

## **Restoring Pennsylvania's UC Safety Net**

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My name is Sharon Dietrich. I am the Litigation Director at Community Legal Services, Inc. (CLS) in Philadelphia. I have been practicing employment law at CLS since 1987 and have an extensive background in unemployment compensation (UC) issues. As do other legal aid lawyers around the state, I represent low wage and unemployed workers. Thank you for allowing me to speak with you today about the impact of recent legislative and administrative changes to the UC system.

Act 60 of 2012 implemented a solution for the insolvency of the UC Trust Fund that arose from its inadequate reserves and the unprecedented claim levels of the Great Recession, but at a terrible cost for one out of ten of Pennsylvania's unemployed. Workers, like businesses, were asked to help shoulder the insolvency burden. Through drastic changes to the financial eligibility criteria in the UC law, that burden was disproportionately placed on this group of claimants, denying them benefits completely, rather than through across-the-board cuts to benefits or increased payroll taxes on persons who were working. This injustice should be corrected, by restoring prior financial eligibility criteria and substituting a very modest payroll tax increase on employed Pennsylvanians.

But Act 60's financial eligibility criteria are just one change to the UC system that has created large holes in what was once a strong UC safety net for the unemployed in Pennsylvania. Even after initial eligibility has been decided, confused and frustrated jobless workers have struggled with new problems, such as on-line work registration, investigations about self-employment, and even challenges to their benefits many months after they thought that they had been determined eligible. These obstacles to claimants being able to focus on their job searches should be reviewed by the PA Department of Labor and Industry (the Department), with a report and recommendations to the General Assembly.

### **I. Reverse Act 60's Harm to the Unemployed by Restoring the Prior Financial Eligibility Criteria and Substituting a Small Employee Tax Increase**

Hampered by an artificially low balance in the UC Trust Fund that could not begin to pay for the historic number of claims filed during the Great Recession, the Trust Fund was required to borrow more than \$3.2 billion from the federal government in order to pay benefits. In order to eliminate the \$3.2 billion in federal loans and avoid escalating surcharges, the Commonwealth issued a \$3.24 billion bond, to be paid off by 2020 through a surcharge on business.<sup>1</sup>

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<sup>1</sup> Information from Pa. Dept. of Labor and Industry, Center for Workforce Information and Analysis (July 2014).

But business was far from alone in contributing to the restoration of solvency. Act 60 achieved UC Trust Fund solvency by concessions from both employers and the unemployed. From 2013 to 2019, the impacts of Act 60 estimated by the Department were:

- Additional employer payments: \$3.504 billion; and
- Claimant eligibility and benefit cuts: \$2.345 billion.

Workers' contribution towards retiring the insolvency debt could have come in three ways (or a combination thereof): an increased payroll tax on workers, who were already paying a small .07% tax; benefit cuts spread among all claimants (such as a reduction in benefit amounts); or cuts affecting only some claimants. As negotiations to achieve trust fund solvency proceeded, no serious consideration was given to a negligible payroll tax increase on the employed as the workers' contribution. This solution was the most equitable as it could have been spread broadly and among a group much more financially able to contribute than jobless workers could through a benefits cut. Nor was there serious consideration of an across-the-board cut on benefits, which would have shared the pain among the unemployed. ***Instead, the cuts primarily eliminated eligibility entirely for some of the unemployed—the least equitable solution for worker-side contributions.***

The largest cut for jobless workers was a change to financial eligibility. For a claimant to be found financially eligible, the percentage of base-year wages that must be earned outside of the high quarter was increased from 37.5% to 49.5%. ***This change was projected to save \$276 million per year by disqualifying 48,000 claimants per year (almost 10% of all claimants).***

This financial eligibility change has had catastrophic consequences for tens of thousands of jobless Pennsylvanians. They are disqualified not because they lack attachment to the labor force, but because their earnings fluctuate. Among those who are hurt are:

- Building trades and other seasonal workers, especially those who work overtime in their busy seasons;
- Low wage workers piecing together multiple part-time jobs;
- Low wage workers with inconsistent work schedules;
- Unemployed workers who receive lump sums of paid time upon separation;
- Previously unemployed workers who are separated again after becoming reemployed;
- New entrants to the labor force, such as recent high school and college graduates, who are separated shortly after beginning their jobs.

Tens of thousands of these workers, unemployed through no fault of their own, would have been eligible several years ago, but now are turned away every year. ***These eligibility changes are a permanent feature of the UC Law. In contrast, the additional employer taxes end when the bond has been fully paid, by 2019.***

***There is a solution that allows these cuts to be rolled back without losing the revenue counted on in the solvency plan: Increase employee contributions from .07% to .14% of wages.*** The current payroll tax on working Pennsylvanians comes to \$35 annually for a person earning \$50,000 (or around \$1.35 per biweekly pay period). If employee contributions were doubled to

0.14%, the modest increase would infuse over \$200 million into the system per year.<sup>2</sup> This change, by itself, will almost completely pay for restoring financial eligibility to its prior level.

An added advantage to increasing employee UC taxes is that these revenues can be allocated to a wide variety of UC purposes beyond payment of benefits, such as UC administration. Act 34 of 2013, which sunsets at the end of 2016, recently took advantage of this flexibility by allocating a portion of the employee tax to UC administration. Employer taxes, on the other hand, can only be allocated to benefits, under the requirements of the Social Security Act.

## II. Review the Holes in Pennsylvania's UC Safety Net

The change to financial eligibility, though dramatic, has been only one way that Pennsylvania's UC safety net has been compromised. The UC program has changed dramatically over the past two decades, making the program more complicated than it was in the past and often leading to interruption or loss of benefits.

In the past, applying for and receiving UC benefits was a relatively simple matter. An unemployed person walked into an employment office, sat down with an interviewer, filled out some forms, and answered some questions. Ambiguities were resolved and misconceptions were cleared up. If the person qualified financially and on the reason for separation, benefits were granted. The person could then focus on looking for another job without dealing with threats to ongoing benefits.

The same is not true at all now. What was once a simple system geared to unrepresented laypeople now is extremely complex. Claimants now often come to legal aid offices with stacks of incomprehensible papers and utter bewilderment. The following are some of the reasons.

- 1) **No UC office for face-to-face problem solving.** The switch from unemployment offices to call centers and computer interfaces is no longer new, of course. But these service delivery methods can add to the confusion that can cause benefits to be lost. Most of the problems described below are exacerbated by bureaucratic barriers. For instance, an ambiguous question in the on-line application can lead to an unintentionally incorrect answer, leading to an inappropriate fault overpayment. A claimant's question about part-time earnings can lead to inconsistent answers from a changing cast of UC Service Center staff that answers the phone calls, many of whom are temporary workers. Moreover, UC Service Center operations can only be expected to be impacted negatively when the supplemental administrative funding provided by Act 34 sunsets next year. To its credit, the Department is actively trying to improve UC Service Center operations.
- 2) **On-line work registration.** Act 6 of 2011 required UC claimants to register for work with CareerLink. However, the Department implemented this requirement unduly narrowly, by requiring all claimants to register on JobGateway, its job search website,

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<sup>2</sup> Actuarial Evaluation 2014: Financial Operations of the Pennsylvania Unemployment Compensation Program. According to the actuarial evaluation, employee contributions accounted for \$194 million in 2014 and will account for \$202 million in 2015. By 2017, they are estimated to account for \$222 million in revenue.

rather than permitting registration at a one-stop center. During the first seven months that the Department required JobGateway registration, around 50,000 eligible claimants lost benefits for failure to properly register on the website, many for failing to understand the requirement or the website. Although the initial problems have abated, many claimants still are inconvenienced at best (especially if they lack computers or computer skills) and lose benefits at worst for not understanding what is required of them. While many claimants take on-line registration in stride, for others, it is an ordeal.

- 3) **“Active work search” requirements.** Requiring work search, as Act 6 did, is not the problem; the vast majority of the unemployed are very motivated to ensure their next paycheck, which is likely to be much higher than their UC check. But the formulaic nature of the requirements as operationalized by the Department (two applications for new employers every week, plus another activity) present a stumbling block, particularly for people aggressively filing applications at the onset of unemployment.
- 4) **“Self-employment” investigations.** Pennsylvania’s UC Law always has encouraged part-time employment by providing a partial benefit credit. However, the law and its administration have not kept up with the changing nature of employment, which often is structured by employers to place entrepreneurial onus on the worker. For instance, what might have been considered temporary part-time employment in the past is now structured to be “consulting.” Or a jobless person may temporarily try work in the “sharing economy,” such as with Uber, while continuing to seek an appropriate replacement job. Many workers who seek to supplement their incomes and stay attached to the workforce while looking for replacement jobs are facing disqualification for accepting such work, even though they are not trying to set up a self-employment situation.
- 5) **Harm from a late employer challenge to claim.** The UC Law essentially allows employers to contest a claim whenever they want, if they do not respond to notice of the filing of the claim. If the employer does not contest the claim at the outset, benefits may be paid without the issuance of a formal determination that starts the running of the 15-day period for an appeal. Many claimants are well into collecting their claim – sometimes they have exhausted their benefits – when they are notified that their eligibility may be overturned. Talk about confusion. Sometimes, because they do not understand what is at stake, they do not respond. Consequently, they end up with large overpayments, sometimes designated as fault. Moreover, the Trust Fund is depleted by the erroneous payment of benefits that would not have been issued had employers not been dilatory in contesting claims.

These issues would be problematic if just one of them happened to a claimant. But for many otherwise eligible claimants, they are cumulative. These obstacles deprive claimants and their families of their subsistence income, cause unnecessary added anxiety during their unemployment spells, and deflect them from their job searches while they are focused on trouble-shooting their UC claims. The Department should review the effect of these policies and their implementation on reciprocity rates, seek to eliminate or ameliorate their harsh effects, and report back to the General Assembly.

### **III. Conclusion**

In sum, I recommend the following actions.

- 1) Restore the percentage of wages required to be paid outside of the high quarter from 49.5% to 37.5%.
- 2) Increase the employee payroll tax from .07% to .14%.
- 3) Review other barriers to UC reciprocity, such as UC Service Center operations, on-line work registration, the policy defining “active work search,” the rules on self-employment and late employer challenges. This review should be undertaken by the Department, with a report and recommendations to the General Assembly.

These steps will restore fairness to the UC Trust Fund solvency plan and restore Pennsylvania’s UC program as a reliable safety net.

Thank you for this opportunity to testify before you on these important topics. I would be happy to address questions.