National Unemployment Insurance Legislative Update

by

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Federal Legislation and related Issues

- Families First Coronavirus Response Act (FFCRA)
- Coronavirus Aid, Relief, and Economic Security Act (CARES)
- Protecting Nonprofits from Catastrophic Strain Act
- Consolidated Appropriations Act, 2021
- American Rescue Plan Act (ARPA)
- Unemployment Compensation Language in Violence Against Women Reauthorization Act HR 1620
- Wyden, Bennet and Brown Proposals

Federal Legislation and related Issues

FFCRA Provisions Continued into 2021

- $1 billion provided to states ($500 million to all certified states that provide employers required to provide notification of availability of UC to employees)
  Assure application is accessible
  Notify applicants when application is received and being processed

- Additional $500 million to states with at least 10% increase in unemployment with conditions.
  The state expressed commitment to strengthen access to unemployment compensation
  - waiving work search
  - eliminate waiting week
  - relieving benefit charges to employers and claimants directly or indirectly due to COVID

Federal Legislation and related Issues

FFCRA continuation

- 100% Federal Reimbursement for Regular Extended Benefits
- Waiver of Interest due on Title XII Loans

Final Extensions through the week ending prior to September 6, 2021.

Federal Legislation and related Issues

FFCRA Related Policy Questions

When does the temporary work search waiver provision end?

- State decision in interpretation of period of emergency?
- Permanent federal law requires that UI claimants must be able to work, available to work and actively seeking work as a condition of being paid unemployment compensation (Section 303(a)(12) of the SSA
- There was no waiver of the available to work requirement.
- Possible confusion with PUA claims conditions for payment

Who Defines Work search Requirement? Disqualification for Refusal of Suitable Work?

States define but feds may provide guidance

How does COVID impact long term definition of able, available and work search and refusal of suitable work?

Increased attention to health and safety conditions at work

Federal Legislation and related Issues

FFCRA Policy Questions
Should states restore waiting week requirements that were suspended during the Pandemic?

Payment of the waiting week increases payout when many trust funds are not yet solvent.

States triggered "on" regular extended benefits may lose the normal federal share reimbursement for the week under permanent EB law (Federal-State Unemployment Compensation Act of 1970)

As of October 15, 2021 only Alaska, Connecticut, New Jersey and New Mexico were triggered "ON" regular EB

Federal Legislation and related Issues

FFCRA Related Policy Questions
When should the special relief from charges to employer accounts end?

Federal law and state emergency executive orders and legislation are difficult to align for time periods and reason for relief from charges.

Despite relief from direct charges, employers may have special solvency taxes imposed under state law to improve state UI trust fund solvency.

Reimbursing employer accounts immediately impacted by federal/state alignment and charging relief. Sorting out Section 2103 CARES credits and state relief has been difficult for states and reimbursing employers.

Despite special relief, contributing employer contribution rates (experience and flat/solvency) on average going up for 2021 and 2022.

Federal Legislation and related Issues

Coronavirus Aid, Relief, and Economic Security Act (CARES)

Established new federally funded Pandemic Unemployment Assistance program for workers not otherwise eligible for regular unemployment compensation.

Provided reimbursement and credits to reimbursing employer accounts for regular unemployment compensation paid for weeks during the emergency pandemic period.

Established new Pandemic Unemployment Compensation to supplement regular unemployment compensation ($600 and then $300 per week).

Provided reimbursement for state payment of the waiting week.

Federal Legislation and related Issues

Coronavirus Aid, Relief, and Economic Security Act (CARES)

Established Pandemic Emergency Unemployment Compensation
Established Mixed Earner Unemployment Compensation
Provided continued funding for states to adopt short time compensation (STC)
Provided special $2 billion in funding for UI systems to improve integrity, systems and claimant access.

US DOL in the process of determining how to use the additional funds and to distribute to individual states.

Federal Legislation and related Issues

Coronavirus Aid, Relief, and Economic Security Act (CARES)

Continuing Policy Issues

Should there be some continuation of increased federal supplements?

$600 and then $300 supplement resulted in some workers receiving more in unemployment compensation (sometimes combined with partial earnings or STC) than they would receive in income.

Should there be a continuation of a federal or state program to provide cash payments to individuals who become unemployed from work as independent contractors or "gig" workers?

- Integrity issues – self-certification
- How to finance – who pays and who benefits
- Impact on regular unemployment compensation

Federal Legislation and related Issues

Coronavirus Aid, Relief, and Economic Security Act (CARES)

Continuing Policy Issues
How much of the $2 billion should be used to develop applications intended for use nationwide?

What funding should be earmarked for development of improved access to unemployment compensation for claimants?

- Language barriers
- Legal speak barriers
- Technology barriers

Federal Legislation and related Issues

Continuing Policy Issues
How should the $2 billion be used to develop improved state UI systems and integrity measures?

- System capacity and scalability
- Upfront filters to avoid identity theft claims
- Coordination with the OIG
- Coordination with the Financial Services Industry
- Interstate cooperation – NASWA Integrity Center
- Cross matches
- Staffing sufficient to work claims when there are hits
- Earnings verification improvement
- Greater attention to prosecution of fraud
- Chargeback and contribution rate computation

Senators Wyden and Bennet Discussion Proposal

Sec. 101. Increases federal financing of EB from 50 percent to 100 percent.

*Sec. 102 and Sec. 103. R*eform the "triggers" used to determine whether additional weeks of benefits are available and how many weeks are available.

Sec. 104. Changes the calculation of the total amount of an individual's EB entitlement to the greater of 50 percent of their total entitlement to regular unemployment compensation or 13 times their average weekly benefit amount.

Sec. 105. Allows individuals who are claiming EB when their state unemployment rate goes down to continue to claim EB until they exhaust the amount to which they were entitled.

Sec. 106. Creates a coordination rule to allow individuals to continue to claim EB even when they begin a new benefit year if their EB amount would be higher than their regular compensation amount.

Senators Wyden and Bennet Discussion Proposal

Sec. 107. Clarifies coordination rules for individuals living or working in multiple states.

Sec. 108. Exempts EB from sequestration, effective as of date of enactment.

Sec. 109. The amendments made by this title (other than section 107) will be effective by January 1, 2023.

Sec. 201. States must offer at least 26 weeks of benefits.

- *Sec. 202*. Weekly benefit amounts must replace 75 percent of the claimant's average weekly earnings in the claimant's highest quarter of earnings during the base period, subject to the state's maximum benefit amount.

Senators Wyden and Bennet Discussion Proposal

Sec. 203. The state maximum benefit amount must be equal to at least two-thirds of state's average weekly wage.

Sec. 204. States may not deny unemployment to an individual because their base period includes part-time work or because they are seeking part-time work. This section also sets limits on how much states may reduce benefits for individuals who are working part-time while continuing to receive benefits.

- *Sec. 205*. States are required to use a base period or alternative base period that includes the most recently completed calendar quarter, and to use an extended base period that includes at least four additional quarters if the individual was incapable of work or took parental leave or other family leave with reduced or no pay during the base period.

Senators Wyden and Bennet Discussion Proposal

Sec. 206. States cannot deny unemployment compensation to an individual if they quit their job for certain compelling reasons, including domestic violence or sexual harassment, illness or disability of a family member, relocation of the individual's workplace or the individual's spouse, loss of child care, unusual risk to health or safety, and irregular work schedules or unpredictable pay.

Sec. 207. Eliminates the "waiting week" policies that deny individuals unemployment compensation during their first week of unemployment.

Sec. 208. States must consider the completion of a temporary work assignment to be an involuntary layoff.

Sec 209. States are required to waive overpayment recovery in cases where the overpayment was not the fault of the individual and such repayment would be contrary to equity and good conscience.

Senators Wyden and Bennet Discussion Proposal

Sec. 210. Requires states to operate a short-time compensation (work share) program and makes workers who have lost up to 80% of their hours potentially eligible for short-time compensation.

Sec. 211. Requires states to cover individuals who have at least $1,000 of covered wages in the high quarter and at least $1,500 in the base period.

Sec. 212. Requires states use the "ABC test" for the purpose of determining whether a worker is considered a UI-eligible employee.

Sec. 213. Expands UI eligibility to certain student workers who are not eligible under current law.

Senators Wyden and Bennet Discussion Proposal

Sec. 214. Requires state systems to meet certain accessibility requirements to make it easier for claimants and employers to interact with unemployment insurance programs.

- *Sec. 215. Jobseeker Allowance* This new program would provide a federal weekly benefit to unemployed workers who are seeking work but are not covered by unemployment insurance or are eligible for only a small unemployment insurance payment. This would include coverage for workers newly entering the labor force and self-employed workers. The Jobseeker Allowance is 100 percent federally financed.

- *Sec. 216. Dependents' Allowance*
- Provides an additional federal benefit of $25 per dependent per week for individuals with dependents claiming unemployment compensation.

Senators Wyden and Bennet Discussion Proposal

- *Sec. 217. Emergency Enhanced Unemployment Compensation*
- Increases the wage replacement rate of unemployment benefits to 100 percent during public health emergencies or other major disasters or emergencies. The benefit increase is federally funded.

  Senators Wyden and Bennet are considering significantly broadening the FUTA taxable wage base and reducing the net FUTA tax rate. The new taxable wage base would be indexed for inflation. The levels of the taxable wage base and net FUTA rate would be determined such that the revenue would be sufficient to cover both administrative costs and Extended Benefits payments.

Senators Wyden and Bennet Discussion Proposal

Senators Wyden and Bennet are considering new solvency requirements for state Unemployment Trust Fund accounts. For example, states could be required to have an "average high-cost multiple"—a measure of solvency that takes into account the amounts that were needed to pay benefits during previous recessions—of at least 1.0 when the economy is strong. This would help ensure that states are prepared to continue to pay unemployment compensation in the event of an increase in claims during an economic downturn.

Additional Funding for Modernization

Senators Wyden and Bennet are considering providing additional funding to supplement state Unemployment Trust Fund accounts to ease the transition to a more generous benefit structure.

Additional Funding for Administration

Senators Wyden and Bennet are considering modernizing the funding formulas for administrative funding to ensure that states have sufficient funds to administer their unemployment insurance programs.

Unemployment Insurance Improvement Act Proposal Wyden, Bennet, Brown

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BASE PERIOD. Requires states to use a base period or alternative base period consisting of at least four quarters that includes the most recently completed calendar quarter. (The “base period” is the period of time the state uses to determine an individual’s entitlement to benefits.) This requirement is a condition of employers in the state claiming a 5.4 percent tax credit against federal unemployment tax.

MINIMUM LEVEL OF PRIOR EMPLOYMENT. Requires states to cover individuals who have at least $1,000 of covered wages in the high quarter and at least $1,500 in the base period. This requirement is a condition of employers in the state claiming a 5.4 percent tax credit against federal unemployment tax

Unemployment Insurance Improvement Act Proposal
Wyden, Bennet, Brown

PART-TIME WORK. Prohibits states from denying unemployment compensation to an individual because they are seeking part-time work as long as they are seeking at least half the number of hours they typically worked in their base period. This section also requires states to allow individuals to work part time and continue to claim unemployment compensation as long as their earnings are less than their weekly benefit amount, and requires states to disregard earnings equal to one-third of the individual's weekly benefit amount in calculating partial unemployment benefits. This requirement is a condition of employers in the state claiming a 5.4 percent tax credit against federal unemployment tax.

Unemployment Insurance Improvement Act Proposal
Wyden, Bennet, Brown

ACCESS TO BENEFITS. Requires that states require employers to provide information regarding unemployment compensation claim-filing to employees upon separation from employment; have in place methods for employers to notify the state workforce agency of employees who may apply for unemployment compensation due to short-term layoffs, business shutdowns, partial unemployment, and short-time compensation; and have an alternate means of claim filing for workers who are unable to use the online claim filing system.

Helping Gig Economy Workers Act of 2021

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This bill temporarily permits digital marketplace companies (e.g., Lyft, DoorDash, Airbnb, etc.) to provide benefits to workers during the COVID-19 (i.e., coronavirus disease 2019) pandemic without such actions establishing those workers as employees or independent contractors or establishing the company as a joint employer under federal, state, or local laws.

This bill applies to digital marketplace companies that provide, among other things, financial assistance, health benefits, training, health checks and personal protective equipment to individuals working through such marketplaces during the period beginning on March 15, 2020, and ending on the later of December 31, 2021, or the expiration of the COVID-19 public health emergency. This bill was introduced by Sen. Braun (R-IN).

Unemployment Compensation Entitlement in Violence Against Women Act (VAWA)

On March 17, 2021, the U.S. House of Representatives passed HR 1620 to re-authorize the Violence Against Women Act (VAWA). The bill included a new federal entitlement in Section 703 for individuals who voluntarily leave employment to be entitled to be paid unemployment compensation.

The language is similar to language proposed in 2019 that was not adopted.

As has been the case since 2019 there is broad bi-partisan support for reauthorization of this act, however, there are provisions (including UI provisions) on which there is disagreement.

Unemployment Compensation Entitlement in Violence Against Women Act (VAWA)

UI related issues include that the language creates entitlement to payment when an individual leaves work for reasons that may not be in connection with work.

The language also creates charges to employer accounts and state UI trust funds although the employer was not involved or even knew about harassment or stalking outside of work.

States have already addressed these issues and enacted law and policy in determining whether leaving work may be for good cause and non-disqualifying.

Issues for 2021 and 2022

- Management of trust funds to avoid triggered FUTA increases.
- Effectively use funding from CARES Act and ARPA to improve state UI trust fund solvency, improve integrity, UI system capacity, tax administration and accessibility for claimants.
- Properly manage 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.
- Be prepared for possible double-dip recession.