



Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on unemployment compensation and seasonal workers

Before the:
Pennsylvania Senate Labor and Industry Committee

Presented by:

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Chairwoman Baker, Chairwoman Tartaglione and members of the Senate Labor and Industry Committee, my name is Alex Halper and I am Director of Government Affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy association in Pennsylvania. We represent employers of all sizes, crossing all industry sectors throughout the Commonwealth. Thank you for the opportunity to testify today on unemployment compensation (UC) and seasonal workers.

The PA Chamber supports UC, a program almost always exclusively funded by employers which is, according to the Pennsylvania Department of Labor & Industry: “...money paid to people who have lost a job through no fault of their own. It is temporary income meant to help make ends meet while people look for a job.” Significant changes to the UC system were made as part of Act 6 of 2011 and Act 60 of 2012 and any discussion on the impact of these changes ought to include some important background to provide the necessary context.

The economic recession obviously took its toll on states’ UC systems and Pennsylvania was no exception. By March 2009, Pennsylvania’s UC trust fund was insolvent and the state was forced to borrow money from the federal government to pay the state share of unemployment benefits, which constitutes the first 26 weeks before any federally-funded emergency or extended benefits are applicable.

Ultimately, Pennsylvania would accrue a debt to the federal government of over \$4 billion. While most states were forced into similar positions of requiring federal support and incurring debt, Pennsylvania's situation was somewhat unique in that the size of the Commonwealth's debt was among the largest in the country and in some cases significantly greater than other comparably sized states that even had higher unemployment rates, including Florida, Illinois, Michigan and Ohio.

In 2011, Pennsylvania employers were required to pay over \$100 million in additional taxes to cover just the interest on the debt and costs were projected to continue mounting exponentially unless meaningful changes were made to address the structural deficits in the trust fund and put the UC system on a path to solvency.

This was not the first time around this period in which policymakers and stakeholders were grappling with these challenges. In 2008, then-Governor Ed Rendell reconvened the UC Advisory Council, a body that makes policy recommendations and is comprised of the Secretary of Labor & Industry, the majority and minority chairs of Senate and House Labor and Industry Committees and representatives for organized labor and employers. This group met on numerous occasions throughout 2009 and early 2010 but was ultimately unable to reach an agreement on comprehensive UC solvency legislation. Among the areas of contention were certain commonsense, reasonable reforms suggested by the employer community that were

rejected, including a benefit offset to reflect severance payments and a work search requirement: a condition for receiving benefits that Pennsylvania would eventually become the last state in the country to adopt in 2011.

Disagreement on a fundamental question separated UC Advisory Council members and remained as debate shifted to the legislature in 2011: is the structural deficit in Pennsylvania's UC system more a result of insufficient revenue or unrealistic and unsustainable outlays? Considering Pennsylvania from a national perspective clearly demonstrates the latter. According to the U.S. Department of Labor, Pennsylvania consistently ranks among the top states for taxable wages and revenue going into the trust fund. More pertinent to individual employers is that Pennsylvania's UC taxes are also typically among the highest in the country. For example, the most recent data from the first quarter of 2015 showed that Pennsylvania had the 7th highest average tax rate on total wages¹ in the country and that does not include the additional costs associated with servicing and paying off the debt.

¹ Using tax rate on *total wages* as opposed to *taxable wages* or *taxable wage bases* as the relevant measure allows for a more apples-to-apples comparison because states utilize different taxable wage bases. In the case of Pennsylvania, our taxable wage base is relatively low – currently \$9,000 and \$8,000 while legislation was being considered – but the average rate paid on those wages is the highest in the country. When the numbers are crunched, the average rate is 7th highest in the country. The use of these various measures became a point of contention as some stakeholders attempted to mislead lawmakers and the public by citing the relatively low taxable wage base and specifically omitting any reference to Pennsylvania's highest rate in the country in order to falsely suggest that our UC taxes were relatively low.

On the other hand, data from the U.S. Department of Labor shows high level outlays from the trust fund for unemployment benefits. In addition to typically ranking among the top three states in total benefits paid, current data shows Pennsylvania also has one of the highest average weekly benefit amounts (8th in the country), an average duration that is above the national average (17th in the country) and one of the highest rates of unemployed individuals covered by unemployment insurance (3rd in the country). The fact is revenue flowing from Pennsylvania employers to the UC trust fund, while robust, cannot keep pace with Pennsylvania's system of granting benefits, which is relatively expansive and generous. Such were the conditions under which the General Assembly began considering solvency proposals during the 2011-2012 legislative session.

The first solvency proposal considered was H.B. 916, which was introduced in March 2011. This bill would have put the trust fund a path to solvency through a variety of cost-saving measures and primarily by adjusting the formula that determines benefits. Under current law – then and now – benefits are based on the wages earned in the claimant's highest-earning quarter. H.B. 916 proposed basing benefits on a claimant's two highest-earning quarters. The PA Chamber supported this provision because benefits would more accurately reflect wages and it would address an unfairness inherent in a highest-quarter formula in which a claimant whose annual wages are

highly concentrated in one quarter can earn a greater unemployment benefit than a claimant earning the same annual wages but who works more throughout the year.

In general, right-sizing benefits was viewed by many as an appropriate response, considering that benefits in Pennsylvania are relatively generous and that this approach would have been preferable to making eligibility changes. H.B. 916 also would have provided a number of other positive changes, including strengthening rules that prevent individuals from qualifying for benefits if he or she was justifiably fired or quit for personal reasons unrelated to the job.

Unfortunately, H.B. 916 was opposed by certain stakeholders and defeated when a vote on second consideration failed in May 2011. Make no mistake: had H.B. 916 or similar legislation focusing on benefits successfully passed, changes to eligibility requirements would not have been necessary and we would likely not be here today.

We are here today because the defeat of H.B. 916 compelled policymakers and stakeholders to go back to the drawing board and develop an alternative proposal to achieve solvency. Any fair and viable alternative would be similar to H.B. 916 by focusing on reducing outlays, rather than simply raising taxes as some suggested, as employers were already paying high taxes and would have to be assessed additional taxes to address the \$4 billion debt. Since reforming the benefit formula was taken

off the table, the only option left to lawmakers was reforming the eligibility formula. Plan B was ultimately Act 60 of 2012. This legislation was passed with bipartisan support in both the House and Senate. Signed into law on June 12, 2012, the bill achieved two central objectives: First, it authorized the Commonwealth to sell bonds to immediately pay off the federal debt. Employers would be, and still are, exclusively responsible for paying the debt now held by the bondholders, but the interest rate is lower and more predictable. Second, Act 60 put the trust fund on a path to solvency through various cost-saving measures, the most significant of which requires claimants to have earned a greater amount of their base-year wages outside of their highest-earning quarter (from 20 percent to 49.5 percent). This provision of Act 60 also corrected a flaw in the UC Act that allowed claimants who had reached a certain wage level to actually earn less outside their high quarter than what was required by law – and the higher the wage, the less the claimant was required to earn, as a percent of their base-year wages, outside the high quarter.

Increasing the amount of wages required to be earned outside the high quarter meant that claimants would have to demonstrate that he or she had a clear attachment to the workforce throughout more of the year before being laid off. This change also impacted cyclical, seasonal workers. These workers are obviously not “unemployed” in the traditional sense, as they typically are provided a reasonably guaranteed date of

return and are not looking for a new job – yet they had still been deemed eligible for unemployment benefits during their off months.

Paying benefits to seasonal workers during their off months seems to fall outside the scope of a traditional view of UC as a safety net for workers who were laid off through no fault of their own and are actively seeking new employment. While the PA Chamber may philosophically hold this view, it is ultimately the responsibility of lawmakers to determine how the UC system should treat seasonal workers. If the General Assembly decides seasonal workers should not qualify for benefits, it should consider other ways to assist these individuals, such as helping to connect employers with complimentary work seasons. If the General Assembly decides seasonal workers should qualify for benefits, the cost associated with these benefits must be paid for and done so without raising taxes on the general business community.

Despite progress made through Act 60, Pennsylvania's UC system remains in a tenuous state. Pennsylvania's trust fund falls well below the U.S. Department of Labor's recommended solvency level, which means another downturn in the economy could lead to a dangerous scenario in which Pennsylvania is forced to incur new debt with the Federal government before the existing debt is paid off.

Pennsylvania employers still pay some of the highest UC taxes in the country, even before costs associated with paying off the debt are counted. In fact, the Tax Foundation's *2015 State Business Tax Climate Index* ranked Pennsylvania as the worst state in the country for employers in terms of Unemployment Insurance taxes.

And too many people are qualifying for benefits even though they do not satisfy one of the key principles of UC: that one's separation from employment should be through no fault of their own. The PA Chamber still supports legislation to tighten up language in the UC Act regarding disqualification for individuals who were justifiably fired or quit for personal reasons unrelated to the job.

The General Assembly Public ought to focus on UC policy that will move the trust fund to solvency as soon as possible, ultimately bring our UC tax rates to competitive levels, root out fraud and abuse and help ensure the long-term health of the UC program.

Again, thank you for the opportunity to testify. I am happy to answer any questions.