

# **National Unemployment Insurance Legislative Update**

by

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# Federal Legislation and related Issues

- President Trump's FY 2020 Budget Proposal
  - Establish National Paid Parental Leave
  - Generate Federal Revenue Through Solvency Requirements
- Unemployment Compensation Language in Violence Against Women Reauthorization HR 1585
- Reemployment services and eligibility assessments
- Worker classification and the Gig Economy Proposal
- Integrity and Erroneous Payment Focus
- Benefit Accuracy Measure and Improper Payment Rates

# Federal Legislation and related Issues

- Continued Interest in expansion of required reporting of occupation information in UI quarterly reports.
- Revised Regulation of State Testing UI Applicants for Controlled Substances
- Work Opportunity Tax Credits for Long Term Unemployed
- SIDES responses and repeal of Federal Statute Law Imposing Penalties

# Stop Using BAM as a Measure for Improper Payments

On February 22, 2019 USDOL posted notice in the Federal Register seeking comments on the extension of the Benefit Adequacy Measurement (BAM) and its use to determine the percentage of improper payments for the purposes of the Improper Payments Act of 2002 and the Improper Payments Elimination and Recovery Act of 2010.

UWC, NASWA and some Individual States Responded.

- \*The use of BAM dramatically overstates improper payment rates and actually discourages states from adopting greater work search and integrity measures.**
- \*Using BAM results in lesser integrity for state unemployment trust funds.**
- \*The sample size is too small.**
- \*Using BAM for the state by state determination of erroneous payment rates or the determination of a national rate is not accurate.**
- \*Unemployment compensation payments made by state workforce agencies are not payments made by federal agencies and should not be subject to the improper payment review in the first place.**

# Workforce Information Advisory Council (WIAC)

•The Workforce Information Advisory Council (WIAC) completed its recommendation to the Secretary of Labor that the Secretary “pursue the inclusion of additional data elements to unemployment insurance (UI) wage records, including occupational title, hours worked, and work site”. No action has been taken by the Secretary on this recommendation.

## Concerns:

- Occupation Data using SOC's or other definitions not likely to be accurate
- Cost/Benefit – Increased cost for all employers with uncertain benefit
- Systems – Current wage reporting systems are designed for UI admin with limited record layout
- Data exchanges – Already in place for research and interstate claims
- Opposition to new Federal unfunded mandates

# President Trump's FY 2020 Budget Proposal for Paid Parental Leave Solvency Requirements

The solvency proposal would result in state UI tax increases and/or benefit cuts projected to be \$9.2 billion over the ten year budget period according to OMB.

The solvency idea was carried over from the proposals of previous administrations. However, there is no mandated tax base increase in the most current proposal.

Has the effect of imposing higher taxes on employers doing business in states with lower trust fund balances even if individual employer accounts have significant positive balances.

Does not recognize that states have access to alternative financing to assure that federal loans are repaid.

The impact of imposing reductions of FUTA offset credits on employers in states with lower trust fund balances may result in states reducing benefits to improve solvency.

# President Trump's FY 2020 Budget Proposal for Paid Parental Leave

Assuming the proposal continues to set the point at which there would be a reduction in the FUTA offset at 0.5% of the AHCM instead of triggering when the state had an outstanding Title XII loan as of two successive January 1<sup>st</sup>s, employers in approximately 10 states would likely be hit with increased FUTA taxes in the year following the first January 1<sup>st</sup>.

As of January 1, 2019 states first impacted would have included CA, CT, IL, IN, MA, NY, OH, TX, VI, WV.

Employers in another 14 would likely be hit with increased FUTA taxes early during a significant economic downturn.

As of January 1, 2019 states vulnerable to FUTA increases would include AL, AZ, CO, DE, KY, MD, MN, MO, NJ, PA, RI, SC, TN, WI.

# President Trump's FY 2020 Budget Proposal for Paid Parental Leave

The financing of the proposal through increased UI solvency (taxes) would

- discourage job creation
- is inconsistent with the overarching themes of the administration to reduce taxes, reduce regulation and administrative costs, reduce federal entitlement spending, and provide flexibility to the states.

This proposal increases taxes on employers, increases administrative costs, and increases federal control over states and businesses. It could also result in states choosing to reduce unemployment benefit amounts.

The UI system is not a good fit for the financing or administration of the program.



# President Trump's FY 2020 Budget Proposal for Paid Parental Leave

## Administrative Issues

1. Where is the additional administrative funding appropriation for systems, training, staffing, accounting, etc. that would be needed for the implementation and ongoing administration?
2. How would administrative funding for the new program, if any, be treated for purposes of federal and state cost allocation for shared overhead, etc.?
3. The FY 2020 proposal assumes a cost of \$18.75 billion over 10 years to be offset by the UI solvency provisions (\$9.2 billion), improved integrity (\$1.7 billion) and RESEA services (\$3.3 billion)
4. Would RESEA savings be counted for this program and the funding of expanded RESEA?
5. How would the benefit determination process be administered? Appeals?
6. How would the implementation and administration of the new program impact the ability of the base UI program to improve in administration and performance?
7. What would be the impact on state ability to ramp up during the next recession?
8. Would the program be permanently authorized or need to seek reauthorization at the end of the 10 year budget period? Do the solvency requirements continue even if the program ends?

# President Trump's FY 2020 Budget Proposal for Paid Parental Leave

## Benefit Issues

1. How would the parental leave amount be determined? If \$300 per week it would be significantly more than many low wage workers are eligible to receive in weekly UI benefits but also less than higher wage workers.
2. How does the increased payout impact the solvency of state UI trust funds, the adequacy of unemployment compensation?
3. How will existing parental leave and other leave be taken into consideration (e.g. voluntary employer plans; state and local plans; sick leave; personal leave; FMLA; short term disability; subsidized child support)
4. How will earnings disregards be handled?
5. The program seeks to make payments to individuals to enable them to remain working. Unemployment compensation may only be paid to individuals who are unemployed, able to work, available to work and actively seeking work.
6. What is the impact on the amount and payment of child support obligations?

# President Trump's FY 2020 Budget Proposal for Paid Parental Leave

## Employer Issues

1. What new reporting requirements would be imposed to determine when an individual may be eligible to receive the benefit?
2. Would UI due process measures apply to determinations?
3. Would employers and representatives be penalized for not responding within short time frames?
4. Would the cost of the new benefit be charged to employer accounts? What if the individual has multiple employers?
5. What would be the impact on experience rating? Contribution rates?
6. If the funding dedicated for the program is insufficient how would benefits be paid? Would they be cut off or is this a new federal entitlement?
7. How would this new requirement be coordinated with the large number of other paid family leave programs at the state level and private plans already in place with employers?

# Current Legislative Status on Paid Parental Leave

The Healthy Families Act of 2019 HR 1784; Rose DeLauro (D-CT) – 131 cosponsors; S 840 Patty Murray (D-WA) – 33 cosponsors.

- Allow workers in businesses with 15 or more employees to earn up to seven job-protected paid sick days each year.
- Workers in businesses with fewer than 15 employees would earn up to seven job-protected *unpaid* sick days each year to be used, unless their employers choose to offer paid sick days.
- Allow workers who are victims of domestic violence, stalking or sexual assault to use their paid sick days to recover or seek assistance related to an incident.
- Include a minimum of one hour of paid sick time for every 30 hours worked, up to 56 hours per year, unless the employer selects a higher limit.
- Allow employers to require certification if an employee uses more than three paid sick days in a row.
- Allow employers to use their existing policies, as long as they meet the minimums set forth for time, types of use and method of use.

# Current Legislative Status on Paid Parental Leave

Healthy Families Act provides paid days of leave for broader reasons than Parental Leave, including:

- *Physical or mental illness, injury, or medical condition of the employee*
- *Professional diagnosis of medical care or preventive medical care*
- *Caring for a child, parent, spouse, domestic partner or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship*

Negotiations with the White House and Senate

Senator Cassidy (R-LA) is the lead Senate negotiator

Although UI was suggested as an option in the President's Budget Proposal, staff at the White House have been quoted as saying and Senator Cassidy's staff have indicated that it is just a place holder pending discussion of alternatives.

Alternatives include using Social Security as delivery agency and/or targeted tax credit payments for individuals to take parental leave.

# Employer Credit for Paid Family and Medical Leave Enacted

On December 22, 2017 President Trump signed into law as part of the Tax Cuts and Jobs Act. Senator Deb Fischer (R-NE) was the primary advocate.

1. Business tax credit for paid family leave for up to 12 weeks per taxable year
2. 12.5% to 25.0% of family leave wages paid
3. **Employer requirements**
  1. **Employee who is not part time, payment of not less than 2 weeks of annual paid family and medical; and**
  2. **Employees who are part time paid amount similar to non part time employees on prorated basis.**
  3. **Rate of payment must be at least 50% of normal wages paid for such services**
4. Effective only for 2018 and 2019.
5. One year extension through 2020 included in House Ways and Means Tax Extenders bill HR 3301

# New Worker Classification Proposal

- **New GIG Act of 2019 (S 700)**

This bill modifies the GIG Act of 2017 language and would amend the Internal Revenue Code to establish a test for determining if a service provider should be classified as an independent contractor, employee or some other entity for tax purposes.

If the requirements of the test are met, the provider may not be treated as an employee, the recipient or any payor may not be treated as an employer, and compensation for the service may not be treated as paid or received with respect to employment.

The factors of the test include:

- \*the relationship between the parties (i.e., the provider incurs expenses; does not work exclusively for a single recipient; performs the service for a particular amount of time, to achieve a specific result, or to complete a specific task; or is a sales person compensated primarily on a commission basis);**

- \*the place of business or ownership of the equipment (i.e., the provider has a principal place of business, does not work exclusively at the recipient's place of business, and provides tools or supplies); and**

# New Worker Classification Proposal

**\* the services are performed under a written contract that meets certain requirements (i.e., specifies that the provider is not an employee, the recipient will satisfy withholding and reporting requirements, and that the provider is responsible for taxes on the compensation).**

**The bill also: (1) sets forth withholding and reporting requirements for service recipients who meet the requirements of the test, and (2) allows service providers to petition the U.S. Tax Court for a determination of employment status.**

This bill introduced by Sen. Thune was amended slightly from the GIG Act of 2017 that was incorporated into the first draft of the Senate amendments to H.R.1 but not retained after opposition was expressed.

UWC indicated a general concern that the new federal definitions amending FUTA and FICA would then be inconsistent with state definitions of employment using the ABC, Common Law or other tests.

The issue of classification in the “gig” economy continues to be difficult with the various federal and state definitions of employee, employer and employment. (e.g. UI, FLSA, Workers’ Comp, NLRB)



# Expanded Reemployment Services and Eligibility Assessments

On April 4, 2019 US DOL published for comment proposed allocation guidance for new grants to states for reemployment services and eligibility assessments (RESEA) The Bi-partisan Budget Act of 2018 dramatically Increased authorization for increased spending on Reemployment Services and Eligibility Assessments.

Authorized dedicated funding to increase from \$117 million in FY 2018 to \$750 million in 2027

## **Goals are to**

- **Improve employment outcomes for individuals that receive unemployment compensation and to reduce average duration of receipt of UC through employment**
- **Strengthen program integrity and reduce improper payments**
- **Promote alignment with the broader visions of WIOA**
- **Establish RESEA as an entry point for individuals receiving unemployment compensation to other workforce programs**

# Expanded Reemployment Services and Eligibility Assessments

**Core components of RESEA to be part of the initial session with a claimant are:**

- **UI eligibility assessment, including review of work search activities, and refer to adjudication, as appropriate, if an issue or potential issue is identified;**
- **Providing labor market and career information that address the claimant's specific needs;**
- **Enrollment in Wagner-Peyser Act funded Employment Services.**

UWC has supported increased funding for RESEA efforts and noted that Reemployment Services have been shown to be most effective when there is close collaboration with employers and the private sector.

# Work Opportunity Tax Credit (WOTC) Extension

- The Tax Cuts and Jobs Act (H.R. 1), enacted in December of 2017 repealed authorization for WOTC credit for long term unemployed after December 31, 2019.

**“Qualified Long Term Unemployed” is defined as**

- **a period of unemployment which is not less than 27 consecutive weeks, and**
  - **Includes a period in which the individual was receiving unemployment compensation under State or Federal law.**
- US DOL released TEGL 25-15 Change 2 on February 16, 2018, with further details with respect to eligibility.
- The continued authorization of WOTC for a broad list of designated populations (Including Long Term Unemployed) is pending and hopefully will be resolved before the end of 2019.

One year extension through 2020 included in House Ways and Means Tax Extenders bill HR 3301

# Unemployment Compensation Entitlement in Violence Against Women Act (VAWA)

- On April 10, 2019 the U.S. House of Representatives passed HR 1585 to re-authorize the Violence Against Women Act (VAWA) other items in the bill included a new federal entitlement in Section 703 for certain individuals who voluntarily leave employment to be entitled to be paid unemployment compensation.
- **no person may be denied compensation under such State law solely on the basis of the individual having a voluntary separation from work if such separation is attributable to such individual being a victim of sexual or other harassment or a survivor of domestic violence, sexual assault, or stalking;**
- **a voluntary separation of an individual shall be considered to be attributable to such individual being a survivor or victim of sexual or other harassment or a survivor of domestic violence, sexual assault, or stalking if such individual submits such evidence as the State deems sufficient.**

# **Unemployment Compensation Entitlement in Violence Against Women Act (VAWA)**

- **a State shall deem sufficient, at a minimum—**
  - (A) evidence of such harassment, violence, assault, or stalking in the form of—**
    - (z) a sworn statement and a form of identification;**
    - (ii) a police or court record; or**
    - (iii) documentation from a victim service provider, an attorney, a police officer, a medical professional, a social worker, an antiviolence counselor, a member of the clergy, or another professional; and**
    - (iv) an attestation that such voluntary separation is attributable to such harassment, violence, assault, or stalking.**

# Unemployment Compensation Entitlement in Violence Against Women Act (VAWA)

UWC and many others raised policy issues, including:

- **The amendment would impose a federal mandate that would be inconsistent with state law. Violence against women in connection with work is already just cause to quit (i.e., is non-disqualifying).** The issue has already been addressed in every state in statute, administrative rule or policy. Most recently in response to incentive funding under the American Recovery and Reinvestment Act of 2009.
- **Under the amendment unemployment benefits would be charged to employers even when claimed harassment was not at the work place, not due to anything the employer did, and did not arise in the course of employment.**
- **Information about harassment could not be kept confidential during the determination of benefits.**

# Unemployment Compensation Entitlement in Violence Against Women Act (VAWA)

- **The amendment imposes increased costs of administration for states without additional federal appropriations and increases administrative costs for employers and federal agencies.**
- **The amendment would increase unemployment insurance taxes and increase the risk of insolvency in state unemployment trust funds.**

# Issues for 2019 and 2020

- **Management of trust funds now and moving into next recession to avoid triggered FUTA increases where possible.**
- **Properly manage increased funding for RESEA implementation to reduce duration and effectively match claimants with work – use flexibility to a broader but targeted group of claimants who are not job attached.**
- **Improve systems to identify individuals who should not be paid at the point of application and reduce erroneous payments. Continue increased dedicated funding for integrity administration and systems.**



# Issues for 2019 and 2020

- **Consider amendment to Section 252 of the TAAEA of 2011 and conforming state laws and improve SIDES exchanges in consultation with employers and their representatives.**
- **Improve the systems by which claimants search for work and are able to document work search to be verified in claims adjudication and in determining erroneous payments.**
- **Preserve the relationship between employer paid FUTA taxes as dedicated for administration of UI and related ES functions.**
- **Avoid UI trust fund diversions for purposes unrelated to unemployment insurance and employment security.**