

Before the Senate Labor & Industry Committee  
Commonwealth of Pennsylvania

Statement  
Of  
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Compensation and Workers' Compensation  
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Courtroom 76  
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I am Douglas J. Holmes, President of the National Foundation for Unemployment Compensation and Workers' Compensation, a research foundation that annually publishes comparisons of state unemployment compensation laws and hosts the National Unemployment Insurance Issues conference.

I also serve as President of UWC Strategic Services on Unemployment & Workers' Compensation (UWC), the national membership organization serving as the voice of business specifically with respect to unemployment insurance. UWC and its predecessor organization have served the business community in analysis of unemployment insurance policy since 1933. UWC members include a broad base of national and state business organizations as well as individual employers with specific interest in unemployment insurance.

I spent most of my professional career as UI Director, Legal Counsel and/or Deputy Administrator for workforce programs in Ohio and supervised or directly served as the Secretary of the Unemployment Compensation Advisory Council in Ohio over a period of 21 years from 1984 through 2005. During that period the council recommended over 20 UI related bills for enactment by the Ohio General Assembly. All of them were enacted with very large bi-partisan votes of support.

This statement is submitted as a supplement to my previous statement which more generally addressed the state of the Pennsylvania unemployment trust fund and solvency efforts.

### **“Seasonal Employment” and “Seasonal Employer”**

The question of how to handle unemployment claims in situations in which an employer is only doing business in a specified season or an individual is only employed in a specified season have been considered in many states. The seasons and industries involved vary by state, particularly with respect to climate and industry affected.

In 2015 only 18 states out of the 53 states and jurisdictions covered for UI had specially designated seasonality provisions. Pennsylvania is one of the states which reported a seasonality provision focused on the commercial canning or freezing of fruits and vegetables during a period of 180 days or less per year. Generally, individuals employed in seasonal industries designated by a state are restricted to benefits to be paid during the season; however, individuals who are also employed outside the season may qualify for benefits outside the season. In some circumstances the individual working outside the season and during the season may have benefits determined based on the combination of seasonal and non-seasonal wages.

Administration of seasonality provisions is burdensome and confusing and typically limited to designated industries and situations. Because of the complexity it is difficult to automate seasonal special claims determinations.

Seasonal industries identified in other states include agricultural products, cotton ginning, professional baseball, ski resorts, tourism, and food processing. In general, these seasonal provisions were enacted to enable workers who otherwise did not have sufficient workforce attachment to qualify for regular benefits to qualify for a lesser number of weeks of benefits during the designated season. Employers in seasonal industries hiring seasonal workers who worked only in season could limit exposure to unemployment claims during the season.

## **Restrictions on Seasonal Provisions**

Seasonality provisions have not expanded over the years for a number of reasons, including 1) fewer employers operate in only specified seasons, 2) employees do not limit their employment to a particular employer or a particular season, 3) federal law with respect to the experience rating of state unemployment taxes has been interpreted to require uniform application of experience rating for employers throughout the state and that contribution rates be based on factors relating to unemployment claims (See 26 USC 3303 (a) below)

### **(a) State standards**

A taxpayer shall be allowed an additional credit under section [3302\(b\)](#) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

- (1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

The federal requirement is that contribution rates are due to unemployment experience or factors bearing a direct relation to unemployment risk. The experience rating is based on the experience of each individual employer.

There are many industries in which there is significant fluctuation in workload during a year but few that operate only in designated seasonal periods. Roofers may not be able to work during the winter outside due to climactic conditions but can perform construction work inside. The retail industry has a significant uptick in employment during the holidays but does not close down the rest of the year. Tax preparation businesses have spikes in workload around April 15<sup>th</sup> but prepare extensions and continue working the rest of the year.

Although these types of workers and businesses might be thought of as seasonal, they have not been categorized as “Seasonal” under UI statutes.

There are industries that employ workers who are commonly referred as “job attached” and/or the employment may be considered “cyclical”.

Job attached claimants are those who are “unemployed” but have not been “separated” from employment. Such employment arrangements often arise in manufacturing in periods of model changeover when individuals are laid off due to lack of work but retain recall rights and are likely to return to employment with the employer. “Cyclical” claims typically refer to claims that are repeated on a cyclical basis each year as part of regular business fluctuation. Construction labor is often thought of as cyclical as demand for workers increases in certain periods and building trades may rely on hiring halls for placement with employment.

## **Impact on UI Trust Funds**

Job attached and cyclical claims are more likely to result in employers obtaining high experience rate taxes compared to other employers because the risk of their employees becoming unemployed is very high every year as employers lay-off employees and then hire them back or reschedule them for work.

High negative balances in employer accounts can develop year over year with high claims load and limits on state UI tax rates. Over time this pattern not only pushes up the unemployment tax to be paid by the employer, but also may result in benefit payments that are effectively socialized to be paid by other employers through increased flat solvency taxes or other solvency related measures spread across all contributing employers.

The use of bonds with flat assessment debt service payments to cover trust fund deficiencies is one example of socializing costs to address UI trust fund solvency.

Each state is different in the amount of these socialized benefit charges, depending in part on the industrial make-up of the state and the extent of cyclical unemployment.

Employers in construction and some manufacturing have higher unemployment tax experience rates. However, it should also be noted that there is value to employers in these industries as they rely on skilled workers and have an interest in assuring that a skilled workforce is available as workload increases.

### **State Administration and Benefit Formula Development**

At the outset of unemployment compensation in the 1930s and into the 1950s unemployment compensation claims were determined based on base period employment requested from the individual's employer when an application was filed. This was called a "wage request" system which minimized costs to employer to respond only to requests when their employees were laid off or became unemployed.

As automation and systems were developed beginning in the 1960s states began to move to systems in which all employers reported wage information and UI tax information to the state agency on a quarterly basis that was used as the basis for determining monetary unemployment compensation eligibility.

In order to make the computation of benefit eligibility easy based on the quarterly information provided, states developed monetary requirements tied to the amounts paid in wages in one or more quarters. The reason for requiring more than just high quarter wages was to assure that there was sufficient work force attachment to qualify for benefits. An individual with few weeks of work and very little in wages should not as a matter of policy receive more in unemployment benefits in a year than the individual earned in the base period year.

High unemployment benefit amounts can have the effect of discouraging unemployed workers from being available for work or actively seeking work. Each state over the years has developed policy in determining the right levels of compensation to provide temporary partial wage replacement to individuals as they actively seek work.

The UI program is designed to provide temporary partial wage replacement for individuals who become unemployed through no fault of their own with the condition that they are able to work, available to work and actively seeking work.

## **What should the workforce attachment requirement be?**

The current provision that certain higher wage claimants are ineligible for compensation unless forty-nine and one-half per centum (49.5%) of base period wages at higher levels was paid in a quarter or quarters of the base year other than the highest quarter is consistent with workforce attachment requirements in other states.

There are alternatives to requiring the 49.5% of base period wages outside the high quarter that address the workforce attachment issue.

**Require employment in at least three calendar quarters and a lesser percentage of wages outside the high quarter.** This would result in some additional workers with concentrated high quarter wages qualifying while eliminating some employees who do not have employment in three quarters.

**Require more credit weeks of work while reducing the percentage of wages outside the high quarter.** This would result in additional workers with high quarter wages qualifying while eliminating some lower wage workers and part time workers who would not have sufficient credit weeks.

**Other benefit provisions could be modified to reduce benefit pay out.**

**Reduce the potential number of weeks of benefits**

**Reduce the maximum weekly benefit amount**

**Reduce the total benefits payable**

**Eliminate the dependency provision**

**Reduce the partial unemployment earnings disregard**

**Broaden the definition of disqualifying income**

**Increase the penalty for disqualification from benefits when the unemployment is due to willful misconduct by a claimant or the claimant voluntarily quits**

Many of these items are regularly considered by states, particularly during reviews of solvency measures. Pennsylvania may have considered them as part of the solvency package enacted after the 2008 recession.

I have attached the annual Highlights of State Unemployment Compensation Laws publication which our foundation produces each year as a frame of reference for further review. Tables 17 -22; 24-28; 30; and 33 show state comparisons of many of these benefit provisions.

Consideration of additional benefit reductions appears to be needed in any event to improve the solvency of the Pennsylvania UI trust fund prior to the next recession.

