



Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on Unemployment Compensation issues

Before the:
Pennsylvania Senate Labor and Industry Committee
Pennsylvania Senate Communications and Technology Committee

Presented by:

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Committee Chairs Bartolotta, Tartaglione, Phillips-Hill and Kearney and members of the Senate Labor and Industry and Communications and Technology Committees, my name is Alex Halper and I am Director of Government Affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy association in the Commonwealth. Our members include employers of all sizes, crossing all industry sectors throughout Pennsylvania. Thank you for the opportunity to testify today regarding unemployment compensation (UC) issues currently confronting the Commonwealth.

UC has served as a critical safety net, benefitting millions of Pennsylvanians over the roughly 85 years of its existence. The PA Chamber and our members support UC – both from a public policy perspective and financially, as it is primarily funded through taxes on employers. In fact, Pennsylvania employers pay among the highest average UC tax rates in the country and, until a few months ago, had been paying an additional assessment to pay off UC debt incurred during the Great Recession.

The PA Chamber has also advocated for policies to ensure UC system focused on its intended purpose which, according to the Department of Labor & Industry's website, is: "...money paid to people who have lost a job through no fault of their own. It is temporary income meant to help make ends meet while people look for a job."

Unemployment compensation has been a focus since the early days of the legislative response to the pandemic and it has been clear that federal and state lawmakers intended for UC to be temporarily utilized more expansively than its traditional purpose. On March 18 the Families First Coronavirus Response Act was signed and included several important provisions related to UC, including providing states with flexibility to waive requirements that could impede eligibility for benefits. The Pennsylvania General Assembly followed up on March 25, passing H.B. 68, now Act 9 of 2020: comprehensive UC legislation that, among other provisions, waives the requirement that UC claimants demonstrate they are searching for work.

Two days later on March 27 the federal Coronavirus Aid, Relief and Economic Security (CARES) Act was signed and provided significant additional federally-funded UC expansion, funding and benefits, including: eligibility for independent contractors, sole proprietors and others not typically eligible; extensions beyond the standard 26 weeks; an additional \$600 per week to all recipients; and funding to incentivize and support state “short-time compensation” programs in which employers avoid layoffs by reducing hours and employees receive a pro-rated unemployment benefit. UC has clearly expanded beyond its typical purpose of providing financial assistance for individuals laid off and actively seeking new employment. It makes sense that lawmakers would seek to drive support to individuals during this difficult through an existing system with established infrastructure. While utilizing UC for this purpose

has required adjustments to allow for flexibility and account for these unique circumstances, it is important to remember and commit to these adjustments being temporary and key principles of UC still being adhered to.

Recurring and often disheartening feedback from claimants involves exceedingly long delays, a challenging process rife with technological mishaps and, accordingly, many weeks with neither a paycheck nor unemployment benefit. This situation is the result of a tragic confluence of circumstances, some of which are inevitable given the unprecedented health and economic situation while others stem from preexisting issues and deficiencies now being amplified. Going forward, while some challenges may continue to be unavoidable, others may and ought to be addressed by lawmakers:

Surge in claims. There was no avoiding a precipitous rise in UC claims: much commercial activity has slowed down or ceased altogether, employers have been shut down and forced to initiate mass layoffs and, as aforementioned, federal law has expanded the program to many individuals not typically eligible like independent contractors and the self-employed. Many of these individuals may have never applied for UC before, or only had experience from the employer perspective, which no doubt led to mistakes, additional inquiries and a slower process.

Business shutdown order. Pennsylvania's UC system has surely been particularly strained by a relatively expansive business shutdown order. By mid-March, as the prospect of a statewide business shutdown order became more likely, we suggested Pennsylvania use guidelines from the federal Cybersecurity and Infrastructure Security Agency (CISA) to determine what businesses were considered essential and therefore exempt from the order. We believed then and now that utilizing CISA guidelines, which was widely adopted by states, would provide for important transparency and a more uniform application of the order. It is also likely that businesses that would have been exempt under CISA were required to close under the shutdown order and did not receive a waiver, thereby adding to the unemployment numbers. Continued progress on statewide mitigation efforts and potential loosening of restrictions based on evidence that employers can and have operated safely will hopefully allow UC claimants to return to full employment and lead to fewer initial claims.

Technology infrastructure. The Department of Labor & Industry has also long been challenged by archaic technology that leads to significant inefficiencies and a slower process. L&I has spent years and hundreds of millions of dollars to update technology infrastructure and though it reported progress earlier this year, it remains ongoing and Pennsylvanians – both those applying for benefits and those tasked with administering the system – are forced to confront this crisis with equipment woefully inadequate for the job. To be sure, the Department has asserted that much of the

delay and wasted money can be attributed to apparent problems with a previous vendor. Either way, Pennsylvania is left tacking an historic crisis with historical tools.

Vague law. A long-time criticism of Pennsylvania's UC system is that the law includes numerous vague terms that make the claims review process more subjective, application of the law less uniform, and often necessitates a more laborious process for employers, claimants and claims reviewers. Not only does the lack of specificity in the law create a less efficient system, it has created a perception that claimants who ought not be eligible should still apply for benefits and appeal denials, knowing the law is open to broad interpretation and their efforts may eventually succeed. This culture extends to employers whose own experience or perception of a deck stacked against them leads to a belief that it is futile and waste of time to contest a claim and work through the adjudication process. This of course leads to more frivolous claims clogging the system. Again, these challenges existed before the pandemic but are no doubt part of the reason UC has struggled. The Department should be clear to all stakeholders and L&I personnel under what circumstances a claimant who claims a pandemic-related separation should not be deemed eligible.

Refusal to work: Employers are increasingly reporting that employees are quitting or those who had been furloughed are refusing offers to return to work, and opting

instead to remain collecting benefits. This obviously imposes costs on the system and employers in these circumstances are directed to report these individuals to the Department. In reality, many employers express reluctance to report their employees, whom they often consider like family and may qualify for a benefit rate that equals or exceeds their regular wages when the \$600 federal enhancement is factored in.

There is also less incentive for employers to contest claims, since Act 9 provided for automatic relief from charges for employees let go as a result of the pandemic. Under normal circumstances, an employer risks a UC tax increase if a former employee qualifies for benefits and is therefore financially incentivized to contest illegitimate claims. However, if an employer will automatically be relieved of those charges, there is no direct financial incentive to contest. While the PA Chamber supported this provision of Act 9, and still contends that employer UC taxes should not be increased under these circumstances, we did not fully anticipate this impact.

The growing trend of employees refusing to work has implications beyond simply costs on the system. Claimants are prohibited by both federal and state law from refusing suitable work without good cause, which surely does not include the prospect of greater take-home pay from benefits. In such cases, a claimant risks termination, being disqualified from UC altogether and potentially facing fraud charges. Additionally, employers who have reoriented their operations to safely resume

business or who are preparing to reopen as restrictions are eased are struggling to bring workers back, making it difficult to salvage their livelihoods. Any potential for an economic resurgence is hampered if workers are incentivized to remain out of work. To be sure, the responsibility is clearly on employers: most importantly, to follow health guidelines and, to the extent possible, ensure facilities are safe for employees, customers and anyone else who comes onto their workplace. And while the onus is also on employers to report cases of refusals to work, more can be done to make individuals aware of the law and we urge lawmakers to consider strengthening UC law as it relates to circumstances when a claimants may be deemed ineligible for benefits after voluntarily separating from employment.

The Department, UC stakeholders and lawmakers have significant challenges with the system that certainly require immediate attention. While we understand that a time will come later to consider the long-term impact of this situation as it relates to UC, we cannot escape the fact that it is having a devastating impact on trust fund solvency, which lawmakers will be forced to address in the not-too-distant future.

Again, thank you for the opportunity to testify. I am happy to answer any questions.