



Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on Unemployment Compensation

Before the:
Pennsylvania House Labor and Industry Committee

Presented by:

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February 25, 2021

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Chairman Cox, Chairman Mullery and members of the House Labor and Industry Committee, my name is Alex Halper and I am Director of Government Affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy association in the Commonwealth. Our members include employers of all sizes, crossing all industry sectors throughout Pennsylvania. Thank you for the opportunity to testify today regarding unemployment compensation (UC) issues confronting the Commonwealth.

UC has served as a critical safety net, benefitting millions of Pennsylvanians over the roughly 85 years of its existence. The PA Chamber and our members support UC – both the concept and financially, as it is almost exclusively funded through taxes on employers. The system is in the midst of a tumultuous, challenging time – claimants, employers, the Department of Labor & Industry and all stakeholders are feeling strain so we appreciate the Committee’s attention to this important program.

Unemployment compensation has been a focus of the legislative response to the pandemic and it has been clear since the early days of that response that federal and state lawmakers intended for UC to be temporarily utilized more expansively than its traditional purpose. On March 18, 2020 the federal Families First Coronavirus Response Act was signed by the President and included several important provisions related to UC, including providing states with flexibility to waive requirements that

could impede the flow of benefits. The Pennsylvania General Assembly responded on March 25, passing Act 9 of 2020: comprehensive UC legislation which provided automatic relief from charges for pandemic-related separations and waived the requirement that UC claimants demonstrate they are searching for work, among other provisions.

Two days later on March 27, the federal Coronavirus Aid, Relief and Economic Security (CARES) Act was signed and provided significant federally-funded UC benefits expansion and funding, including: eligibility for independent contractors, sole proprietors and others not typically eligible; extensions beyond the standard 26 weeks; an additional \$600 per week to all recipients; and funding to incentivize and support state “short-time compensation” programs in which employers avoid layoffs by reducing hours and employees receive a pro-rated unemployment benefit. A response of this magnitude was welcomed by many, including employers and employees whose workplaces were forced to shut down. Unfortunately, the administration of these programs proved extraordinarily difficult.

For months, and even recently to a lesser extent, we heard feedback from employers that their employees, or themselves as claimants, were experiencing exceedingly long delays, a process rife with technological mishaps and, accordingly, many weeks or months with no revenue, paycheck or unemployment benefit. This outcome was the

result of a tragic confluence of circumstances, some of which could not realistically be controlled: the precipitous rise in claims, including from many first-time claimants; expansive business shutdown and capacity mitigation orders; and outdated technology, to name a few. Other circumstances stem from preexisting deficiencies now being amplified. Going forward, lawmakers should strive to fix those deficiencies over which you do have some control, begin the process of addressing the UC trust fund's fiscal state, and plan for transiting UC back to its intended purpose based on targeted support.

A long-time criticism of Pennsylvania's UC system, which has become all too apparent during the pandemic, is vagueness and unnecessary subjectivity in the law. The statute includes vague terms that make the claims review process more subjective, application of the law less uniform, and often necessitates a more laborious process for employers, claimants and claims reviewers. Not only does the lack of specificity in the law create a less efficient system, it has created a perception that claimants who ought not be eligible should still apply, knowing the law is open to broad interpretation. This culture extends to employers whose own experience or perception of a tilted playing field leads to a belief that it is futile to contest a claim and work through a time-consuming adjudication process. This leads to more inappropriate claims clogging the system.

During the course of the pandemic this chronic problem often manifested as claimants turning down work or employees refusing offers to return to work in order to continue collecting benefits, which, in some cases, were greater than regular wages when federal enhancements were factored in. While employers were directed to report these individuals, the reality was many expressed reluctance to report their employees, whom they often consider like family. They may have even sympathized with employees making more collecting benefits than earning wages, even as the employer struggled through a workforce shortage. Ideally, employers would not be forced into this position, and instead could reference specific standards in statute.

Further exacerbating the problem were comments from Gov. Wolf at an April press conference when he was asked what recourse was available to an employer if an employee who had been furloughed refuses to return to work and opts instead to continue collecting benefits. Gov. Wolf stated “there’s one really simple thing you can do as a business owner and that is raise the compensation of your employees.”

Besides the troubling fact that a governor was encouraging his citizens to commit fraud, this response frustrated employers, many of whom considered it anything but “simple” to raise wages when their business had been shut down.

Employers reported that early on employees freely acknowledged they were declining work to remain collecting benefits, perhaps not recognizing the gravity and legal ramifications of such an admission. Eventually it seemed employees, perhaps having become aware of the risk, reportedly began to explain their refusals to work as based on a general feeling of being uncomfortable or concerned their employers could not comply with health guidelines. No doubt, many claimants expressing these concerns were genuine; however, we at the time urged lawmakers and the department to outline conditions under which these pandemic-related claims were in fact eligible. We continue to advocate for more specificity in the law and better guidance. Both claimant and employer would benefit from a system that was more predictable; and the system would benefit as well with fewer contested claims slowing the process. Accordingly, we supported H.B. 2557 last session. While the bill essentially guaranteed eligibility in certain circumstances, which does give us concerns, on balance we believe greater clarity and predictability would benefit all stakeholders and the system.

The PA Chamber has long advocated for policies to ensure the UC system is focused on its intended purpose which, according to the Department of Labor & Industry's website, is to provide "temporary income support if you lose your job through no fault of your own." This includes legislation to provide eligibility standards for claimants who quit their job for personal reasons or were fired for willful misconduct.

In addition to addressing vagueness in the law we urge lawmakers to also focus on the system's finances. Pennsylvania's UC trust fund is once again bankrupt after existing in a state of insolvency for much of the last decade during a historically sluggish post-Great Recession recovery. During that time and to this day, Pennsylvania employers pay among the highest average UC tax rates compared to other states – 5th highest in the country and more than double the national average according to the most recent U.S. Department of Labor data from 2019. On top of that, until a little over a year ago, Pennsylvania employers were assessed an additional tax to pay off UC debt incurred during the last recession.

Insolvency triggers higher state taxes on employers. Pennsylvania is also back to borrowing from the federal government to pay state benefits, which will eventually trigger high federal taxes. In other words, Pennsylvania employers' already high UC taxes will only continue to increase in the years ahead as many will likely still be recovering. Raising already high UC taxes is frustrating under normal circumstances; it is even more so given how many employers were forced to lay off workers for reasons beyond their control – business shutdown orders, capacity restrictions, etc. The PA Chamber is partnering with fellow chambers and advocates from around the country urging Congress to forgive federal UC debt or at least maintain the interest-free status of the loans. We also urge state lawmakers to pursue policies that add

efficiency to the UC system, target benefits and help avoid significant tax increases that are looming. The following are just a few concepts we believe worth considering:

- **Benefit fairness:** Under current law, benefits are based on the claimant's single highest-earning quarter of the year. This creates an unfair dynamic in which a claimant whose wages are concentrated in one quarter can qualify for a greater benefit than a claimant earning similar or greater annual wages but who worked consistently throughout the year. This system is even more unfair as it favors seasonal workers – those typically not “unemployed” in the traditional sense (i.e. looking for a new job) as opposed to claimants who are truly laid off and looking for employment.
- **UC vs. paid leave:** Under current law, a claimant may still qualify for benefits even if he or she intends to return to the same employment after a leave of absence. This is inconsistent with the purpose of the program, which is for individuals who are unemployed and actively seeking new employment. The law should clarify that a quit of necessitous and compelling nature is intended to be a permanent separation.
- **Reapplying after disqualification:** Under current law, a claimant who was previously found ineligible because he or she was responsible for the separation can purge that disqualification after simply earning six times his or her weekly benefit rate (WBR). This is a relatively low threshold and part of the reason

Pennsylvania's eligibility standards rank among the most expansive in the country.

We support H.B. 177 to require claimants to work 10 weeks and earn 15 times their WBR before reapplying.

UC underwent a number of temporary changes during the pandemic to allow for flexibility and account for the uniqueness of the circumstances. Stakeholders should all be planning to transition the program back to regular order – both phasing out changes intended to be temporary, but also maintaining new policies where appropriate. For example, we urge lawmakers to focus on restarting the work-search requirement and utilizing technology to make it more effective and functional for claimants and employers. On the other hand, the experience over the last year has demonstrated that hearings can be conducted virtually or by telephone and either party should always have that option.

We look forward to working with lawmakers, the Department, claimants' advocates and all stakeholders to improve the UC program and ensure its vitality into the future.

I appreciate the opportunity to testify and would be happy to answer questions.