

Testimony of Douglas J. Holmes on SB 916  
before the  
Oregon House Committee On Labor and Workplace Standards  
April 30, 2025

Chair Grayber, members of the Committee, thank you for the opportunity to testify today with respect to SB 916

I am Douglas J. Holmes, President of UWC – Strategic Services on Unemployment Compensation and Workers’ Compensation, and the National Foundation for Unemployment Compensation and Workers’ Compensation.

UWC is a national association providing subject matter expertise with respect to unemployment insurance legislation and policy. UWC members include employers, workforce agencies, and business associations at the state and national level. Our foundation hosts the annual National Unemployment Insurance Issues conference.

I am testifying today as an opponent to SB 916 in its current form for the following reasons.

**The bill is contrary to Section 303(a) (12) of the Social Security Act (42 USC 503(a) (12))**

This federal statute requires as a condition of the payment of unemployment compensation that an individual must be able to work, available to work, and actively seeking work. The provision was added in 2012 to reinforce the long held interpretation of the US Department of labor that these three conditions must be met in order for an individual to be eligible to be paid. The requirement is now a requirement for a state to be certified to receive the federal UI administrative grant. See

[https://www.ssa.gov/OP\\_Home/ssact/title03/0303.htm](https://www.ssa.gov/OP_Home/ssact/title03/0303.htm)

This bill seeks to “notwithstanding” the current provisions in Oregon law that meet the federal requirement with respect to weeks claimed during a labor dispute. The bill provides the notwithstanding to apply if the labor dispute is a lockout and for weeks after the first week of a labor dispute that is not deemed to be a lockout. This is contrary to federal law on its face.

The 1979 US Supreme Court Decision in [New York Tel. Co. v. New York Dept. of Labor | 440 U.S. 519 \(1979\) | Justia U.S. Supreme Court Center](#) that has been referenced informally is not on point with respect to the interpretation of the availability requirement. In that decision the court noted that because there was no specific prohibition against states paying unemployment compensation in the Social Security Act or the National Labor Relations Act states could make payments to claimants during a dispute. Section 303(a) (12) of the Social Security Act was enacted in 2012 to provide the specific requirement for all claimants, without an exclusion for claimants for weeks during a labor dispute.

Statutory provisions in New Jersey and New York that remove the disqualification due to a labor dispute after a specified period were enacted many years prior to 2012 and before congress clarified the availability requirement in statute.

**The bill is inconsistent with the proper administration of the federal grant as prescribed by the US Department of Labor.**

The US DOL Handbook 301 provides guidance to states in the proper administration of the federal/state unemployment insurance program. Guide Sheets 3 and 4 address the available to work requirement and refusals of suitable work. There is no special provision to permit payments during labor disputes. See [https://www.dol.gov/sites/dolgov/files/ETA/handbooks/2005/ETHand301\\_5th.pdf](https://www.dol.gov/sites/dolgov/files/ETA/handbooks/2005/ETHand301_5th.pdf)

**The bill may be inconsistent with federal law with respect to the payment of unemployment compensation to individuals providing instructional services with educational institutions between terms.**

The bill raises an issue with respect to the application of the between terms denial requirements of federal law provided in 26 USC 3304(a) (6) in that the period of a labor dispute may extend to weeks during which federal law requires that unemployment compensation is not payable. If there were strikes by instructional employees of educational institutions a conflict of laws issue would arise with respect to weeks claimed between terms.

**The bill would serve to reduce the solvency of the Oregon UI trust fund.**

Although the Oregon unemployment insurance trust fund is relatively more solvent than many states, the UI system is financed by employers through federal and state unemployment taxes. An increase in benefit payout under the bill would increase employer tax obligations.

**The bill would increase administrative costs for the Oregon Employment Department and employers and third party administrators responsible for providing information necessary for proper administration.**

In order to implement the provisions in the bill, there would be increased administrative costs of policy development, potentially new rules, programming, training, and systems modifications. Additional costs would also be imposed on employers and Third Party Administrators that interface with the Oregon UI system in the exchange of information, benefit, and UI tax administration.

**The Special Treatment of back pay awards to resolve strikes raises many administrative and legal issues with respect to allocation, taxation, and overpayment recovery.**

Unemployment insurance is a temporary wage replacement program funded by employers against the risk of unemployment for employees. The determination of eligibility is made solely in the administration of statute

conforming to federal law. Unemployment compensation is not bargained for as a term or condition of employment.

Unemployment compensation is reported as taxable wages as prescribed by the Internal Revenue Service based on the 1099G reports submitted by the state UI agency. A special provision to reduce wages under a collective bargaining agreement for strike settlement payments or unemployment compensation paid for weeks during a labor dispute raises issues with respect to how to administer withholding and whether there is an impact on UI tax and income tax. It also raises issues with respect whether settlement payments should be deductible as earnings, subject to state UI tax, and whether the payments impact Supplemental Unemployment Benefit (SUB) plans maintained by employers that may already provide for SUB payments in addition to regular unemployment compensation.

Federal law requires that overpayments of unemployment compensation that are collected by the UI agency must be immediately deposited into the state unemployment trust fund.

**The state, counties, public schools, colleges, and universities are employers who would be subject to increases in costs in the event of a labor dispute.**

It should be noted that as reimbursing employers these entities are required to reimburse the state UI trust fund for benefits paid and charged to their accounts. Increased payments and charges to their accounts could be substantial in the event of a labor dispute.

I urge you to address these issues before proceeding to final consideration of SB 916. Although there may have been an initial review by USDOL, there is a significant risk that federal issues will be identified that require new legislation and administrative costs that could be avoided by addressing these issues on the front end.