# National Unemployment Insurance Legislative Update

by

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# Federal Legislation and related Issues

- Congressional Joint Resolution (HJ Res 42) to Disallow US DOL Regulations Interpreting State authority to test UI applicants for controlled substances
- President Trump’s FY 2019 Budget Proposal to Establish National Paid Parental Leave
- New Employer Credit for Paid Family and Medical Leave
- Integrity and Erroneous Payment Focus
- Reemployment eligibility assessment and reemployment services
- New innovations – the Secretaries Innovation Group Proposals

# Federal Legislation and related Issues

- WOTC and long term unemployed
- Workforce Innovation and Opportunity Act (WIOA) and expansion of required reporting of occupation information.
- Worker classification and the Gig Economy Proposal
- Whitehouse proposal to merge the Departments of Labor and Education

# Work Opportunity Tax Credit (WOTC) Extension

• The Tax Cuts and Jobs Act (H.R. 1), enacted in December of 2017 repealed authorization for WOTC credit for long term unemployed after December 31, 2019.

"Qualified Long Term Unemployed" is defined as

- a period of unemployment which is not less than 27 consecutive weeks, and
- Includes a period in which the individual was receiving unemployment compensation under State or Federal law.

•US DOL released TEGL 25-15 Change 2 on February 16, 2018, with further details with respect to eligibility.

•Initial WOTC reports show that 35,774 individuals were claimed for WOTC credit as long term unemployed in FY 2017. Most WOTC credits are claimed for individuals in the SNAP program.

•The continued authorization of WOTC for a broad list of designated populations (Veterans, SNAP, LTUR) is being discussed and could be addressed at the end of 2018.

# UI Agency Drug Testing to Determine Eligibility

Authority in Section 2105 of the Middle Class Tax Relief and Job Creation Act of 2012.

- Authority limited to circumstances where
  - 1) applicant for benefits was terminated from most recent employer because of unlawful use of controlled substances, or
  - 2) is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing (as determined by the Secretary of Labor)
- Already narrow authority made narrower by Regulations and UI-PL
  - Restricting the list of occupations for which drug testing is regularly conducted
  - Limit the period for drug testing to the period after application and before a continued week claim is filed
  - Requiring the agency to determine that a suitable occupation for the individual is not available in the labor market
  - Requiring that the drug test meets standards for Mental Health Services or US DOT

In light of enactment of HJ Res 42, US DOL working on new regulations and interpretation that better reflect congressional intent.

# President's FY 2019 Budget Unemployment Compensation CBO Score FY 2019 to FY 2028 (millions)

| | |
|---|---|
| **Outlays** | |
| Require States to Provide Parental Leave* | 26,690 |
| Offset Disability Insurance for UI Receipt (UI Effects) | -470 |
| Improve UI Integrity | 123 |
| Provide Mandatory Funding for RES,REA | 4,142 |
| **Revenue** | |
| Establish a Solvency Standard for UI* | 60 |
| Require States to Provide Parental Leave | 8,859 |
| Offset Disability Insurance for UI Receipt (UI effects) | -204 |
| Improve UI Integrity | 54 |

**CBO assumed a program similar to California would be administered country wide and benefits would be paid out of state UI trust funds. No legislative language was provided to be scored. CBO assumed no recessions and used its state by state models to project the impact on state trust fund balances. The CBO model assumes that states will adjust revenue over time to roughly maintain the same balance as the base line with just a $60 million increase. This varies substantially from the OMB projection.*

# SSDI and Unemployment Compensation Overlap Reduction or Disqualification

President Trump's FY 2019 Budget included a proposal to reduce an individual's entitlement to a DI benefit for state or federal unemployment compensation. Legislative language is not yet provided but a number of definitional issues are involved.

•If an individual is paid unemployment for a week within a month also claimed for SSDI should the individual be disqualified for SSDI for the month?

•How to obtain information from state UI agencies to compare with SSDI in a timely manner.

•Matching weeks to be paid against months when weeks split the beginning or end of the month.

• The proposal is estimated by CBO to save money for SSDI and state UI trust funds.

• Policy issue of coordination with existing state provisions that deduct SSDI from UI or deny UI benefits because the individual is not able to work.

• It may be possible for an individual to qualify as disabled for SSDI but still be able to perform some work to meet the able to work test for UI.

# Workforce Innovation and Opportunity Act (WIOA) and Unemployment Compensation

- Expansion of Wage Information Reporting Requirements driven by search for national comprehensive data base for use in WIOA performance and to evaluate connections between education and the workforce.
- The Workforce Information Advisory Council (WIAC) completed its recommendation to the Secretary of Labor that the Secretary "pursue the inclusion of additional data elements to unemployment insurance (UI) wage records, including occupational title, hours worked, and work site".
- No action by the Secretary on this recommendation. Louisiana has required occupation and other information on quarterly reports with uncertain results. Ongoing issues include:

    Wage information reporting is governed by state law

    Cost/Benefit – Significant cost for all employers with uncertain benefit

    Systems – Current tax systems are designed for UI admin with limited record layout

    Data exchanges – Already in place for research and interstate claims

    Opposition to new Federal unfunded mandates

# President Trump's FY 2019 Budget Proposal for Paid Parental Leave

## Solvency Requirements

The solvency UI Tax Increase would result in large initial state UI tax increases. $22 billion over the ten year budget period according to OMB.

The solvency idea was carried over from the proposals of previous administrations. However, there is no mandated tax base increase in the most current proposal.

Has the effect of imposing higher taxes on employers doing business in states with lower trust fund balances even if individual employer accounts have significant positive balances.

Does not recognize that states have access to alternative financing to assure that federal loans are repaid.

The impact of imposing reductions of FUTA offset credits on employers in states with lower trust fund balances may result in states reducing benefits to improve solvency.

# President Trump's FY 2019 Budget Proposal for Paid Parental Leave

Assuming the proposal continues to set the point at which there would be a reduction in the FUTA offset at 0.5% of the AHCM instead of triggering when the state had an outstanding Title XII loan as of two successive January 1sts, employers in approximately 12 states would be hit first with increased FUTA taxes.

As of the third quarter of 2017 states immediately impacted would have included CA, AZ, CT, DE, IN, MA, NY, ND, OH, RI, VI, WV.

Employers in another 12 would likely be hit with increased FUTA taxes early during a significant economic downturn.

As of the third quarter of 2017 states vulnerable to FUTA increases would include AR, GA, KS, MD, MN, MO, NJ, ND, SC, TN, VA, WI.

# President Trump’s FY 2019 Budget Proposal for Paid Parental Leave

The financing of the proposal through increased UI solvency (taxes) would discourage job creation and the proposal is inconsistent with the overarching themes of the administration to reduce taxes, reduce regulation and administrative costs, reduce federal entitlement spending, and provide flexibility to the states.

This proposal increases taxes on employers, increases administrative costs, and increases federal control over states and businesses.

The UI system is not a good fit for the financing or administration of the program.

# President Trump's FY 2019 Budget Proposal for Paid Parental Leave

Administrative Issues

1. Where is the additional administrative funding for systems, training, staffing, accounting, etc. that would be needed for the implementation and ongoing administration?
2. How would administrative funding for the new program, if any, be treated for purposes of federal and state cost allocation for shared overhead, etc.?
3. How would UI taxes and payments to finance the new program be collected, managed and accounted for? What systems would be used? What programming is needed?
4. How would the benefit determination process be administered? Appeals?
5. How would the implementation and administration of the new program impact the ability of the base UI program to improve in administration and performance?
6. What would be the impact on state ability to ramp up during the next recession?
7. Would the program be permanently authorized or need to seek reauthorization at the end of the 10 year budget period? Does the tax increase continue even if the program ends?

# President Trump's FY 2019 Budget Proposal for Paid Parental Leave

Benefit Issues

1. How would the parental leave amount be determined? If $300 per week it would be significantly more than many low wage workers are eligible to receive in weekly UI benefits but also less than higher wage workers.
2. How does the increased payout impact the solvency of state UI trust funds, the adequacy of unemployment compensation?
3. How will existing parental leave and other leave be taken into consideration (e.g. voluntary employer plans; state and local plans; sick leave: personal leave; FMLA; short term disability; subsidized child support)
4. How will earnings disregards be handled?
5. The program seeks to make payments to individuals to enable them to remain working. Unemployment compensation may only be paid to individuals who are unemployed, able to work, available to work and actively seeking work.
6. What is the impact on the amount and payment of child support obligations?

# President Trump's FY 2019 Budget Proposal for Paid Parental Leave

Employer Issues

1. What new reporting requirements would be imposed to determine when an individual may be eligible to receive the benefit?
2. Would UI due process measures apply to determinations?
3. Would employers and representatives be penalized for not responding within short time frames?
4. Would the cost of the new benefit be charged to employer accounts? What if the individual has multiple employers?
5. What would be the impact on experience rating? Contribution rates?
6. If the funding dedicated for the program is insufficient how would benefits be paid? Would they be cut off or is this a new federal entitlement?
7. How would this new requirement be coordinated with the large number of other paid family leave programs at the state level and private plans already in place with employers?

# Employer Credit for Paid Family and Medical Leave Enacted

On December 22, 2017 President Trump signed into law as part of the Tax Cuts and Jobs Act. Senator Deb Fischer (R-NE) was the primary advocate.

1. Business tax credit for paid family leave for up to 12 weeks per taxable year
2. 12.5% to 25.0% of family leave wages paid
3. Employer requirements
    1. Employee who is not part time, payment of not less than 2 weeks of annual paid family and medical; and
    2. Employees who are part time paid amount similar to non part time employees on prorated basis.
    3. Rate of payment must be at least 50% of normal wages paid for such services
4. Effective only for 2018 and 2019.

# New Worker Classification Proposal

- **GIG Act of 2017 (S 1549)**

This bill would amend the Internal Revenue Code to establish a test for determining if a service provider should be classified as an independent contractor rather than as an employee for tax purposes.

If the requirements of the test are met, the provider may not be treated as an employee, the recipient or any payor may not be treated as an employer, and compensation for the service may not be treated as paid or received with respect to employment.

The factors of the test include:

*the relationship between the parties (i.e., the provider incurs expenses; does not work exclusively for a single recipient; performs the service for a particular amount of time, to achieve a specific result, or to complete a specific task; or is a sales person compensated primarily on a commission basis);

*the place of business or ownership of the equipment (i.e., the provider has a principal place of business, does not work exclusively at the recipient's place of business, and provides tools or supplies); and

# New Worker Classification Proposal

*New Economy Works to Guarantee Independence and Growth Act of 2017 or the NEW

* the services are performed under a written contract that meets certain requirements (i.e., specifies that the provider is not an employee, the recipient will satisfy withholding and reporting requirements, and that the provider is responsible for taxes on the compensation).

The bill also: (1) sets forth withholding and reporting requirements for service recipients who meet the requirements of the test, and (2) allows service providers to petition the U.S. Tax Court for a determination of employment status.

This bill introduced by Sen. Thune was incorporated into the first draft of the Senate amendments to H.R.1 but not retained after opposition was expressed.

UWC indicated a concern that the new federal definitions amending FUTA and FICA would then be inconsistent with state definitions of employment using the ABC, Common Law or other tests.

The issue of classification in the "gig" economy continues to be difficult with the various federal and state definitions of employee, employer and employment.

# Expanded Reemployment Services and Eligibility Assessments

The Bi-partisan Budget Act of 2018 Dramatically Increased authorization for increased spending on Reemployment Services and Eligibility Assessments.

Authorized dedicated funding to increase from $117 million in FY 2018 to $750 million in 2027

Goals are to

- Reduce average duration
- Strengthen program integrity and reduce improper payments
- Promote alignment with WIOA
- Establish an entry point for individuals receiving unemployment compensation to other workforce programs

States will seek grants for expanded funding from US DOL based on instructions from US DOL.

The Secretary of Labor will promulgate regulations for a base funding formula no later than September 30, 2019

# Secretaries' Innovation Group UI Proposals

The Secretaries Innovation Group is a group of state human services and workforce agency officials developing new options for states related to Unemployment Insurance. Proposals developed include:

1.States to own and manage their own statewide systems;

2.Expand reimbursing option to any employer within the state;

3.Dedicated set aside of small portion of SUTA for targeted efforts to return claimants to work and/or improve integrity.

The SIG continues to refine options that may be identified in federal legislation for consideration.

# Issues for 2018 and 2019

- Management of trust funds now and moving into next recession to avoid triggered FUTA increases where possible.
- Increase REAs and reemployment services to a broader but targeted group of claimants who are not job attached.
- Improve systems to identify individuals who should not be paid and reduce erroneous payments. Continue increased dedicated funding for integrity administration and systems.
- Consider amendment to Section 252 of the TAAEA of 2011 and conforming state laws and improve SIDES exchanges in consultation with employers and their representatives.
- Improve the systems by which claimants search for work and are able to document work search to be verified in claims adjudication and in determining erroneous payments.

# Issues for 2018 and 2019

- Consult with the administration and with congressional committees about the proposed merger of the Department of Labor and Department of Education
- Preserve the relationship between employer paid FUTA taxes as dedicated for administration of UI and related ES functions.