

National Unemployment Insurance Legislative Update

by

Douglas J. Holmes, President

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

holmesd@uwcstrategy.org

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Federal Legislation and related Issues

- Congressional Joint Resolution (HJ Res 42) to Disallow US DOL Regulations Interpreting State authority to test UI applicants for controlled substances
- President Trump's Budget Proposal to Establish National Paid Parental Leave
- Relationship between SSDI and UI
- Integrity and Erroneous Payment Focus
- Reemployment eligibility assessment and reemployment services
- Administrative funding for UI
- New innovations – the Secretaries Innovation Group Proposals

Federal Legislation and related Issues

- WOTC and long term unemployed
- Recognition of Professional Employer Organizations (PEOs)
- Workforce Innovation and Opportunity Act (WIOA) and expansion of required reporting of occupation information.

Work Opportunity Tax Credit (WOTC) Extension

- Consolidated Appropriations Act, 2016 (HR 2029)– signed December 18, 2015
- Section 142 provided an extension of the Work Opportunity Tax Credit for qualified individuals for work which began on or before December 31, 2019.
- Added “long term unemployed” as qualified for coverage by WOTC.
- Defines “Qualified Long Term Unemployed” as
 - In 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 on June 17, 2016 with instructions to state workforce agencies with new forms and definitions of Long-Term Unemployed. State Workforce Agencies, UI Agencies and employers will need to work together.
- States will use UI quarterly wage reports and benefit claims information as sources to determine eligibility. When these reports are lacking states will use a self-attestation form.
- US DOL released TEGL 25-15 Change 1 on January 11, 2017 with further clarification that individuals need not be UI claimants at the time of hire to meet WOTC requirements.

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)
- Federal 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
- Starting with Texas there has been a discussion state by state about whether a PEO that is certified as the employer for purposes of FUTA and therefor may receive credit for taxes already paid on FUTA wages by a predecessor may also receive credit for state UI taxes on wages already paid by a predecessor employer to meet state UI law obligations.

UI Agency Drug Testing to Determine Eligibility

Authority 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

In light of enactment of HJ Res 42, US DOL working on new regulations and interpretation that better reflect congressional intent.

SSDI and Unemployment Compensation Overlap Reduction or Disqualification

President Trump's FY 2018 included a proposal to reduce an individual's entitlement to a DI benefit in any month in which the individual also received a state or federal unemployment compensation benefit.

- If an individual is 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.
- The proposal is estimated to save money for SSDI and state UI trust funds.
- Policy issue of coordination with existing state provisions that deduct SSDI from UI or deny UI benefits because the individual is not able to work.
- It may be possible for an individual to qualify as disabled for SSDI but still be able to perform some work to meet the able to work test for UI.

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. WIOA regulations were published for comment in April, 2015.
- Report and recommendations due soon from the Workforce Information Advisory Council (WIAC)

Ongoing issues include:

- 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 exchanges – Already in place for research and interstate claims
 - Opposition to new Federal unfunded mandates
- Other ongoing WIOA issues include
 - Focus on UI claimants in one-stops?
 - Dedicated funding for REA and RES for UI claimants?
 - Impact of cost allocation of UI and ES base grant funds to one-stops. Will it reduce funds for dedicated use for UI administration and the work test?
 - Impact on employer use of public employment service for labor exchange?
 - Increased collaboration with the private sector, temp services and outplacement agencies?
 - Coordination with UI claimants in approved training, apprenticeship, customized training?

President Trump's FY 2018 Budget Proposal for Paid Parental Leave

UI Tax Increase (FUTA and/or SUTA) of \$12.9 billion over 10 years would be the largest UI tax increase since at least 1985.

Assumes significant savings from increased integrity efforts of \$2.2 billion and more than \$4.0 billion from eligibility assessments and reemployment services.

Increased tax revenue and savings from integrity designed to “pay for” the proposed parental leave program costing an estimated \$18.5 billion over 10 years to be administered through the UI system.

There are many issues with the proposal that were apparently not addressed in development of the portion relating to UI.

President Trump's FY 2018 Budget Proposal for Paid Parental Leave

Tax Issues

The proposal would result in an estimated 20 states likely to be paying increased FUTA tax up to the full 6.0% on a \$7,000 tax base (instead of the normal 0.6%) or drastically cutting benefits.

By setting 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^{sts}, employers in approximately 38 states would be hit with triggered tax increases during a 2008 size recession.

Many states would trigger FUTA increases much faster, the increases would be greater over time, and it would take much longer for FUTA taxes to come off, if ever.

President Trump's FY 2018 Budget Proposal for Paid Parental Leave

As of the 4th quarter of 2016 there were still 17 states with UI trust fund account balances of less than 0.5% AHCM or continuing indebtedness for alternative financing. Employers in the following states would be hit immediately with FUTA tax increases or need to reevaluate bond packages, and would see increases in taxes and debt service over time due to enactment of the proposal.

Arizona	California	Colorado*	Connecticut	Illinois*
Indiana	Kentucky	Massachusetts	Michigan*	Nevada
New York	North Dakota	Ohio	Pennsylvania*	Texas*
Virgin Islands	West Virginia			

The increase in FUTA penalties could result in more states electing to finance UI trust fund debt in the private market resulting in less revenue for the federal unified budget than anticipated.

Some states would also likely combine tax increases with additional benefit cuts to meet the new solvency standard.

*States relying on private sector bond financing would need to increase bonded indebtedness, increase the debt service payments, and/or rely on increased SUTA or FUTA tax revenue.

President Trump's FY 2018 Budget Proposal for Paid Parental Leave

The financing of the proposal through increased UI solvency (taxes) would discourage job creation and the proposal 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.

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

President Trump's FY 2018 Budget Proposal for Paid Parental Leave

Administrative Issues

1. Where is the additional administrative funding 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. How would UI taxes and payments to finance the new program be collected, managed and accounted for? What systems would be used? What programming is needed?
4. How would the benefit determination process be administered? Appeals?
5. How would the implementation and administration of the new program impact the ability of the base UI program to improve in administration and performance?
6. What would be the impact on state availability to ramp up during the next recession?
7. Would the program be permanently authorized or need to seek reauthorization at the end of the 10 year budget period? Does the tax increase continue even if the program ends?

President Trump's FY 2018 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 2018 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?

Secretaries' Innovation Group UI Proposals

The Secretaries Innovation Group is a group of state human services and workforce agency officials developing new options for states related to Unemployment Insurance. Proposals developed include:

1. States to own and manage their own statewide systems;
2. Expand reimbursing option to any employer within the state;
3. Permit employers to purchase private UI insurance as an alternative to the state UI plan;
4. Dedicated set aside of small portion of SUTA for targeted efforts to return claimants to work and/or improve integrity.

The SIG continues to refine options that may be identified in federal legislation for consideration.

Issues for 2017 and 2018

- Management of trust funds now and moving into next recession to avoid triggered FUTA increases where possible.
- 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 and SSDI for the same period of time.
- Improve systems to identify individuals who should not be paid and reduce erroneous payments. Increase dedicated funding for integrity administration and systems.
- Consider amendment to Section 252 of the TAAEA of 2011 and conforming state laws.
- 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.