

National Unemployment Insurance Legislative Update

by

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Federal Legislation and related Issues

- New FUTA Provisions for Motion Picture Production
- Relationship between SSDI and UI
- US DOL Financing Regulation Will Limit Use of Cash Flow Loans to States in Next Recession
- Denial of claimants while incarcerated
- Reemployment eligibility assessment and reemployment services

Federal Legislation and related Issues

- WOTC and long term unemployed
- Recognition of Professional Employer Organizations (PEOs)
- Workforce Innovation and Opportunity Act (WIOA)
- President Obama's FY 2017 Budget Proposal and Policy Direction
- Proposed Expansion of Wage Information in the Trade "customs" Bill
Defeated

Special Treatment of Motion Picture Projects for FUTA

Consolidated Appropriations Act of 2015 Established Special Definition of “motion picture project employer” and “motion picture project employee” for purposes of FUTA and FICA.

Definition of “motion picture project employer” excluded from common law and determined based on new statutory standards that include that the employer is a signatory to a collective bargaining agreement and has treated 80 percent of all remuneration as paid to motion picture workers.

Raises questions about alignment with the definition of “employer” under state UI laws, the determination of special “motion picture project employer” status, and any impact on existing employer status determinations, mergers and acquisitions.

Effective for remuneration paid after December 31, 2015.

Adding Occupational Codes to Wage Information

On May 14, 2015 the Senate passed trade related “customs” legislation (HR 644) with an amendment from Senator Maria Cantwell (WA) to require all employers (over 7 million) as a matter of federal law to include information to enable occupational (SOC Codes) coding of every employee (133 million) reported in quarterly wage reports.

UWC opposed the new federal unfunded mandate.

CBO found that the unfunded mandate would cost employers hundreds of millions in the first year and significant additional costs for state agencies.

Standard Occupational Coding (SOC) involves over 800 codes and is time consuming. Most employers currently don't use them; the coding would likely be unreliable; and the ongoing cost of updating quarterly reports, systems changes and training for employers and agencies would be significant.

The House version of the “customs” legislation did not include a similar provision, and the final enacted legislation signed by the President on February 24, 2016 did not include the provision.

Treasury Offset Program (TOP) Applies to unpaid Employer Contributions

TAAEA Act of 2011 requires states to implement TOP to collect unemployment compensation debt that is due and unpaid through offset against individual income tax refunds.

States began with benefit overpayments but now are beginning to apply the offset to “persons” that may include LLCs or other business entities in which the owner or member owes contributions for the business but has filed an individual income tax return and is due a refund.

The offset may catch employers in this group by surprise. State agencies, business associations, service companies and accountants should be aware of the potential of offset.

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.
- Employers have until September 29th to submit requests for certification for individuals hired from January 1, 2016 through August 31, 2016.

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)
- 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
- A workshop presentation from the National Association of Professional Employers (NAPEO) will provide details.

UI Agency Drug Testing to Determine Eligibility

Authority enacted 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

SSDI and Unemployment Compensation Overlap Reduction or Disqualification

President Obama's proposed budget 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.

- Rep Sam Johnson HR 918 and Senator Orrin Hatch S 499
- If individual 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.
- Agreement was not reached whether to deduct UI benefit payments from SSDI; deny SSDI if an individual was able to work to qualify for UI; and whether to prohibit states from deducting SSDI payments from UI benefits.
- Still interest in doing something in this area to reduce SSDI pay out.

Denial of Payment to Claimants While Incarcerated

Continued attention being paid to this issue that may generate savings and be consistent with good policy and integrity.

- HR 2503 introduced by Rep. Dave Reichert (WA)
- Requires state to inquire with SSA to access data base of individuals confined in a jail, prison, or other penal institution or correctional facility.
- States would consider the information as a basis of denying the individuals unemployment compensation for not being available to work or actively seeking work.
- Other data bases and cross matches are being used on a state by state basis with significant savings for state UI trust funds.

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.

- Policy and recommendations now pending with the Workforce Information Advisory Council (WIAC) beginning its first meeting July 13-14, 2016 at BLS in Washington DC

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 issues include

- Will there be an increased focus on UI claimants in one-stops?
- Treatment of Dedicated funding for REA and RES for UI claimants
- Cost allocation issues
- Impact on employer use of public employment service for labor exchange?

President Obama's FY 2017 Budget Proposal and UI Related Policy

Greatest UI Tax Increase (FUTA and SUTA) in History, \$63 billion.

Increase the effective FUTA tax rate from 0.6 percent to 0.8 percent in calendar year 2017.

Require states to increase state unemployment tax bases to \$40,000.

Beginning in 2018, require states to have a minimum tax equivalent to 0.175 percent on a \$40,000 tax base (\$70 per employee) indexed to go up indefinitely with increases in average wages.

Require states to have a UI trust fund balance in their state accounts of at least 0.5 times the Average High Cost Multiple or be subject to a FUTA offset credit reduction (FUTA Tax Increase)

President Obama's FY 2017 Budget Proposal and UI Related Policy

1. Provide wage insurance for half of lost wages, up to \$10,000 over two years. Displaced workers making less than \$50,000 who were with their prior employer for at least three years would be eligible. The program would be administered as a Federally-funded program administered directly through state unemployment insurance programs.
2. Require that state UI programs cover workers who may not already be eligible to be paid, including part-time workers, newer labor market entrants, certain low-income and intermittent earners, and workers who leave work for compelling family reasons such as to move with a spouse, escape domestic violence, or care for an ill family member. States could receive incentives for improving benefit levels and extending coverage to workers in growing non-traditional forms of employment, like temporary employment services workers.
3. Provide states with incentives to create temporary work-based training programs, apprenticeship or on-the-job training while continuing to be paid unemployment compensation. States could also receive funds for relocation assistance programs to help workers pursue new opportunities in a different community coupled with expert guidance on new possibilities.

President Obama's FY 2017 Budget Proposal and UI Related Policy

4. Promote work-sharing and incentivize states to offer and allow retraining for workers on UI or to provide relocation vouchers or subsidized employment. In addition, it would expand intensive career counseling to the long-term unemployed, discouraged, and part-time workers.
5. Require that all state UI programs provide *at least* 26 weeks of coverage.
6. Create a permanent program of extended UI benefits that would automatically provide up to 52 additional weeks of federally-funded benefits for states experiencing rapid job-losses or high unemployment.
7. Require that states maintain reserves in their UI trust fund accounts sufficient to provide benefits for at least six months of an average economic recession.

President Obama's FY 2017 Budget Proposal and UI Related Policy

8. Provide implementation grants and additional incentives to states for work-sharing programs to provide incentives to employers to instead of laying off workers provide partial unemployment benefits to workers whose hours are cut.

9. Provide new resources to states for Career Navigators who instead will proactively reach out to every worker who is most at risk of not being able to reset their careers after being unemployed:

- (a) the long-term unemployed who have been unemployed for approximately six months or more;
- (b) discouraged workers who have dropped out of the labor force altogether; and
- (c) people who are only able to find part time work.

Career Navigators will help them find a job, match with an appropriate training program, and connect to federal support services. This proposal will expand intensive counseling services to more than 1 million people annually.

10. Expand in-person reemployment services to the one-third of UI beneficiaries most at risk of exhausting their benefits, as well as all returning veterans who are receiving UI.

Issues for 2016 and 2017

- The focus of the next Administration and Majorities in the House and Senate will have profound impact on the direction of the UI Program with respect to tax burden for employers and the priorities for federal funding. Items that may or may not be priorities include:
 - Statutory increase in FUTA tax base or rate.
 - 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 for a week of unemployment compensation if determined disabled under SSDI with respect to the same week.

Issues for 2016 and 2017

- Improve systems to identify individuals who are incarcerated and being paid unemployment compensation.
- Require that states not write off overpayments prematurely.
- Monitor the employer penalty provision for failure to respond to requests for information and consider revisions.
- Increase dedicated funding for integrity administration and systems
- New administration could continue policy to expand UI eligibility, increase benefits and increase federal and state UI taxes similar to the stated policy direction from President Obama.