

**State Advisory Council to Unemployment Compensation (UC)
Meeting Minutes**

Date: May 26, 2022, 10:00 a.m.

Location: Rm. 1401, L&I Building, 651 Boas St, Harrisburg, PA 17121 and Teams

Council Members present: William Trusky, Tiffany Bloyer, Scott Briggs, Maurice Cobb, Noah Erwin for Sen. Tina Tartaglione, Angela Ferritto, Richard Grimaldi, Steven Grubbs, Sara Innamorato for Rep. Mullery, James Jones, Eric Kratz for Sen. Camera Bartolotta, Moshe Marvit, Geoffrey Moomaw, E. Tim O’Toole, John Scarpato for Rep. Jim Cox, Julia Simon-Mishel, Frank Sirianni, and Emily Town
Also present: Hanima Amara, Neil Cashman, Kristen Gardner, Christopher Giovanis, Julia Grubbs, Rebecca Keen, Maria Macus, Brian Parr, Sally Piatak, Nsungwe Shamatutu

Reporter: Hannah Bartkowski

The meeting was called to order by Chairman Bill Trusky.

1. Following the Pledge of Allegiance, all the board members introduced themselves.

2. **Report from Counsel:**

Because the Council meets in public under the Sunshine Act, it is within the jurisdiction of the Right-to-Know Law, with the ability for certain meeting records to be requested.

The Council follows all Sunshine Act rules. As part of the Act’s rules, all deliberations of the Council – such as discussion of ideas, policies, or recommendations – must occur in a public meeting.

Furthermore, a stenographer is recording the meeting, and minutes will be prepared.

Counsel highlighted several subsections of the UC Law that establishes the Council and sets forth its duties and responsibilities:

(d) Two-year term for members starts on Feb. 1 of odd-numbered year, so even though the Council is being reconvened late in that process, the term will still end on January 31, 2023.

(f) Council will deliberate and provide advice and recommendations to the department in all aspects of Unemployment Compensation program. The Council will also make periodic reports to the Governor and General Assembly regarding its recommendations.

(i) There’s specific information that the Council can request, as well as information it can’t have. Anything that is considered confidential under the regulation will remain confidential even for the Council. On request, the Council can be given copies of any report made by the PA Dept. of Labor & Industry to the U.S. Dept. of Labor, plus a list of 16 different examples of other information that may be requested.

(j) Council has the authority to authorize preparation of an annual financial analysis of the UC Fund.

(k) Outlines a report that the Department shall provide to the Governor and the General Assembly. Counsel also called attention to the delegation form for use by members on either a single-meeting basis or until revoked by the designating authority.

3. Chair provided various UC statistics:

- Three weeks prior to March 15, 2020, a total of 40,000 UC claims were filed (roughly 13,300 per week). During the three weeks following March 15, there were a total of 1.1 million claims filed.

- From March 2020 to March 2021, the PA Dept. of Labor & Industry paid out \$40 billion in UC benefits. The most it had ever paid out previously was at \$4.7 billion in 2009 during the Great Recession.
- During the pandemic, the Dept. and UC had to stand up various federal programs with very little guidance from the US Dept. of Labor. When asked by the US Dept. of Labor in April 2020, “What can we do to help you?” the then UC Deputy Secretary’s response was: “Give us 1,000 trained Unemployment Insurance (UI) staff, and you to leave us alone for 3-5 years.” He said, “Instead, we received zero trained UI staff and are up to our eyeballs in audits.”

4. Department Staff Reports

- **Fiscal Unit** – Hanima Amara discussed how the program lost funding from 2011-2016. In 2016 they were notified by USDOL that funding would be cut by an additional \$12 million for the 2017 federal fiscal year, which resulted in a furlough of 500 employees. Without any resource justification model (RJM) expertise and an inconsistent funding base, a consultant was located to provide that expertise/training. For a salary of \$49,000 a year, he brought in an additional \$7 million for the agency in his first year.
- **UC Tax Services** – Sally Piatak talked about home-headquartering field staff in 2017, which saved millions of dollars in building leases, and then home-headquartering central office staff during the pandemic, which reduced overhead costs even more. PA has roughly 338,000 active employers. Last year, despite the pandemic and recovery, 45,000 new employers were registered.
- **UC Benefits Policy** – Becky Keen and her staff of 58 review USDOL guidance and changes to state laws or legislation that need to be translated into procedures for UC staff actually processing claims. They policy staff were responsible for standing up the five new federal programs that were created simultaneously during the pandemic with an almost instant start; for administering the annual quality service plan with USDOL and the quarterly corrective action plan; and for handling the 23 ongoing audits through the USDOL and Office of Inspector General. In regard to DUA claims for the area around Philadelphia that was declared a disaster because of flooding, of the thousands of claims received, only 43 were eligible. But every single claim had to be manually evaluated. Of the 50,000 Mixed Earnings EUC applications received, less than 50 are eligible and a total of \$4,000 paid out. That analysis is now able to be done electronically, but it also had to be initially conducted manually.
- **UC Service Centers** – Nsungwe Shamatutu manages the six centers across the state with a total of just over 800 staff. In early 2020, the phone queue had been eliminated. But since March of 2020, his staff has responded to over 3.7 million emails and answered 3.5 million phone calls. During the peak, they were answering over 10,000 calls and responding to over 7,000 emails per day. Employees from PHEAA, Revenue, PennDOT, and Agriculture were seconded to assist with the sudden influx.
- The department was funded appropriately for the low unemployment rate that existed in early 2020. However, almost overnight, the highest unemployment rate in history skyrocketed onto the scene. With staff having to transition to work from home and use technologies that aren’t widely accessible in some rural areas presented a challenge. And, for the first time in UI history, USDOL permitted hiring contractor staff to help with the overwhelming demands.

- **Policy** – Julia Grubbs discussed borrowing from the federal government to pay UC claims in Sept. of 2020. The state continued to borrow and pay off, borrowing over \$2.4 billion that has been paid off. However, the borrowing is slated to continue, since the quarterly revenues generated aren't always available when revenues must be paid to claimants. PA is in jeopardy of falling under the accrued tax credit reduction with an outstanding loan balance for two years running on Jan.1. As long as the outstanding balance is paid off on Nov. 10, that tax will trigger off. PA solvency is essentially figured based on how much was paid out in claims over the previous three years. So in the three years prior to 2020 with record low unemployment, the UC funds were very solvent. However, with record unemployment following immediately behind, that money ran out in a matter of months, further heightened by nationwide recession. Federal solvency looks at how much has been paid out in the three most recent recessionary periods to determine how much money is needed in the fund in order not to require borrowing. According to the Fed's calculations, PA hasn't been solvent since 1971. PA law says to look at the average of the past three years, which can change very quickly. According to PA calculations, the system was solvent in early 2020.
- **Legislative Affairs** – Neil Cashman gave a highlight of over 33 bills introduced during the last session relating to unemployment compensation. The only one signed into law extended the appeal period from 14 days to 21 days. Currently, House Bill 129 proposed by Chairman Cox would officially change the primary/default method of appeal hearings to virtual, with the option of in-person or telephonic. Other bills address issues that arose during the pandemic such as vaccine-related issues and eligibility for unemployment; suspending the waiting week; and providing for employer relief from charges.
- **UC Board of Review** – Brian Parr oversees 17 referee offices across the state, plus appeal sites in CareerLinks, with a staff of 50 permanent and approximately 20 temporary referees. Legal staff write draft decisions for second-level appeals that the three-member board reviews in monthly meetings, many of them passed unanimously. The pandemic required the referee offices to operate virtually at a time when claims (and subsequent appeals) were skyrocketing. The referees are operating on a backlog of 56,000 divided almost equally between the regular UC and Pandemic Unemployment (PUA) claims. There's concerted effort in conjunction with the Governor's Office of General Counsel and L&I's Office of Chief Counsel to bringing down the backlog, including moving attorneys from the Workers' Compensation Appeal Board to help write decisions.

5. Discussion:

- Hanima Amara gave a brief overview of above-base funding from the federal government. The main targets that the USDOL is to publish in May, were consistently running late by 1-2 months. Last year, however, they weren't published until Sept., and the federal fiscal year starts Oct. 1. There was no notice as to what the USDOL would allocate for UC until a month before it was to be spent. This year, the USDOL published a \$14 million cut. On the two quarterly reports submitted for the federal fiscal year thus far, there's been nothing received back from the feds. It's not until a deposit is made that the percentage can be calculated; hopefully it's 70 percent, but that's just a guess. L&I has requested \$1.3 million for each quarter.
- Julia Grubbs explained the five components to House Bill 549: 1) Eliminating the waiting week. 2) Eliminating the credit week. 3) Eliminating the severance pay. 4) Aligning PA's solvency definition with that of the feds. 5) Allowing claims on shared work. Instead of laying off

employees, if the entire workforce's hours were reduced by 20 percent, workers could file a UC claim for the "layoff" portion.

- Board discussion centered on credit weeks create difficulty in determining benefits, and questions if the financial impact has been studied. Additional questions concerned impact to the Trust Fund on benefit changes, which were estimated to equal \$180 million per year.
- Fraudulent claims have presented other issues. On the Friday before Memorial Day 2020, the chair received a call from former counsel to Gov. Ridge, reporting he had a PUA claim and asking why. The creation of PUA set off an organized effort nationwide in filing fraudulent claims because it's so cheap for fraudsters to buy identities on the dark web and there are no employers involved to "vet" these individuals. The unique system allowed individuals not traditionally in the workforce to be eligible for benefits. When the modernized UC system went live on June 8, 2021, the fraudsters were sitting in wait to attack. Multi-factor authentication and other security features have been implemented to help prevent fraud, but that creates difficulty for people who legitimately need to access the system.
- Board members asked about the ability for paying off the balance by Nov. 10, such as using COVID funds, and approaching the Administration and/or the General Assembly; these kinds of discussions are constantly occurring.
- In reference to HB 129, Neil Cashman said that referees prefer the default hearing method be in-person, because they think it's the most honest, most efficient way to conduct a fair, open hearing. That is the Department's current recommendation, with the option for telephonic or virtual. Pennsylvania has large portions of the state that are rural, where people don't have access to good cell or Internet service that could make virtual hearings problematic for them. A claimant who tried to get into a hearing whose access was rejected, was caused by Verizon who wouldn't let the call go through, assuming it was spam. After 20 minutes of arguing, Verizon finally let the claimant's call through.
 - Board members discussed flexibility being good for constituents. One said the vast majority of states started allowing telephone hearings even before the pandemic struck. Earlier this year while crunching numbers, of the 1,500 hearings held since March 2020, not a single one requested a telephone hearing. But some hearings are far more efficient by telephone. Before he went on vacation a week ago, he had a telephone hearing that lasted 12 minutes. He was glad he didn't have to drive 45 minutes each way for just 12 minutes. Another member suggested amendment to HB 129 would allow any party to request an in-person hearing for any reason.
 - One member said it's been incredibly difficult for claimants – especially low-income claimants without access to technology – to use their phones for a hearing. Particularly if they've been denied benefits and are going through the appeals process, they've already lost access to a cellphone. In Philadelphia at least, they can take a bus or walk to the hearing. In telephone hearings that last for hours, it's extremely difficult to follow, particularly when there are hundreds of pages of documents. An in-person referee can point to the document in question.
 - A member who recommended making a plain language effort with the UC forms, since they can be difficult to understand, said his experience with telephonic hearings is that the individual has the impression that it's a more informal process than it really is.
 - The success rate of appeals from both the employee and employer side relative to the method of hearing resulted in the question Has the appeal success rate altered in any way from in-person to telephone hearings? Brian Parr was tasked with bringing that data to the next meeting.

- The Board agreed to hold its next meeting in July starting at 11 to accommodate members coming from a distance. The chair also offered to provide lunch for members.
 - When questioned about the process for proposing agenda items, the Chair suggested they be circulated to the group as a whole. He also suggested a presentation on UC fraud for the next meeting, as well as a discussion with Geographic Solutions.
6. Following unanimous approval (Motion: Geoffrey Moomaw; Second: Julia Simon-Mishel), meeting adjourned at 12:20 p.m.