligible to be paid through the UI system.

The question then became how much to provide in supplemental payments and how to create the new program on such a short timeline. State UI agencies were identified as the national distribution network for both.

UWC suggested that a different method of administration would be preferable to using the existing federal/state UI system.

The federal/state UI system is an employer financed state administered unemployment insurance system that covers employees who earned wages and had significant workforce attachment. To be paid, individuals must have become unemployed through no fault of their own and must be able to work, available to work and actively seeking work.

The federal pandemic response in the CARES Act was financed by the federal general fund and provided benefits to individuals who do not have

sufficient earned wages to be paid regular UC benefits and may not be able to work, available to work or actively seeking work.

Congressional Action

The first COVID-19 pandemic legislation was drafted by the House majority in the form of the Families First Coronavirus Response Act (FFCRA). The FFCRA provided emergency administrative funds to states and provided flexibility to states by notwithstanding the normal federal requirements with respect to work search and encouraged states to waive the waiting week and non-charge employer accounts for benefits that would normally be charged to employer accounts. The reasoning for the temporary waiver was the recognition that there was a public interest to require that individuals stay home and not travel to work locations or to seek work. The FFCRA was rushed through the House and passed the Senate. The FFCRA was followed by the more comprehensive CARES Act.

The CARES Act included the additional $600 per week in federal supplement payments through the Pandemic Unemployment Compensation program and the establishment of the new Pandemic Unemployment Assistance program to pay benefits to individuals who were not paid through the regular unemployment compensation program. The Pandemic Emergency Unemployment Compensation program was established to provide extended benefits for individuals who were not otherwise eligible for regular extended unemployment compensation.

Difficult issues

Income replacement

The driving policy behind the CARES Act was to make employers and employees whole for the loss of income/revenue due to the forced economic shut down.

Recognizing that the regular state-based unemployment insurance provided wage replacement on average of only 40% of average weekly wage in the individual's base period, part of the policy discussion

concerned the amount of a federal supplement to regular unemployment compensation during the pandemic. There was also a concern that old state UI systems would have extreme difficulty in managing complex changes. A review of state maximum weekly benefit amounts showed a range from as low as $235 in Mississippi to a high of $1234 (including maximum dependency allowance) in Massachusetts. Given the broad range of maximums and the policy direction to make workers whole, the U.S. Treasury and congressional leadership elected to set the additional Pandemic Unemployment Compensation payment at $600 per week. Although it was acknowledged that this would be a large increase in states with lower weekly benefit amounts, the short time to act and the inability of state UI systems to respond drove decision makers to set the amount at what they viewed as the middle.

It quickly became apparent that the additional $600 on top of regular unemployment compensation impacted the availability of workers for jobs. Some employers reported that their employees would not report to work because they were generally concerned about COVID-19 exposure and they could be paid more in unemployment compensation with the additional $600 than they would earn for full time work.

Alternatives to the $600 were considered, but the National Association of State Workforce Agencies testified before the U.S. Senate Finance Committee that state systems were not capable of making complex changes on such short notice.

As the temporary period for the $600 supplement in the CARES Act ended, there was no longer a consensus that a flat $600 supplement was needed. Many states were months behind in processing existing claims. Senate leadership elected to pause in continuing the supplement until it was clear that it was still needed. There was also continuing concern that the amount at $600 created a disincentive for claimants to return to work. In the absence of congressional agreement, President Trump elected to create a program through FEMA grants to provide $300 per week payments on a temporary basis.

UWC suggested at this time that if there remained a need for a supplement in payment amount that it should be structured such that the total of regular unemployment compensation and the additional payment not exceed the average wages paid to the individual in the individual's base period. Discussion on this policy point continues.

The UWC approach was discussed but not adopted because of perceived complexity and the suggestion that regular unemployment compensation amounts in some states were too low to begin with.

The American Rescue Plan Act will provide a $300 per week supplement for weeks ending prior to September 6, 2021.

Pandemic Unemployment Assistance – Fraud Vulnerability

There was considerable interest in providing support for "gig" workers who would not otherwise qualify to be paid unemployment compensation. The challenge was to determine how to determine the amount of wages/income that the individual was receiving before pandemic shutdowns and to determine an appropriate replacement amount.

Without access to a data base of wage information for reference as used for regular unemployment compensation, policy makers turned to the IRS for income tax returns and the regulations used to determine amounts to be paid under the Disaster Unemployment Assistance program.

It was argued, however, that in many cases individuals working as Gig workers would not have documentation through which to verify recent income. As a result, the legislative language establishing the PUA program required only that an individual self-certify and be paid the minimum weekly benefit amount in the state based on the DUA regulations. The PUCA $600 then was added to this amount to be consistent with the treatment of those receiving regular unemployment compensation.

At the time of legislative development, UWC noted that the combination of on-line application, self-certification, and large amounts of money to be paid would open the program to fraud. Also, because of delay in preparing to pay PUA benefits, the number of weeks to be paid

retroactively increased, creating an attractive target for fraudsters. The weakness was acknowledged by US DOL and states were advised in the program directions to pay attention to fraud vulnerability due to the self-certification.

As has been pointed out by the U.S. Department of Labor Office of Inspector General, this self-certification and insufficient safeguards led to a high percentage of fraudulent claims and payments.

UWC and others urged congress to tighten up this language and they responded in the Consolidated Appropriation Act, 2021 with new language requiring that PUA applicants provide documentation.

Workload Impact

The overall workload increase due to PUA and increased regular claims impacted many states with significant delays in processing, retroactive claims determinations and payments. This happened all over the country, most famously in California where a scammer produced a video about how he was becoming a millionaire by defrauding the California Economic Development Department through on-line applications.

Many states are still catching up with back dated claims and now dealing with high numbers of appeals.

The impact for employers has been confusion as to 1) whether their accounts are being properly charged for regular unemployment compensation benefits; 2) whether charges to accounts have been properly reconciled so that contribution rates for 2021 are correct; and 3) the circumstances under which their workers who refuse to return to work may be denied benefits.

Although the source of funds for the federal pandemic programs has been the federal general fund and not the employer FUTA tax revenue, there has been an increase in claims that exceeded any since the great depression. These increases and the impact of reduced payroll will likely increase average contribution rates in 2021, 2022, and 2023.

Recommendations

Unfortunately, much like previous recessions in the 1970s, 1980s, 1990s, 2000s and 2008-2009, the administrative issues related to unemployment insurance for the 2020 recession were repeats from prior recessionary periods. The increase in the number of applications and claims beginning in March of 2020 was 5-10 times the workload of the same period in 2019. State systems typically were built to handle double the highest workload in the last 20 years, but the workload in 2020 greatly exceeded technical specifications. An initial policy push to increase benefit amounts and payments to more individuals for longer periods of time has been followed by a recognition that paying fast likely resulted in increased improper payments and fraud. Audits after past recessionary periods have often identified systems issues in many states that needed to be addressed along with issues of legislative and policy interpretations. Identifying system weaknesses and preparing for the next economic cycle may enable Ohio to avoid issues in the years to come.

Specific recommendations include.

- Employers should be engaged in the conceptual and detailed design of improved systems and administrative processes, including the use of the State Information Data Exchange System (SIDES).
- Technical specifications for systems should assure the capability to handle workloads equal to the 2020 workload.
- Additional funding for systems and appropriate staffing should be requested from the U.S. Department of Labor (Note: the American Rescue Plan Act of 2021 includes $2 billion in dedicated funding for this purpose)
- Stop payment provisions should be adopted under which applications and weekly claims identified as high risk of fraud or identity theft are routed for special attention prior to claims being authorized for payment.
- The system should provide a dedicated portal for the submission of information from employers about potential fraud and identity theft

and a procedure for the agency to report on any action taken as a result.

- Registration requirements for individuals applying for unemployment compensation should provide sufficient information upon which to match unemployed workers effectively and efficiently to employers though reemployment services. The goal of unemployment insurance should be clear as part of the overall employment security programs to return unemployed workers to work – not to maximize the number of weeks or amount of unemployment compensation.
- Private/Public partnerships should be developed to assist in administration where permitted under federal law.
- Integrity best practices noted in descriptions from the NASWA Integrity Center and the Unemployment Insurance Program Letter (attached) should be reviewed and adopted as part of the systems and administrative development.
- UI knowledgeable staff should be allocated to respond to inquiries from all customers, including legislators, claimants, employers, and news media.
- Clarification should be obtained from US DOL and Congress in anticipation of post pandemic issues, including:
    - Ending date for emergency provisions in the FFCRA
    - Restoration of availability to work and work search requirements.
    - Termination of CARES Act provisions and reporting requirements.
    - Preparation for post program audits
- Ohio decision makers should meet regularly to review updates on progress with respect to backlogs, fraud, identity theft, and any legislation or rulemaking that may require an expedited response.

Chair Hackett and Frazier and members of the UI Modernization Council that concludes UWC's prepared remarks. I would be happy to try and answer any questions.