

# **INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND WORKFORCE INVESTMENT**

## **Minutes of the 2nd Meeting of the 2020 Interim**

**July 30, 2020**

### **Call to Order and Roll Call**

The 2nd meeting of the Interim Joint Committee on Economic Development and Workforce Investment was held on Thursday, July 30, 2020, at 8:30 AM, in Room 171 of the Capitol Annex. Representative Russell Webber, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Russell Webber, Co-Chair; Senators Karen Berg, Rick Girdler, Denise Harper Angel, Jimmy Higdon, Wil Schroder, Reginald Thomas, Mike Wilson, and Max Wise; Representatives Kim Banta, Lynn Bechler, John Blanton, Kevin D. Bratcher, R. Travis Brenda, McKenzie Cantrell, Daniel Elliott, Chris Freeland, Al Gentry, Kathy Hinkle, Thomas Huff, Nima Kulkarni, Savannah Maddox, Jason Petrie, Bart Rowland, Ashley Tackett Laferty, and Buddy Wheatley.

Guests: Ashli Watts, President and CEO, Kentucky Chamber of Commerce and Muncie McNamara, Former Executive Director, Kentucky Office of Unemployment Insurance.

LRC Staff: Andrew Manno, Sasche Allen, and Kirsten Parker.

### **Approval of Minutes**

A motion to approve the minutes of the June 26, 2020 meeting was made by Senator Rick Girdler, seconded by Representative Chris Freeland, and approved by voice vote.

### **Update on Unemployment Insurance**

Ashli Watts, President and CEO of the Kentucky Chamber of Commerce, gave an overview of the Unemployment Insurance Trust Fund, which are funds used for paying unemployment insurance benefits. In February 2020, the UI Trust Fund was positive and on a Schedule A, which is the schedule most beneficial to employers. Due to the COVID-19 pandemic, businesses began closing either temporarily, permanently, or having to pay to make modifications to comply with safety regulations. As a result, the state's unemployment rate began to rise, and the trust fund balance is now zero. The state took out an almost \$900 million loan with the federal government to replenish the Trust Fund and

employers will ultimately be paying the loan off in the future. Unemployment rates have now moved from a Schedule A to a Schedule D which will result in a large tax increase to every Kentucky employer beginning January 2021. Some larger businesses will see over a 2000 percent tax increase on their UI rates under the new schedule. Ms. Watts proposed several options the Chamber has formulated that could aid in relieving employers and assist with the repayment of the new federal loan. First, the Chamber has reached out to its federal delegation and Majority Leader McConnell about a loan forgiveness or any other assistance from the federal government. Secondly, the Chamber has asked Governor Andy Beshear if any CARES ACT funds would be available to supplement the Trust Fund to offset the massive increase to employers. The third option could be for the General Assembly to follow suit with other states by adopting legislation that would remove the time period of the pandemic from tax evaluations on employers. Lastly, a possible solution could be to model the response to the 2008 Recession. Then Governor Steve Beshear, gathered a task force of business, labor, and state leaders and officials that made recommendations that produced legislation passed in 2010 that saved employers \$450 million and led to the federal loan that was taken out to be paid back a year early, saving an additional \$165 million.

Responding to a question from Co-Chair Russell Webber, Ms. Watts clarified that all benefits paid to those who would not have qualified for traditional unemployment before the pandemic, such as those that are independent contractors, were paid out of federal funds and not from the state's UI Trust Fund.

Answering a question from Senator Jimmy Higdon, Ms. Watts said that the rate for each employer will be different and will be dependent upon how many employees were laid off during the pandemic, how long those employees were laid off, and the size of the company or business. All Kentucky employers however will move to a Schedule D starting January 2021.

Replying to Senator Mike Wilson, Ms. Watts said she agreed that there are differences between the 2008 Recession and the current state of the economy. The 2008 Recession occurred over a longer period of time and had a slower increase in the unemployment rate. She further explained that because it is unknown how long the state will see effects of the pandemic, more funds may have to be requested from the federal government. Answering a follow up, Ms. Watts confirmed that in addition to an unemployment insurance rate increase, employers also had to pay a surcharge after the federal loan was obtained for the 2008 Recession. This surcharge resulted in the federal loan being paid off early, saving employers \$165 million.

Addressing Senator Rick Girdler, Ms. Watts said that the Chamber is very communicative with the Governor's Office and did have phone conversations with the Governor's Office prior to the first shutdown of businesses in March 2020.

Responding to a question from Co-Chair Danny Carroll, Ms. Watts reiterated all benefits paid to those who would not have qualified for traditional unemployment before the pandemic, such as those that are independent contractors, are being paid out of federal funds and not from the state's UI Trust Fund.

Answering questions from Senator Karen Berg, Ms. Watts said that after working with economists, the Chamber is hopeful that once there are treatments or vaccines developed to combat COVID-19, the economy should recover more quickly than it did with the 2008 Recession. Responding to a follow up, she said businesses have done everything they can to keep Kentuckians safe through the pandemic, the Chamber worked closely with the Governor's Office on reopening plans, and the Chamber encourages wearing face coverings as a safety measure.

Replying to Co-Chair Danny Carroll, Ms. Watts stated the Chamber was not consulted by the Governor's Office about the most recent mandate on restaurants to operate at an indoor seating capacity of 25 percent.

The former Executive Director of the Office of Unemployment Insurance, Muncie McNamara, testified about his tenure as executive director from January 16, 2020 to May 5, 2020 and the conditions surrounding the Office of Unemployment Insurance's response to the closing of the state's economy as a result of the COVID-19 outbreak. He detailed his personal experiences with implementing three newly created unemployment insurance programs that covered those not covered by traditional unemployment insurance, guiding his staff in processing an overwhelming amount of claims with an antiquated computer system, data breaches that occurred during his time with the Office of Unemployment Insurance, issues he had with decision making of his superiors, and the circumstances involving his termination from the Education and Workforce Development Cabinet.

Answering questions from Co-Chair Russell Webber, Mr. McNamara said there were no personal discussions between him and the Governor's Office pertaining to the March shutdown, a more reasonable measured response should have been taken before issuing benefits to claimants who would not have qualified for traditional unemployment, and more time should have been taken to make modifications to the computer system to adequately handle claimants that qualified for the three new unemployment insurance programs.

Responding to a question from Co-Chair Carroll, Mr. McNamara explained that through his conversations with the Deputy Secretary of the Education and Workforce Development Cabinet, Josh Benton, he gathered that Governor Andy Beshear had inquired about providing benefits to those recently released from correctional facilities, but he advised that it could not be done because they had no connection to workforce before the COVID-19 pandemic. Answering a follow up question, he said that he had been told about

state issued employee phones being collected after he was terminated but did not have firsthand knowledge of that information.

Addressing Senator Jimmy Higdon, Mr. McNamara said at the start of the pandemic there were already limited staff members that were able to adjudicate complicated claims.

Replying to Representative John Blanton, Mr. McNamara reiterated that through his conversations with the Deputy Secretary of the Education and Workforce Development Cabinet, Josh Benton, he gathered that Governor Andy Beshear had inquired about providing benefits to those recently released from correctional facilities, but he advised that it could not be done because they had no connection to workforce before the COVID-19 pandemic. The question was posed to him but he could not speak to the intent of the Governor.

Answering an inquiry from Representative Kim Banta, Mr. McNamara stated that he was made aware of a data breach on April 22, 2020, before the Education and Workforce Development Cabinet publicly acknowledged a separate data breach on April 23, 2020.

Responding to Representative Savannah Maddox, Mr. McNamara said he was not aware of the statute requiring reporting of a data breach to the Attorney General at the time of the breach. He said that the Office of Unemployment Insurance did take steps to try and prevent the issue from occurring again but is not certain that it was a permanent fix due to the age of the computer system that is used.

Addressing a question from Representative Daniel Elliott, Mr. McNamara said he was aware of large amounts of claims being waived of investigation in the beginning of the pandemic when the Office was attempting to quickly process claims, especially those that would normally require further investigation or that would not normally qualify for traditional unemployment. Federally, each individual claim is required to be adjudicated, and as a result the Office of Unemployment Insurance was instructed by the U.S. Department of Labor to discontinue this process.

Replying to Representative Lynn Bechler, Mr. McNamara stated he was unaware of the form used for mandatory reporting to the Attorney General regarding data breaches at the time of the initial data breaches at the Office of Unemployment Insurance. He was also unaware of the Education and Workforce Development Cabinet's protocol on data breaches at the time but did report the breach to the information technology department.

Answering questions from Senator Karen Berg, Mr. McNamara said when he began his tenure as Executive Director in January 2020 the Office of Unemployment Insurance was understaffed and had a backlog of unemployment insurance claims. He also stated that after a majority of the field offices had previously been closed, the Cabinet had reopened

some of those and was working to add 40 additional positions to combat staffing issues. Replying to a follow up, he explained the administrative budget is federally funded.

Responding to Co-Chair Danny Carroll, Mr. McNamara said, in his opinion, the Office of Unemployment Insurance was understaffed before the COVID-19 pandemic. Reopening field offices gave people another option for service and decreased telephone wait times.

Addressing a question from Representative Chris Freeland, Mr. McNamara said he was unaware of why employees of the Legislative Research Committee were not utilized to assist in processing unemployment insurance claims.

Replying to Representative Thomas Huff, Mr. McNamara stated that staff members from other departments of the Education and Workforce Development Cabinet and from the Governor's Office were also assisting with adjudicating claims.

Answering questions from Representative Jason Petrie, Mr. McNamara said that he raised concerns about an appointment to the Unemployment Insurance Commission to the Deputy Secretary and General Counsel of the Education and Workforce Development Cabinet.

Responding to Co-Chair Russell Webber, Mr. McNamara confirmed that he received a corrective action letter the same day that he raised concerns about an appointment to the Unemployment Insurance Commission to the Deputy Secretary and General Counsel of the Education and Workforce Development Cabinet due to what he considered a conflict of interest.

Addressing Co-Chair Danny Carroll, Mr. McNamara indicated that he wrote a letter raising concerns regarding required training for new employees but was aware of the training prior to the day he submitted his letter. Responding to a follow up, he said that it was possible that the data breaches were a data entry mistake but could not be certain. Answering another follow up question, he stated that he did apply for his position through the proper channels and was not offered a position prior to applying through the Governor's transition website.

Replying to Co-Chair Russell Webber, Mr. McNamara said when he wrote his letter raising concerns about the unemployment insurance call centers, it was submitted to the Deputy Secretary of the Education and Workforce Cabinet, the Commissioner of Workforce Investment, and the Director of Human Resources. It was given to the Director of Human Resources to be put in Mr. McNamara's personnel file.

There being no further business, the meeting adjourned at 10:16 a.m.

