

# UNEMPLOYMENT INSURANCE REFORM TASK FORCE

## Minutes of the 5th Meeting of the 2021 Interim

October 28, 2021

### Call to Order and Roll Call

The 5th meeting of the Unemployment Insurance Reform Task Force was held on Thursday, October 28, 2021, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Russell Webber, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Michael J. Nemes, Co-Chair; Representative Russell Webber, Co-Chair; Senators Ralph Alvarado, Mike Wilson, and David Yates; Representatives Josh Branscum, McKenzie Cantrell, Phillip Pratt, and Scott Sharp.

Guests: Jamie Link, Secretary, Labor Cabinet; Buddy Hoskinson, Executive Director, Office of Unemployment Insurance, Labor Cabinet; Morgan Eaves, Legislative Director, Labor Cabinet; Sam Flynn, General Counsel and Inspector General, Labor Cabinet; Kate Shanks, Senior Vice President of Public Affairs, Kentucky Chamber of Commerce; and Joe Forvath, Senior Fellow, Foundation of Government Accountability.

LRC Staff: Andrew Manno, Audrey Ernstberger, Kirk Smith, and Sasche Allen.

### Approval of Minutes

A motion to approve the minutes of the September 28, 2021, meeting was made by Representative Phillip Pratt, seconded by Senator Mike Nemes, and approved by voice vote.

### Unemployment Insurance Policy Recommendations

From March 2020 to October 17, 2021, a total of 2,437,076 unemployment insurance claims have been received by the Office of Unemployment Insurance. A total of \$6,685,423,672 has been paid to unemployment insurance claimants through all unemployment insurance programs. As of October 22, 2021, a total of 6,170 claims have been processed related to the SB 7 unemployment insurance benefit waiver for an overpayment of benefits, and a total of \$9,388,328.78 in benefits have been waived as a result of overpayment of benefits. From April 15, 2021 to October 20, 2021, Kentucky Career Center staff have assisted with more than 60,000 in-person appointments, and Office of Unemployment Insurance call center staff have taken more than 102,042 calls via the helpline. Of those calls, 37,191 calls were related to claim assistance and 64,851 related to personal identification number assistance.

The Labor Cabinet and Office of Unemployment Insurance have been working to obtain a vendor to build a new system for the Office of Unemployment Insurance. Vendor proposals were due on October 26, 2021. The project is estimated to cost \$47.5 million with \$30 million being taken from restricted funds, \$10 million from bond funds, and \$7.5 million from general funds. After a vendor is secured and a contract is finalized, it will take 18 to 24 months to build and implement the new system.

Responding to Representative Russell Webber, Labor Secretary Jamie Link said multiple vendors requested the deadline for proposal submission be extended by one week, but he did not know the number of vendors that made this request.

Answering a question from Representative Phillip Pratt, Secretary Link explained that a new unemployment insurance system is crucial, and some components date back to the late 1970's. The Labor Cabinet and the Office of Unemployment Insurance will continue to improve the existing system until the new system is implemented. There are no known existing systems on the market that the Cabinet can procure that would fully address all the needs of the Office of Unemployment Insurance and meet the federal and state requirements.

Senator Mike Nemes gave an explanation about the necessity of a new system to be built from the ground up to replace the current antiquated system. Funds had been allocated during previous administrations to replace the system but the process was delayed.

Replying to Representative Russell Webber, Secretary Link stated he would follow up with the members with the amount of state and federal funds that have been spent on upgrades to the system thus far.

The U.S. Department of Labor has offered resources to the Office of Unemployment Insurance including an eight week Tiger Team. The team is composed of experts across many disciplines such as fraud specialists, equity and customer service specialists, unemployment insurance program specialists, business intelligence analysts, computer systems engineers and architects, and project managers. The goal is to provide technical assistance to reduce claim backlogs, improve program equity, streamline business processes, and enhance the use of fraud prevention and detection tools. The U.S. Department of Labor is interviewing state program and technical staff, performing research, and collecting data. The work of the team will conclude December 20, 2021 and the U.S. Department of Labor will present a final recommendation report and action plan.

Policy recommendations were presented that centered on Short Time Compensation (STC) and overpayment waivers. STC, also known as a work sharing program, helps prevent layoffs by allowing employers to reduce hours of work for some employees rather than laying them off while others continue to work full time. The amount of unemployment insurance benefits paid to individuals filing for STC is a prorated portion of the

unemployment insurance benefits they would have received if they were totally unemployed. The process is initiated by the employer and not the employee, and the Secretary would create an application form whereby the employer would submit an STC plan to the Cabinet for approval. A total of 27 other states have STC programs but this is not a program that can be independently implemented and would require a statutory change. To implement STC in the Commonwealth, an amendment to KRS 341.080(3) expanding the definition of partial unemployment compensation would be necessary.

Addressing a question from Representative Phillip Pratt, Buddy Hoskinson, Executive Director of the Office of Unemployment Insurance, explained that Short Time Compensation would be taken from the employers' portion of the Unemployment Insurance Trust Fund. Secretary Link reiterated that the employer would be responsible for initiating the process.

Overpayment waiver reform was also discussed as a policy recommendation. The Commonwealth is one of very few states that does not provide recourse for claimants who incurred an overpayment through an administrative error. The General Assembly passed SB 7 during the 2021 Regular Session that provided a waiver application process for claimants which incurred an overpayment through no fault of their own and if recovery would be contrary to equity or good conscience. The waiver only applied to overpayments incurred on claims filed between January 27, 2020 and December 31, 2020. Proposed legislation would recite the process and procedure for a waiver but would apply to claims filed from December 31, 2020 and forward. It was noted that SB 7 created issues in the timing for appeals and finality in unemployment insurance adjudications.

Responding to Representative Josh Branscum, Mr. Hoskinson stated the unemployment insurance system was taken offline in April 2021 to reset existing claimants' personal identification numbers. The 64,851 calls made to the unemployment insurance helpline for PIN assistance could stem from the system reset or from new claimants that need PIN assistance. In response to a follow up question regarding unemployment insurance overpayment waivers, Mr. Hoskinson said there are about 700 claimants that did not complete the waiver appropriately, but the Office of Unemployment Insurance is following up with those claimants to ensure the correct action is taken moving forward.

Answering a question from Representative Scott Sharp, Mr. Hoskinson stated the backlog of unemployment insurance claims totals approximately 84,000 with 60,000 being traditional unemployment insurance claims, 3,800 being pandemic emergency unemployment compensation claims, and another 20,000 being pandemic unemployment assistance claims. Addressing a follow up question, Mr. Hoskinson explained that staff are being cross trained to better assist with the backlog of unemployment insurance claims and improvements are being made to the online portal. With the current number of staff

members, the Office of Unemployment Insurance can process about 3,000 backlogged claims per week.

Replying to a question from Representative Phillip Pratt, Secretary Link said that due to a reorganization that occurred in August 2020, the Kentucky Career Centers are under the jurisdiction of the Labor Cabinet and because the centers continue to have numerous functions, the Labor Cabinet continues to work closely with the Education and Workforce Development Cabinet to manage those functions. Answering a follow up question, Morgan Eaves, Legislative Director for the Labor Cabinet, explained that in order to obtain any reports or audits of the Office of Unemployment, a request would be made to the agency conducting the report or audit. Replying to another follow up question, Mr. Hoskinson said that federal staffing flexibility ended on September 4, 2021, and any employee that is not classified as either a state merit employee or a federally funded time limited employee can only perform administrative work. Answering a follow up question, Sam Flynn, General Counsel and Inspector General for the Labor Cabinet, clarified that of the 31 state employees that had been identified for possible fraudulent activity relating to unemployment insurance claims, 17 received benefits due to the auto pay feature, one was dismissed from state service because they accessed and altered their own claim, and the remainder of individuals were reviewed for appropriate personnel action. After being given all information regarding the individuals involved, law enforcement agencies chose not to follow through with a criminal investigation. Replying to another follow up question, Mr. Hoskinson confirmed that the current unemployment insurance work search requirement is one contact per week.

Addressing a question from Representative Scott Sharp, Mr. Flynn clarified that he is the acting Inspector General for the Labor Cabinet as well as the General Counsel for the Cabinet.

### **Workforce Issues**

The Kentucky Chamber of Commerce has several recommendations for the General Assembly to improve unemployment insurance as it relates to workforce issues across the Commonwealth. The Chamber recommends that additional funding be provided to the Unemployment Insurance Trust Fund to return the balance to the pre-pandemic level. In addition, the Chamber suggests improvements to the unemployment insurance tax structure. Studies show that the state ranks as one of the worst in the country for high tax rates. A partnership has been established between the Chamber and the Tax Foundation to further explore the state's tax code and analyze the unemployment insurance tax structure. Major reform suggestions of the Chamber center on strengthening work search requirements which would include redefining a "job contact" as a broadly defined "work search activity", requiring at least five work search activities per week, updating the statutory requirement that claimants find suitable work, developing a more robust job referral program, updating the Labor Cabinet's online portal for employers to report

refusals, and increasing the frequency of the auditing processes to ensure claimants are fulfilling work search requirements.

Responding to Senator David Yates, Kate Shanks, Senior Vice President of Public Affairs for the Kentucky Chamber of Commerce, said strengthening work search requirements is a priority regardless of issues that were created relating to the pandemic, and the Chamber would be willing to analyze the necessary resources needed to increase the frequency of the auditing processes of work searches for those receiving unemployment insurance benefits.

Senator Mike Nemes made comments regarding rebuilding the Unemployment Insurance Trust Fund, strengthening work search requirements, the skills gap across the state, and allocating the necessary resources and staff for increasing the frequency of the auditing processes to ensure claimants are fulfilling work search requirements.

Answering a question from Representative Phillip Pratt, Ms. Shanks clarified that the Chamber's Kentucky Talent Hub was launched by the Kentucky Chamber Foundation and was built on the needs of employers. The Chamber's Kentucky Talent Hub is not connected to the Office of Unemployment Insurance.

### **Unemployment Insurance Recommendations**

The Foundation for Government Accountability (FGA) recommends three steps to improve the state's unemployment insurance that include benefit reform, emphasizing jobs, and protecting the system. Benefit reform can be achieved by indexing benefits to the state's unemployment rate. Several states have adopted the indexing process including Florida that has been able to decrease its benefit duration by half, lower spending by 70 percent, and lower taxes by 70 percent. FGA estimates that if the Commonwealth implemented indexing, then the Unemployment Insurance Trust Fund would increase to \$567 million, taxes would decrease by 17 percent, and the average number of weeks of unemployment insurance benefits would decrease to 4.6 weeks. Emphasizing jobs can be accomplished through strengthening work search requirements by collecting proof of work searches from unemployment insurance claimants and requiring the Labor Cabinet to actively verify work searches. Protecting the system can be done by performing weekly crosschecks, recovering overpayments, and reporting to the legislature. This would also include flagging suspicious cases, a multi-factor authentication, and locking out fraudsters.

Responding to Representative Russell Webber, Joe Forvath, Senior Fellow with the Foundation of Government Accountability, said that calculating a state's ideal Unemployment Insurance Trust Fund solvency involves the state's spending over time and the present amount of the trust fund. The Commonwealth has not reached ideal solvency since 1976. Senator Mike Nemes added that prior to the pandemic, the state's Unemployment Insurance Trust Fund was close to reaching ideal solvency.

Answering a question from Senator Ralph Alvarado, Mr. Horvath explained that numerous states have adopted indexing benefits to the state's unemployment rate but each state has chosen to implement the process differently.

Representative Phillip Pratt made comments about how Kentucky's weeks of unemployment insurance benefits and the maximum weekly benefit amount compares to surrounding states.

Responding to Senator Mike Nemes, Mr. Horvath said he would follow up with more information regarding an individual receiving unemployment insurance benefits during job training with the indexing process.

There being no further business before the committee, the meeting adjourned at 11:57 a.m.