

National Employment Law Project



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NELP Publications:

Unemployment Insurance Federal Highlights (1998-1999)

Revised September 1999

Congressional Developments

Financing Reform & UI Expansions Proposed: Bipartisan legislation has been introduced in the House (H.R. 1830) which establishes strong financial incentives for states to meet unemployment insurance (UI) trust fund solvency targets, while also reforming the Extended Benefits program and providing administrative funding to support states that adopt the "movable base period." Meanwhile, the "Coalition for Employment Security Financing Reform," backed by employers and a number of state agencies (www.state.oh.us/obes/html/overview.htm) has waged an aggressive campaign to "devolve" UI administrative funding to the states. The proposal has the potential to negatively impact the ability to set national policy that guarantees appropriate administrative safeguards at the state level.

UI for Domestic Violence Victims: The "Battered Women's Economic Security and Safety Act" (S.1069), was introduced by Senators Wellstone, Murray and Schumer, providing a range of job protections for victims of domestic violence, including access to unemployment benefits.

UI Pilot Program for Workers on Family & Medical Leave: The "Family Income to Respond to Significant Transitions (FIRST) Insurance Act" (S. 1355/H.R. 2500) was introduced in both the Senate and the House authorizing an appropriation of \$400 million for a FIRST Demonstration Program. The legislation would support pilot programs in the states that use different mechanisms, including unemployment insurance and temporary disability insurance, to provide paid leave to individuals caring for a newborn or adopted child and to workers taking other forms of leave authorized by the Family and Medical Leave Act of 1993.

U.S. Department of Labor (DOL) Highlights

UI & Paid Family Leave: President Clinton issued an executive memorandum on May 24, 1999, directing the Secretary of Labor to implement federal regulations authorizing the states to enact legislation providing

unemployment benefits to individuals taking leave to care for newborn or newly-adopted children. For more information on this initiative, see National Employment Law Project, "Expanding Unemployment Insurance for Workers on Family & Medical Leave: Question & Answer" (July 1999).

"Prevailing Conditions of Work" Requirement: DOL issued a directive requiring states to better comply with a federal law that allows UI claimants to refuse to accept new work "if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality." "Conditions of work" are now broadly defined to include fringe benefits, paid sick leave, vacation leave, pension, job security, training, promotional opportunities, unionization, the permanency of work, and other fundamental concerns. This directive has special relevance given the increased emphasis in state UI programs toward a "work first" model and the growing number of states that limit access to UI in situations involving temporary work. See Unemployment Insurance Program Letter No. 41-98 (August 17, 1998).

Revised Timeliness and Quality Control Standards: For the past several years, DOL has been engaged in a significant review of its timeliness, quality control and other performance criteria regulating state UI programs. "UI PERFORMS", as the initiative is known, recently resulted in the issuance of revised standards to insure the timeliness and quality of UI claims, hearings and appeals. For a detailed description of the new standards, including a summary of DOL's response to the comments and concerns of UI advocates, see Federal Register, Vol. 64, No. 134, at pages 38087-38097 (July 14, 1999); "UI PERFORMS Tier I and Tier II Performance Measures, and Minimum Performance Criteria for Tier I Measures," Unemployment Insurance Program Letter No. 37-99 (July 1, 1999).

Y2K Compliance: The Y2K problem hit the UI system a year earlier than it did most other benefit programs because the UI program must be able to handle dates with the year 2000 starting in January 1999 to establish an individual's "benefit year." Early indications were that some states (Arizona, Delaware, Hawaii, Illinois, Kansas, Massachusetts, Missouri, Montana, New Hampshire, New Mexico and Vermont) were not fully prepared to make these computer changes, thus requiring temporary fixes to insure the timely payment of benefits. The Department has issued grants totaling \$205 million to assist the states with Y2K compliance. See Unemployment Insurance Program Letter No. 48-98 (October 14, 1998).

UI Privatization Measure Defeated: Governor Engler of Michigan instituted a plan to privatize Michigan's federally-funded Employment Service (ES) and selected features of the UI program. However, the U.S. Department of Labor determined that the Michigan plan violated federal law. Governor Engler then took DOL to court challenging the agency's interpretation of the federal law requiring "merit staffing" of ES and UI functions. The district court ruled in favor of the DOL and dismissed the lawsuit in its entirety (*State of Michigan v. Alexis M. Herman*, No. 5:98-CV-16, U.S. Dist. Ct., W.D. Mich.). The state's appeal was subsequently withdrawn and the case was settled in favor of DOL's position. The Department is currently engaged in negotiations with Georgia and Maryland over other "merit staffing" issues related to the UI program

UI Tax Exemption for Employers Hiring Welfare Recipients Ruled Illegal: At least two states, Minnesota and Arizona, recently enacted laws which allowed employers who hire welfare recipients not to be subjected to an increase in their UI taxes if the workers later qualify for unemployment. Specifically, the state laws required the employers to rely on welfare status as a "pre-employment circumstance" that would allow employers who lay off these workers not to have their "experience rating" increased as it is in most other layoff situations (experience rating was established in order to discourage employers from laying off workers). Interpreting the federal law on "experience rating," DOL concluded that these state laws were illegal thus establishing an important precedent preventing employers from limiting their UI tax liability as applied to individual groups of workers. See Unemployment Insurance Program Letter No. 13-99 (January 22, 1999).

DOL Corrects Policy that Required Food Stamp Overpayments to be Collected from Unemployment Benefits: DOL's prior position, that the federal welfare law amended the Food Stamp Act to require a state food stamp agency to collect any overpayments of food stamp coupons by withholding unemployment benefits, has been rescinded. The U.S. Department of Agriculture (USDA) has determined that the intercept of UI may not be "cost-effective" for some states and has authorized each state to decide whether to adopt the policy. States that do not wish to adopt the policy do not have to apply for a waiver from the USDA. The large number of states that previously enacted legislation implementing the overpayment policy should consider revisiting the issue in light of the change in federal policy. See Unemployment Insurance Program Letter No. 37-96, Change 2 (April 12, 1999).

National "Dialogue" on UI Reform Finalized: DOL completed a year-long "dialogue" process that solicited extensive input from state UI agencies, business, labor and advocate groups to evaluate the effectiveness of the current UI system. DOL issued a briefing paper summarizing a number of key concerns related to UI financing and access to UI benefits. Numerous groups commented on the briefing paper, both in writing and in a series of local events (65 in all, which included 3,800 participants) held across the country. A report is available on DOL's website (www.doleta.gov/dialogue) summarizing many of the commentators key concerns. The last in the series of dialogue sessions was held in Boston in September 1998, featuring a national group of over 40 workers and representatives from labor unions and worker advocacy organizations who testified in support of worker's agenda for reform of the UI system.

NELP National Employment Law Project

55 John Street, 7th Floor • New York, NY 10038 • Phone: (212) 285-3025 • Fax: (212) 285-3044

Email: nelp@nelp.org • Please send questions or comments about this site to [Allison Palmer](#)

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