

State UI Legislative and Policy Issues National UI Issues Conference

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Significant Legislative Issues and Enactments 2016-2017

- UI Integrity and Identity Theft
- UI Trust Fund Solvency
- Misclassification of Employment
- State Surcharges for Admin Funding, Employment and Training
- Paid Family Leave
- Reporting and Disclosure of Wage, Benefit and Occupational Information
- Benefit Amount Determinations
- Definition of Misconduct
- Drug Testing
- Between Terms Denials

2017 Legislation

UI Integrity and Identity Theft

- Overpayment Audit and Tracking System (OATS)
- Currently developing a new overpayment and audit tracking system, which is expected to improve our ability to detect, stop and recover benefit overpayments.
- Development is ongoing and, in the next several weeks, we will implement a Monthly Wage crossmatch.
- With Monthly Wage crossmatch we can detect claimants who are collecting unemployment insurance benefits to which they are not entitled due to wage earnings, based on a crossmatch between paid certifications and employer monthly wage reports.
- Our cross-matching ensures that those who have returned to work do not continue to collect UI benefits. Our implementation of the monthly wage report crossmatch allows us to stop benefits sooner.

UI Trust Fund Solvency

- IDES (IL) issued \$1.6B bonds in 2012 to cover shortfalls in the state's Unemployment Trust Fund account.
- Pending confirmation by the bond lawyers, IL repaid all outstanding bonds in mid-June of 2017.
- IL repays its bonds through a surcharge on employers (fund building rate) that is set at 0.55% during any calendar year in which there were outstanding bonds as of 10/31 of the immediately preceding calendar year
- Since IL paid off the bonds, the fund building rate could go down in future years (beginning in 2018). The surcharge could eventually drop to as low as 0.4%.

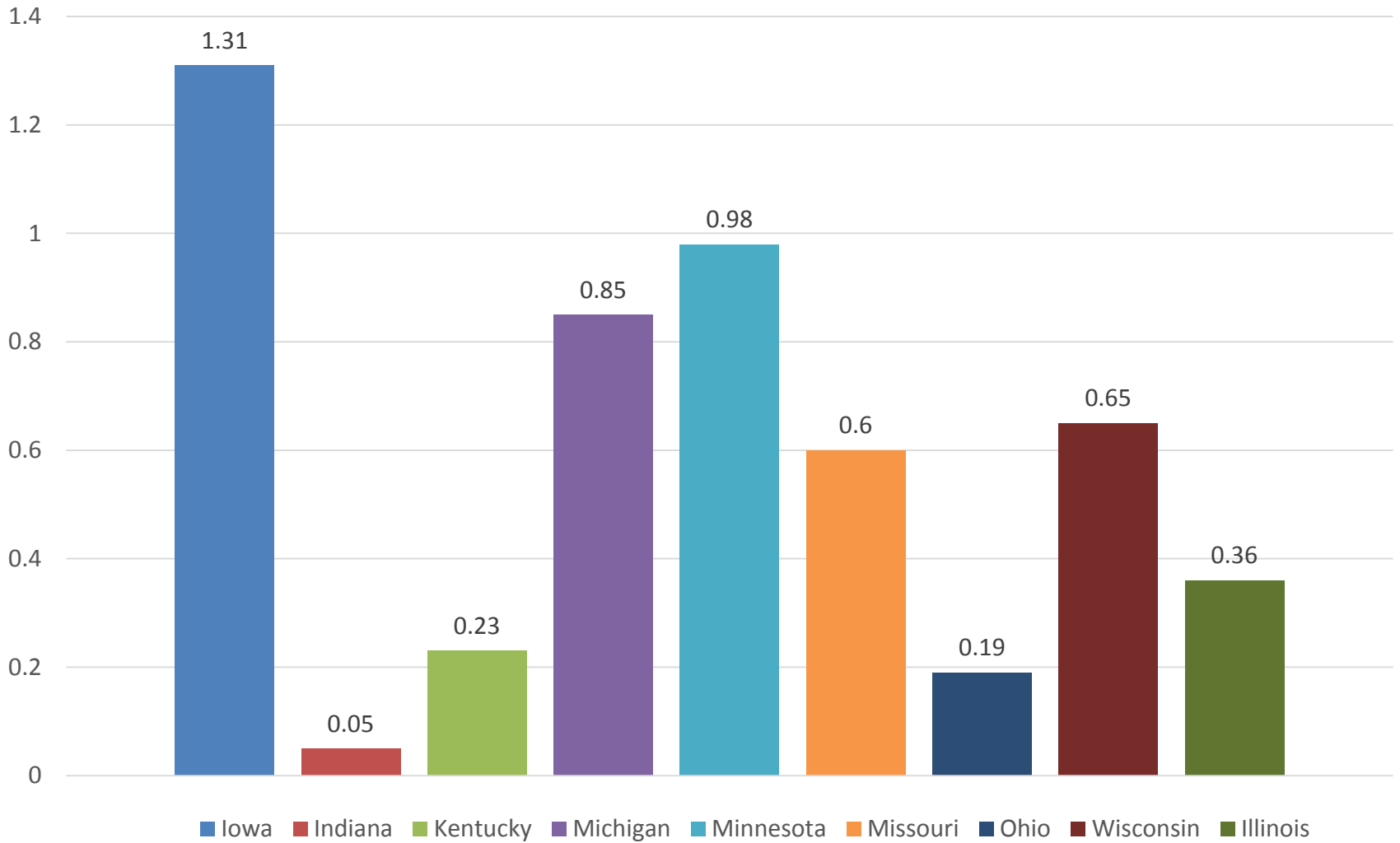
UI Trust Fund Solvency cont.

Minimum solvency standard - Average High-Cost Multiple (AHCM)

- The President's Budget includes a proposal to add a minimum solvency standard in the UI program.
- The proposal would provide an incentive (penalty) to states to adequately fund their UI systems by making states that fail to maintain an Average High-Cost Multiple (AHCM) of 0.5 for two consecutive January firsts subject to FUTA tax credit reductions under the same schedule that states face currently when they borrow from the feds.
- ACHM (essentially a measure of how long a state's trust fund would last in a recession).
- An ACHM of 1 means the state's trust fund would last 1 year during a "high-cost" period; An ACHM of 0.5 means the fund would last ½ year.

AHCM

(Data from USDOL's "State UI TF Solvency Report 2017")



Misclassification of Employment

State Surcharges for Admin Funding, Employment and Training

Paid Family Leave

- The Trump Administration budget proposal:
 - States would be required to provide six weeks of parental leave and the proposal gives States broad latitude to design and finance the program. The proposal is fully offset by a package of sensible reforms to the UI system—including reforms to reduce improper payments, help unemployed workers find jobs more quickly, and encourage States to maintain reserves in their Unemployment Trust Fund accounts.
 - Indicates that the paid parental leave program will cost \$18.5 Billion over the ten years ending 2027 and be paid for in large part with \$12.9 Billion in increased state UI tax receipts due to a new federal solvency standard, \$2.2 billion in improved UI program integrity, and more than \$4.0 billion in savings from improved eligibility assessments and reemployment services.

Paid Family Leave

Claudia – can you add th map from the Henry Kaiser Foundation to this slide?

<http://www.kff.org/other/state-indicator/number-of-births/?activeTab=map¤tTimeframe=0&selectedDistributions=number-of-births&sortModel=%7B%22collId%22:%22Location%22,%22sort%22:%22asc%22%7D>

Paid Family Leave

- Initial concerns raised
 - Increase UI taxes and costs for all employers
 - Reduce funds available for regular UI
 - Increase the federal deficit
 - Proposal is inconsistent with the requirement that claimants must be able to work, available to work and actively seeking work
 - Does not address how existing subsidized child care and employer paid child care would be determined

Paid Family Leave

- No Paid Family Leave in IL currently
- Legislation introduced in recent years
- The drafts appear to be works-in-progress
- Fiscal Cost
 - IDES cannot use federal funds to administer program, would require a separate state funding stream (to our knowledge, states that have a PFL program also have a disability insurance program, so have infrastructure funded without UI/fed funds)
 - Startup costs estimated at \$75 to \$100 million

Reporting and Disclosure of Wage, Benefit and Occupational Information

- IL has authority in our statute to require additional information by rule but we'd be limited to such records in their native format – meaning the employer could provide their records as-is. Not currently prepared to accept/process such records.

Benefit Amount Changes

- IL P.A. 99-912, eff. 12/19/2016, created a new “additional benefits” program for eligible individuals whose unemployment is attributable to a layoff from a steel manufacturer impacted by trade.
- In short:
 - Provides up 26 weeks of additional benefits (after regular 26 weeks)
 - Unemployment must be due to a layoff from a trade-impacted steel manufacturer
 - The individual must have been certified on or after 1/1/15 as eligible to apply for Trade Adjustment Assistance (TAA) – but AB benefits are offset by any Trade Readjustment Allowance received
- Benefits paid out of our regular UI trust fund.

Benefit Amount Changes cont.

- “Rest stops”
 - As an incentive for business/labor (and state gov) to reexamine the UI system every few years, IL puts “rest stops” into its law that lower benefits and raise revenue.
 - **Benefit:** according to current IL law, in 2018, an individual’s weekly benefit amount is schedule to drop from 47% to 42.9% of his/her prior AWW (calculated to cut benefits by approx. \$400m).
 - **Revenue:** adjusted state experience factor for calendar year 2018 will be increased by 19% absolute (calculated to generate appox. \$500m).
 - Changes go into effect absent statutory change.

Definition of Misconduct

- Under the general definition of misconduct (no change since late 80's), an individual is disqualified from receiving benefits if he/she was discharged for a (1) a deliberate and willful violation (2) of a reasonable rule or policy of the employer governing the individual's behavior in the performance of his/her work, that (3) either (a) harmed the employer or a fellow employee or (b) was repeated despite a warning or explicit instruction from the employer.
- P.A. 99-488
 - Expanded the definition of misconduct with 8 new circumstances, effective 1/3/2016, which do not necessarily require each element above be met.

The previous definition notwithstanding, “misconduct” shall include any of the following work-related circumstances:

1. Falsification of an employment application, or any other documentation provided to the employer, to obtain employment through subterfuge.
2. Failure to maintain licenses, registrations, and certifications reasonably required by the employer, or those that the individual is required to possess by law, to perform his or her regular job duties, unless the failure is not within the control of the individual.
3. Knowing, repeated violation of the attendance policies of the employer that are in compliance with State and federal law following a written warning for an attendance violation, unless the individual can demonstrate that he or she has made a reasonable effort to remedy the reason or reasons for the violations or that the reason or reasons for the violations were out of the individual's control. Attendance policies of the employer shall be reasonable and provided to the individual in writing, electronically, or via posting in the workplace.
4. Damaging the employer's property through conduct that is grossly negligent.

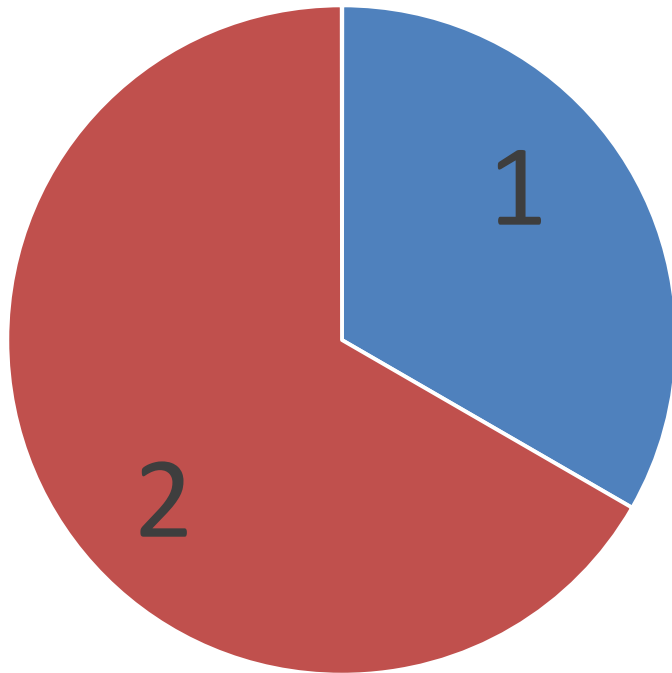
5. Refusal to obey an employer's reasonable and lawful instruction, unless the refusal is due to the lack of ability, skills, or training for the individual required to obey the instruction or the instruction would result in an unsafe act.

6. Consuming alcohol or illegal or non-prescribed prescription drugs, or using an impairing substance in an off-label manner, on the employer's premises during working hours in violation of the employer's policies.

7. Reporting to work under the influence of alcohol, illegal or non-prescribed prescription drugs, or an impairing substance used in an off-label manner in violation of the employer's policies, unless the individual is compelled to report to work by the employer outside of scheduled and on-call working hours and informs the employer that he or she is under the influence of alcohol, illegal or non-prescribed prescription drugs, or an impairing substance used in an off-label manner in violation of the employer's policies.

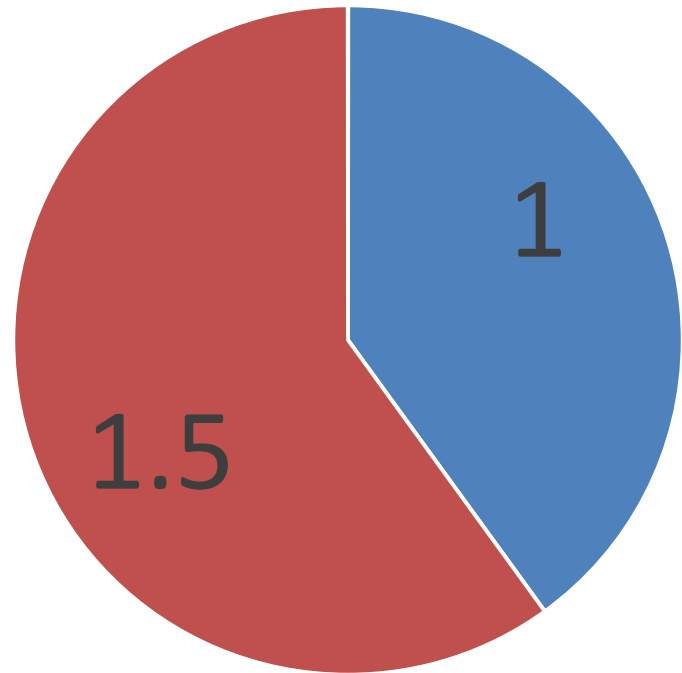
8. Grossly negligent conduct endangering the safety of the individual or co-worker.

Pre-HB1285



■ Deny ■ Allow

2016 Ratio



■ Deny ■ Allow

Petrovic v. IDES, 2016 IL 118562 (2016)

- Prior to *Petrovic*, appellate cases concluded that an employer's rule need not have been expressly stated, but could be inferred based on "common sense."
 - "There are some acts of misconduct that are so serious and so commonly accepted as wrong that employers need not have rules covering them."
 - "Common sense implies the existence of certain rules in the work place."
 - "Implied in every employment agreement is the duty of a worker to report to work on time for work"
 - "Although the company does not have an employee handbook, there would be an implied/understood policy prohibiting lying. Precedent holds that it is not necessary that every rule in a work place be written or recorded in some fashion. Common sense implies the existence of certain rules in the work place".

Petrovic v. IDES, 2016 IL 118562 (2016)

- In *Petrovic*, the IL Supreme Court narrowed the so-called, “common sense” rule. Under the premise that an employee should not be disqualified unless he/she engaged in conduct he/she knew was prohibited, the Court announced the following rule: **“in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a prima facie intentional tort.”**

Drug Testing

Between Terms Denials

The Federal Unemployment Tax Act (FUTA) generally requires that employees of governmental or nonprofit educational institutions be eligible for unemployment benefits under the same terms and conditions as other UI claimants. The eligibility of IL employers for over \$1B worth of annual federal tax credits is conditioned on IL complying with that requirement, among other things.

There are exceptions to the requirement: 1) a professional educational employee (e.g., a teacher) cannot use wages for his/her services as such to qualify for benefits between terms (or during customary holiday or vacation recesses) if he/she has a **contractual right to perform that work in the next term** (or after the holiday or vacation) or there is a **reasonable assurance that he/she will perform that work in the next term** (or after the holiday or vacation) and 2) a nonprofessional educational employee (e.g., a groundskeeper) may be treated the same as a professional educational employee. IL law treats professional and nonprofessional employees the same.

Between Terms Denials

- There is IL case law construing what constitutes a **reasonable assurance**, based on prior guidance and direction from USDOL.
- Under the old guidance, “reasonable assurance” was a relatively low threshold.
- On 12/22/2016, however, USDOL issued a program letter changing its interpretation of FUTA. Under the new interpretation, some circumstances that were previously considered as constituting a reasonable assurance would no longer be viewed as such. So the threshold has been raised (easier to qualify for benefits between terms).
- Denying benefits under the new circumstances could jeopardize the continued availability of the federal tax credits now available to IL employers.
- Pending federal guidance, IDES will toe the line between following existing case law and not violating the new guidelines – assuming USDOL sticks by that interpretation.