

# UNEMPLOYMENT INSURANCE REFORM TASK FORCE

## Minutes of the 1st Meeting of the 2021 Interim

June 22, 2021

### Call to Order and Roll Call

The 1st meeting of the Unemployment Insurance Reform Task Force was held on Tuesday, June 22, 2021, at 1:00 PM, 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, Brandon J. Storm, Mike Wilson, and David Yates; Representatives Josh Branscum, McKenzie Cantrell, Phillip Pratt, and Scott Sharp.

Guests: Courtney Meador, Human Resources Director, Houchens; George McFarland, Owner, UCCS; Kate Shanks, Vice President of Public Affairs, Kentucky Chamber of Commerce; Larry Roberts, Secretary, Labor Cabinet; Buddy Hoskinson, Executive Director, Office of Unemployment Insurance, Labor Cabinet; Morgan Eaves, Director of Legislative Affairs, Labor Cabinet; Amy Staed, Executive Director, Kentucky Association of Private Providers; Tom Underwood, State Director, National Federation of Independent Business/Kentucky; Dan Withrow, CEO, CSS Distribution Group; and Eddie Kraft, President, Nanz & Kraft Florist.

LRC Staff: Andrew Manno, Audrey Ernstberger, Drew Baldwin, Sasche Allen, and Helen McArthur.

### Unemployment Insurance Fraud

Kate Shanks, the Vice President of Public Affairs for the Kentucky Chamber of Commerce, made remarks about the challenges the business community has faced combating the filing of fraudulent unemployment insurance claims. The US. Department of Labor has estimated that over \$63 billion was paid out across the country in improper or fraudulent unemployment insurance claims in the first 12 months of the COVID-19 pandemic. Ms. Shanks said that employers are ultimately being held responsible for paying out the benefits of these fraudulent claims since employers pay into the unemployment insurance trust fund. George McFarland, owner of UCCS, stated that his firm assisted clients with 400 to 500 unemployment insurance claims a day during the pandemic and a large amount of those were fraudulent. UCCS is an unemployment compensation firm that helps employers with unemployment compensation taxes, costs, and hearings. Mr. McFarland added that phishing emails, debit card scams, job seeker scams, and phone

scams are plaguing an outdated system that is not equipped to handle the large volume of claims.

Answering a question from Representative Russell Webber, George McFarland stated an employer has 10 to 12 days to respond by mail or electronically to an unemployment insurance claim with a claimant's employment separation information. Due to staffing shortages and ongoing issues with the U.S. Postal Service during the pandemic, information was often delayed being reported back to the Office of Unemployment Insurance and benefits were issued when they should not have been.

Replying to Representative McKenzie Cantrell, Kate Shanks said that phishing scams are difficult to prevent. The Chamber has training for employers on how to avoid falling victim to the scams.

Addressing a question from Senator Ralph Alvarado, Ms. Shanks and Mr. McFarland said they were not familiar with employers that have experienced data breaches. Replying to a follow up question, Mr. McFarland stated that in order to properly process the influx of unemployment insurance claims, his UCCS staff of nine would have needed at least an additional 40 staff members.

Representative Phillip Pratt commented about data breaches on the state level at the Office of Unemployment Insurance.

Answering a question from Representative Russell Webber, Labor Cabinet Secretary Larry Roberts clarified that due to HB 413, claims were not paid out of the employers' unemployment insurance account. Therefore, there was no negative impact on employers due to fraudulent claims. Responding to a follow up question, the Executive Director of the Office of Unemployment Insurance, Buddy Hoskinson, confirmed that employers have 10 to 12 days to respond to a claim and are entitled to an appeal process.

Responding to Representative Phillip Pratt, Secretary Roberts stated that any data breaches that have occurred were limited and did originate within the Office of Unemployment Insurance. Executive Director Hoskinson further explained that adjustments were made to prevent future breaches that included installing a new front door interface and changing the PIN code system. Any person that has filed an unemployment insurance claim in the last 20 years was required to reset their PIN number and verify their identity. Representative Pratt briefly discussed a specific unemployment insurance claimant.

Addressing questions from Senator Ralph Alvarado, Morgan Eaves, Director of Legislative Affairs for the Labor Cabinet, stated employees of the Legislative Research Commission were not approved to assist with adjudicating unemployment insurance claims during the pandemic due to privacy and legal constraints.

Replying to Representative Scott Sharp, Secretary Roberts said the Ernst and Young firm was utilized to adjudicate unemployment insurance claims, because there was already an existing contract with the firm. Its employees had the clearance necessary to adjudicate claims. The decision to contract with Ernst and Young was made by the Labor Cabinet in conjunction with the Governor's Office. There were two separate contracts with the firm that totaled about \$14.5 million.

Answering a question from Senator Mike Nemes, Secretary Roberts explained the RFP for upgrades to the unemployment insurance system is currently in the latter stages. The General Assembly passed legislation in the 2018 Regular Session that allowed for the Service Capacity Upgrade Fund (SCUF) to be used for the RFP. It was estimated that the new system would cost around \$60 million dollars. The current amount in the SCUF account is \$40 million. Senator Nemes clarified that Ernst and Young employees did not have federal approval to adjudicate claims at the start of its contract with the state but later obtained the necessary credentials. Employees of Ernst and Young were initially gathering preliminary information from claimants. Secretary Roberts confirmed that the Ernst and Young contracted ended in January 2021. Additional federal funds have been allotted as needed to hire permanent employees for the Office of Unemployment Insurance. Legislation passed during the 2021 Regular Session made it easier for Labor Cabinet employees to obtain federal clearance. Executive Director Hoskinson said the Cabinet is still struggling with hiring employees.

Responding to Representative Scott Sharp, Secretary Roberts discussed a previous task force on unemployment insurance that was comprised of legislative members and citizen members from the labor and business communities that he served on as a labor representative. The task force did not recommend upgrades to the unemployment insurance system be made at that time due to the stipulation that federal funds would be allotted for the upgrades based on the expansion of benefits.

Addressing Senator Ralph Alvarado, Secretary Roberts listed improvements that are necessary including the modernization of the unemployment insurance system, cross training of staff, and changes to some of the restrictions on federally funded time limited positions within the Office of Unemployment Insurance.

Replying to Representative Phillip Pratt, Secretary Roberts explained that the Office of Unemployment Insurance is expanding and opening additional locations due to the backlog of claims that need to be adjudicated and processed. As the backlog begins to dissipate, then the funds for those federally funded time limited positions will no longer be allocated. However, career services will continue to be made available to the public.

Secretary Roberts pointed out that the unemployment insurance trust fund deficit of \$505 million will be paid at the start of the new fiscal year as a result of the General

Assembly approving the use of \$575 million of federal funds. Due to employers' first quarter unemployment insurance taxes and the contribution CARES Act funds appropriated by the Governor, the unemployment insurance trust fund will have a positive balance of \$345 million.

Representative Russell Webber requested that the Labor Cabinet collaborate with the Kentucky Chamber of Commerce and the National Federation of Independent Business to make improvements to the unemployment insurance system.

### **Private Providers Perspective**

The Kentucky Association of Private Providers (KAPP) is a trade association that represents about 100 providers of community based support services to individuals with intellectual and developmental disabilities through Medicaid waiver programs. KAPP members totally operate based on Medicaid reimbursement and any unexpected increases in costs, such as unemployment insurance, could potentially be devastating to the providers' budgets. Many KAPP members provide adult day services and are still operating under limited capacity due to COVID-19 restrictions which has significantly affected available services and staffing. The workforce shortage has also been a tremendous issue for providers that has led to increased overtime costs. Amy Staed, the Executive Director for KAPP, explained that expanded federal pandemic unemployment assistance payments have made it difficult for providers to hire staff. Medicaid reimbursements allow most providers to pay employees about \$10 an hour when the federal pandemic unemployment assistance payments amount to about \$15 an hour. In addition, she discussed issues with employees being approved for unemployment insurance benefits that had been terminated based on allegations of abuse.

Replying to Senator Ralph Alvarado, Amy Staed said there have not been any increases in liability insurance for residential providers but it is a possibility. About 25 day service providers across the state are struggling with combating increased costs.

Representative Russell Webber made remarks about providers having issues with individuals receiving unemployment insurance benefits after being accused of abuse and neglect.

### **Issues Related to Small Business**

National Federation of Independent Business/Kentucky (NFIB) represents about 4,000 small businesses that have less than 50 employees. The NFIB conducted a statewide survey of its members and found that about 90 percent of its members had job openings. Tom Underwood, the State Director of NFIB, explained that some small businesses struggle with unemployment insurance, because they do not have a dedicated human resources staff that are knowledgeable about the area. He suggested that a staff person be available at state career centers to counsel small businesses about unemployment insurance rights and procedures for employer. Dan Withrow, CEO of CSS Distribution Group and

Eddie Kraft, President of Nanz & Kraft Florist, discussed challenges experienced by small business owners with the workforce shortage and competing with the expanded federal pandemic unemployment assistance payments. Mr. Underwood concluded with a list of areas that need to be improved including the outdated unemployment insurance system, the employer reporting functions within the unemployment insurance system, and counseling of employees and employers within the state career centers. He also advocated for the halt of the expanded federal pandemic unemployment assistance payments.

Representative Phillip Pratt commented that his small business was a member of NFIB. He said to his knowledge, the percentage of small businesses with job opening may be greater than 90 percent.

Representative Russell Webber remarked that he, as Chair of the House Economic Development and Workforce Investment Committee, along with Representative Phillip Pratt, as Chair of the House Small Business and Information Technology Committee, submitted a letter to the Governor's Office asking to end the state's participation in the federal pandemic unemployment assistance program.

There being no further business before the task force, the meeting adjourned at 2:38 p.m.