



# National Unemployment Insurance Legislative Update

by

**Douglas J. Holmes, President**

**UWC – Strategic Services on Unemployment &  
Workers' Compensation**

**[holmesd@uwcstrategy.org](mailto:holmesd@uwcstrategy.org)**

**June 17, 2015**



# Federal Legislation and related Issues

- The End of Emergency Unemployment Compensation (EUC)
- Able to Work, Available to Work and Actively Seeking Work
- Treasury Offset Program (TOP) becomes mandatory for unpaid employer contributions from income tax refunds
- UI Agency drug testing limited by statute and US DOL interpretation
- SSDI eligibility denial or reduction if eligible for Unemployment Compensation
- Denial of claimants while incarcerated
- Reemployment eligibility assessment and reemployment services



# Federal Legislation and related Issues

- WOTC and long term unemployed
- Recognition of Professional Employer Organizations (PEOs)
- Workforce Innovation and Opportunity Act (WIOA)
- President Obama's FY 2016 Budget Proposal
- Proposed Expansion of Wage Information in the Trade “customs” Bill

# The End of EUC



Did EUC negatively or positively impact the economic recovery?

Studies by the National Bureau of Economic Research and a review of unemployment claims data suggest that the EUC program provided too many weeks for too long and actually increased the total unemployment rate.

Senator Jack Reed (NV) asked GAO to review the impact of the reduced number of weeks in states that enacted reductions. States enacted reductions in the maximum number of weeks to save money and increased state UI taxes to respond to solvency concerns.

A broad federal mandate to greatly increase the maximum number of weeks of benefits in all states may have unintended consequences and is very costly.

Other responses with general revenue funding and or tax incentives may be more effective in reducing the unemployment rate and increasing employment.



# Adding Occupational Codes to Wage Information

On May 14<sup>th</sup> the Senate passed trade related “customs” legislation (HR 644) with an amendment from Senator Maria Cantwell (WA) to require all employers (over 7 million) as a matter of federal law to include information to enable occupational (SOC Codes) coding of every employee (133 million) reported in quarterly wage reports.

UWC opposes the new federal unfunded mandate.

CBO found that the unfunded mandate would cost employers hundreds of millions in the first year and significant additional costs for state agencies.

Standard Occupational Coding (SOC) involves over 800 codes and is time consuming. Most employers currently don't use them; the coding would likely be unreliable; and the ongoing cost of updating quarterly reports, systems changes and training for employers and agencies would be significant.



## **Treasury Offset Program (TOP) Applies to Benefit Overpayment and unpaid Employer Contributions**

TAAEA Act of 2011 requires states to implement TOP to collect unemployment compensation debt that is due and unpaid through offset against individual income tax refunds.

States began with benefit overpayments but now are beginning to apply the offset to “persons” that may include LLCs or other business entities in which the owner or member owes contributions for the business but has filed an individual income tax return and is due a refund.

The offset may catch employers in this group by surprise. State agencies, business associations, service companies and accountants should be aware of the potential of offset.



# Work Opportunity Tax Credit (WOTC) Extension

- Tax Increase Prevention Act of 2014 (HR 5771)– signed December 19, 2014
- Section 119 provided an extension of the Work Opportunity Tax Credit for qualified individuals for work which began after December 31, 2013 and on or before December 31, 2014.
- Authorization for a continued extension for individuals hired in 2015 may be considered in a tax extenders bill later this year.
- The Omnibus Appropriations Act made funds available for WOTC State Administration for the remainder of FY 2015 which ends September 30, 2015.
- States were provided funding to allow acceptance of certification requests. Retroactive authorization is once again pending.
- Potential expansion to long term unemployed.



# Professional Employer Organization (PEO) Recognition as the Employer

- Tax Increase Prevention Act of 2014 (HR 5771) Recognized PEOs as employers for purposes of unemployment insurance reporting and contributions through the Small Business Efficiency Amendments (SBEA)
- PEO Certification
- Requirements for PEOs to become certified by the IRS include:
  - Bonding
  - Annual Audits
  - Quarterly CPA Attestations on Employment Taxes Reporting and Other IRS
  - Annual Fee
- For Detailed Information Contact the National Association of Professional Employers (NAPEO)



# UI Agency Drug Testing to Determine Eligibility

- Authority enacted in Section 2105 of the Middle Class Tax Relief and Job Creation Act of 2012.
- Authority limited to circumstances where
  - 1) applicant for benefits was terminated from most recent employer because of unlawful use of controlled substances, or
  - 2) is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing (as determined by the Secretary of Labor)
- Already narrow authority made narrower by Regulations and UI-PL
  - Restricting the list of occupations for which drug testing is regularly conducted
  - Limit the period for drug testing to the period after application and before a continued week claim is filed
  - Requiring the agency to determine that a suitable occupation for the individual is not available in the labor market
  - Requiring that the drug test meets standards for Mental Health Services or US DOT



# SSDI and Unemployment Compensation Overlap Reduction or Disqualification

- Obama proposed budget includes a proposal to reduce an individual's entitlement to a DI benefit in any month in which the individual also receives a state or federal unemployment compensation benefit.
- Rep Sam Johnson HR 918 and Senator Orrin Hatch S 499
- If individual paid unemployment for a week within a month also claimed for SSDI the individual would be disqualified for SSDI for the month.
- Issues include:
  - How to obtain information from state UI agencies to compare with SSDI in a timely manner.
  - Matching weeks to be paid against months when weeks split the beginning or end of the month.
- Fair chance of some legislative enactment to save SSDI money.

# Denial of Payment to Claimants While Incarcerated



- Continued attention being paid to this issue that may generate savings and be consistent with good policy and integrity.
- HR 2503 introduced by Rep. Dave Reichert (WA)
- Requires state to inquire with SSA to access data base of individuals confined in a jail, prison, or other penal institution or correctional facility.
- States would consider the information as a basis of denying the individuals unemployment compensation for not being available to work or actively seeking work.
- Other data bases and cross matches are being used on a state by state basis with significant savings for state UI trust funds.



# Workforce Innovation and Opportunity Act (WIOA) and Unemployment Compensation

- Expansion of Wage Information Reporting Requirements Driven by Search for national comprehensive data base for use in WIOA performance evaluation. Regulations Pending.
  - Legal – Wage information reporting defined by state law
  - Cost – Significant cost for all employers with uncertain benefit
  - Systems – Old systems and designed for UI admin with limited record layout
  - Data exchange – Already in place for research and interstate
  - Opposition to new Federal unfunded mandates
- Other issues include
  - Will there be an increased focus on UI claimants in one-stops?
  - Treatment of Dedicated funding for REA and RES for UI claimants
  - Cost allocation issues
  - Impact on employer use of public employment service for labor exchange?



# President Obama's FY 2016 Budget Proposal UI Issues

Greatest UI Tax Increase (FUTA and SUTA) in History, \$60 billion.

Increase the effective FUTA tax rate from 0.6 percent to 0.8 percent in calendar year 2016.

Require states to increase state unemployment tax bases to \$40,000.

Beginning in 2017, require states to have a minimum tax equivalent to 0.175 percent on a \$40,000 tax base (\$70 per employee) indexed to go up indefinitely with increases in average wages.

Incent States to Pay Increased Extended Benefits.

Replace the current extended benefit (EB) program with one that triggers “on” earlier but also require EB claimants to receive Reemployment Services and Eligibility Assessments (REA/RES).

For States paying up to 26 weeks of regular benefits, the EB program would be 100 percent federally funded. Other States would pay 50 percent of the EB benefit costs.

# President Obama's FY 2016 Budget Proposal UI Issues



Incentivize States to expand UI benefit eligibility in a manner similar to “UI Modernization” in the American Recovery and Reinvestment Act.

Establish a permanent REA/RES program in the regular UI program.

Mandate States' use of the State Information Data Exchange System.

Require States to cross-match UI claimants with the Prisoner Update Processing System data base.

Reduce SSDI benefits dollar for dollar in any month in which that person also receives a State or Federal UI benefit.

# Issues for 2015 and 2016



- No new statutory increase in FUTA tax base or rate.
- Careful Management of FUTA Offset Credit Reduction Provisions to avoid triggered FUTA increases where possible in states with outstanding loan amounts.
- Increase REAs and reemployment services to a broader but targeted group of claimants who are not job attached.
- Prohibit individuals from being paid unemployment compensation for a week of unemployment compensation if determined disabled under SSDI with respect to the same week.

# Issues for 2015 and 2016



- Improve systems to identify individuals who are incarcerated and being paid unemployment compensation.
- Require that states not write off overpayments prematurely.
- Monitor the employer penalty provision for failure to respond to requests for information and consider revisions.
- Increase dedicated funding for integrity administration (systems and staff)