

Joint Committee on Unemployment Insurance Oversight

Maryland General Assembly
Joint Committee on Unemployment Insurance Oversight
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Delegate Emmett C. Burns, Jr., Co-chair

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Senator Barry Glassman

Delegate Sally Jameson

Delegate Jeannie Haddaway-Riccio

Representative of the Department of Labor, Licensing, and Regulation

Ms. Julie Squire, Assistant Secretary

Division of Unemployment Insurance

Department of Labor, Licensing, and Regulation

Representative of the Department of Business and Economic Development

Mr. Alfredo Goyburu, Economist

Department of Business and Economic Development

Representative of the Maryland Retailers Association

Mr. Patrick Donoho, President

Maryland Retailers Association

Representative of the Job Opportunities Task Force

Mr. Jason Perkins-Cohen, Executive Director

Job Opportunities Task Force

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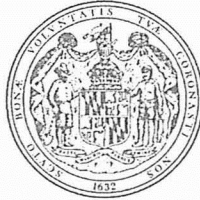
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Chairman & CEO, Sage Policy Group and Senior Lecturer at Towson University

Committee Staff (Department of Legislative Services)

Tami Burt
Laura Atas



MARYLAND GENERAL ASSEMBLY
COMMITTEE ON UNEMPLOYMENT INSURANCE OVERSIGHT

December 14, 2012

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Joint Committee on Unemployment Insurance Oversight respectfully submits a summary report of its 2012 interim activities. The committee met once during the interim (November 28) to consider a number of issues that affect the State's unemployment insurance system. Attached is a summary of the issues that the committee considered.

During the 2013 session, the joint committee may also conduct its annual review of unemployment insurance related legislation and any outstanding issues raised during the interim.

The joint committee is appreciative of the advice and assistance provided by governmental officials, members of the public, and legislative staff during the 2012 interim and looks forward to the same spirit of cooperation and assistance during the 2013 legislative session.

Respectfully submitted,

Thomas McLain Middleton
Senate Co-chair

Emmett C. Burns, Jr.
House Co-chair

TMM:ECB/TDB/tas

cc: Mr. Karl S. Aro
Mr. Warren G. Deschenaux
Ms. Lynne B. Porter

Joint Committee on Unemployment Insurance Oversight Interim Report

At the November 28, 2012 meeting, the joint committee heard from the Assistant Secretary of the Division of Unemployment Insurance of the Department of Labor, Licensing, and Regulation (DLLR) on the status of the unemployment insurance (UI) system. The committee also heard from a policy analyst from the Department of Legislative Services (DLS) and a representative of the Cancer Support Foundation on temporary disability insurance benefits that other states provide to individuals who are unemployed but unable to work due to nonwork-related illness or injury.

Status of the Unemployment Insurance System

Ms. Julie Squire, Assistant Secretary of the Division of Unemployment Insurance, provided the following information on the status of the UI system.

UI Trust Fund Balance and Employer Taxes in Calendar 2013

Ms. Squire explained that, as of September 30, 2012, Maryland's UI trust fund reflected a balance of \$794.5 million – the fifth highest balance of all UI trust funds. The balance of the UI trust fund has fluctuated over the years, growing in good economic times to over \$1 billion in each of calendar 2007 and 2008, and diminishing in bad economic times to a level that required the UI trust fund to borrow \$133.8 million from the federal government in February 2010. Infusion of \$126.8 million of federal modernization incentive funds in May 2010 and repayment of those borrowed funds by December 2010 caused the balance of the UI trust fund to remain at a level that required Maryland employers to pay from the highest tax table from 2010 through 2012. The current balance of the UI trust fund made it possible for employer tax rates to shift to Table C, in which an employer pays an assessment of 1.0% to 10.5% on each employee's taxable wages up to \$8,500. Accordingly, employers will pay from \$85.00 to \$892.50 per employee for calendar 2013.

The main driver of the decline of the UI trust fund in recent years was the increased claims for UI benefits resulting from the economic downturn. Initial claims grew from about 222,000 in calendar 2007 to a high of over 416,000 in calendar 2009. Initial claims began to fall in calendar 2010 to 376,836 and again in calendar 2011 to 345,317. In fiscal 2012 (calendar year data not yet available), initial claims fell to 335,033.

The joint committee expressed an interest in learning whether employer tax rates will change for 2014 as well. Ms. Squire indicated that although it is difficult to predict how the system will look next year, DLLR will have a clearer sense of potential changes starting in January 2013.

Status of the Tax Deferment, Trust Fund Solvency, and Cost-Neutral Modernization Act

Ms. Squire reminded the joint committee that, to qualify for modernization incentive funds, Chapter 2 of 2010 which made several UI system changes, including adopting an alternative base period, making part-time workers eligible for benefits, and providing Workforce Investment Act training benefits for at least 26 weeks in high demand industries.

To offset the cost of expanded UI benefits, Chapter 2 of 2010 also reduced UI benefit eligibility to certain claimants. Specifically, the Act abolished UI benefits for claimants who become ill or disabled and are unable to seek work after filing for benefits due to the illness or disability; increased the disqualification penalty for claimants who are dismissed for misconduct or gross misconduct; and reduced the amount (from \$100 to \$50) of earnings a claimant who becomes partially employed may receive that do not affect a claimant's weekly benefit (called "earnings disregard"). Effective March 1, 2012, the Act increased the minimum amount of qualifying wages an individual must earn during the base period to be eligible for UI benefits from \$900 to \$1,800. Accordingly, the minimum weekly available benefit amount increased from \$25 to \$50, reflecting the current amount available to a claimant with at least \$1,800 in qualifying earnings. The Act also reduced the interest rate charged to businesses that fail to make employer contributions or reimbursement when payment is due and required DLLR to offer payment plan options.

Ms. Squire indicated that all components of the Act have been implemented. In particular, she mentioned that DLLR is authorized to continue offering payment plans, despite the shift to Table C, and explained that interest rates for late payments would increase to 18% per year.

The joint committee requested Ms. Squire to provide a chart that shows the trend of socialized costs (noncharging) since the enactment of the 2010 Act .

Status of the Federal Extended Benefits and Emergency Unemployment Benefits Programs

Ms. Squire discussed that the 2008 federal law established federally funded emergency unemployment compensation benefits (EUC) for 47 weeks for UI claimants who have exhausted regular State UI benefits (26 weeks) for a total of 73 weeks. Under the federal Middle Class Tax Relief and Job Creation Act of 2012, as of June 2012 EUC is comprised of three tiers: Tier 1–20 weeks; Tier 2–14 weeks if the State unemployment rate is at least 6%; and Tier 3–13 weeks if State unemployment rate is at least 7%. Maryland triggered "off" of Tier 3 EUC in June 2012, as the EUC three-month average total unemployment rate had dropped below the 7% trigger. Under the 2012 federal Act, as of September 2, 2012, EUC changed to be: Tier 1–14 weeks; Tier 2–14 weeks if the State unemployment rate is at least 6%; and Tier 3–9 weeks if State unemployment rate is at least 7%. In September 2012, the State was notified by the U.S. Department of Labor that Maryland's latest three-month average total unemployment rate

is 7%. As a result of this current rate, Maryland triggered back “on” to Tier 3 EUC as of Sunday, October 7, 2012. DLLR reported approximately 18,000 new EUC claims and \$156 million EUC benefits paid to claimants in fiscal 2013, through October 2012. The extended benefits (EB) program expires at the end of December 2012.

Once EUC is exhausted, claimants may receive an additional 13 weeks of benefits through the EB program, for a total of 86 weeks of benefits. Until 2010, states with relatively lower unemployment rates like Maryland did not qualify. The federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 made significant changes to the EB program, allowing relatively lower unemployment rate states like Maryland to qualify. Further, under the federal Act, the federal government will reimburse states for 100% of EB costs for weeks of unemployment through December 2012, depending on the state unemployment rate. In Maryland, Chapter 170 of 2011 established an additional “on” indicator based on a State average rate of total unemployment of at least 6.5%, to make UI claimants eligible to receive up to 13 weeks of 100% federally funded EB. Under State law, EB applies to weeks of unemployment beginning after January 2, 2010, and ending four weeks prior to the last week for which 100% federal funding is available. EB may not be payable based on a State “on” trigger established under Chapter 170 for any week of unemployment beginning before October 1, 2011. Since October 1, 2011, approximately 38,000 individuals received \$122 million in EB. As of April 21, 2012, Maryland claimants are no longer eligible for EB because Maryland’s unemployment rate has declined. A mechanism contained in Chapter 170 established a fund that included an appropriation of \$1.6 million to reimburse county and municipal corporations for EB payments that are ineligible for federal reimbursement. The EB program expires at the end of December 2012.

The joint committee discussed that the Maryland UI system will need tweaking if the tax base requirement under federal law is increased from \$7,000 to \$15,000 (a change currently being discussed in Congress). Further, the joint committee requested that Ms. Squire provide statistics regarding the companies with the largest number of layoffs (the concern is with manufacturing companies and how to encourage consumers to buy Maryland products).

Implementation of the Domestic Violence Legislation

Chapter 53 of 2012 authorizes an individual to be eligible to receive UI benefits if DLLR determines that the individual voluntarily left employment because the individual or the individual’s spouse, minor child, or parent was a victim of domestic violence. The Act, which became effective October 1, 2012, requires an individual to (1) provide documentation to substantiate the abuse; and (2) reasonably believe that the individual’s continued employment would present a safety concern. Ms. Squire mentioned that although DLLR has received only one case so far, it is spearheading an awareness campaign that has included a press event with Lieutenant Governor Anthony G. Brown and a flyer that is being distributed through the Maryland Network Against Domestic Violence.

Legislative Audit of the Division of Unemployment Insurance

In September 2012, the Office of Legislative Audits (OLA) within DLS released an audit report of the Division of Unemployment Insurance. The division reduced the number of findings from the previous audit and, for the first time in three audit cycles, did not receive any repeat findings. Ms. Squire characterized the five findings as being “IT-related” and designed to prevent and recover overpayments. Specifically, the first finding recommends that the division access out-of-state wage information that is available through the National Directory of New Hires. Ms. Squire reported that the division is working to implement this recommendation. The second finding recommends additional cross-match procedures through agreements with the Department of Public Safety and Correctional Services (DPSCS), Social Security Administration, Department of Health and Mental Hygiene, and Central Payroll for State employees. Ms. Squire said that the division has already established an agreement with DPSCS and has started to establish a monthly cross match with the other agencies. The third finding recommends that the division improve its claimant address database. Ms. Squire said that the division has begun to make the appropriate changes. The fourth finding identifies a programming error that caused 89 individuals to be mislabeled as qualified hires for 74 employers to claim a Job Creation Recovery Tax credit. Ms. Squire indicated that the division has corrected the error. The fifth finding recommends that the division modify access to specified data files in order to improve security. Ms. Squire reported that the division has already made the suggested changes.

In responding to the findings, Ms. Squire explained that fraud and other reasons can cause improper payment of UI benefits and said that the overpayments referenced in the audit report represent approximately 0.03% of total benefits paid. She mentioned that the division has established a Cross-Divisional Integrity Task Force to discuss ways to reduce overpayments and to present information to employers on cost-containment measures, among other tasks. Ms. Squire reminded committee members that Maryland received a \$6 million grant in 2011 that it shares with Vermont and West Virginia to integrate and modernize computer software.

Conformity and Proposed Legislation

Ms. Squire alerted the joint committee of the need for legislation to conform State law to the federal Trade Adjustment Assistance Extension Act of 2011 in two respects. The first provision of the Act prohibits states from reversing a charge against an employer’s contribution rate when the employer has repeatedly failed to respond to requests for information about new UI claims. Ms. Squire advised that although State law already prohibits “noncharging,” the U.S. Department of Labor told DLLR that the State law is not specific enough. The second provision of the Act requires states to assess a penalty when a claimant is overpaid due to fraud. Ms. Squire indicated that legislative action during the 2013 session is necessary to conform State law to federal law in these respects.

Ms. Squire also referenced a potential additional legislative proposal that would extend the amount of time by which the division may make specified refunds to an employer. She said

that the change could extend the timeframe from three years to four years to align the refund system with all other UI systems in Maryland.

The joint committee anticipates further discussing these legislative proposals during the 2013 session. At the end of DLLR's presentation, a member of the joint committee requested Ms. Squire to provide an update on the Maryland Work Sharing Unemployment Insurance Program. Ms. Squire offered to distribute information to the joint committee at a later date.

Temporary Disability Insurance Benefits for Individuals Unable to Work Due to Cancer – Other States

Ms. Laura Atas, a DLS policy analyst, and Ms. Carter of the Cancer Support Foundation concluded the meeting with a presentation on an alternative benefit that five states and Puerto Rico offer to individuals who are unemployed but unable to work due to nonwork-related illness or injury. DLS conducted research on temporary disability insurance (TDI) benefits over the interim at the request of Delegate Sally Y. Jameson, a member of the joint committee. Ms. Atas presented the information to the joint committee, also at Delegate Jameson's request, to raise awareness about the issue.

Maryland workers who develop cancer oftentimes have difficulty maintaining their jobs, due to the nature of the disease and the extensiveness of the treatments required. Employment contracts and State and federal law may entitle an individual to a complement of benefits such as leave, health insurance, workers' compensation insurance, unemployment insurance, disability, sickness, and temporary disability insurance. Stringent eligibility standards and provisions that mandate the exhaustion or exclusivity of benefits, however, limit access to these benefits. Many unemployed individuals who are receiving treatment for cancer do not qualify for traditional wage replacement benefits. For example, an individual may not receive workers' compensation benefits if his or her cancer is not considered to be a compensable "occupational disease" under State or federal workers' compensation law. Similarly, an individual may not receive unemployment insurance benefits if he or she is unable or unavailable to work.

California, Hawaii, New Jersey, New York, Rhode Island, and Puerto Rico have each established a mandatory disability system that requires employers to provide short-term wage replacement benefits to covered employees who become disabled. TDI laws generally cover commercial and industrial wage and salary workers in private employment, but do not cover domestic workers, family workers, government employees, or self-employed individuals. Some states operate a public fund, while others allow employers to choose whether to purchase TDI through a state plan or a private plan. Common eligibility requirements among the jurisdictions include: period of covered employment before disability, period of consecutive days of disability, loss of wages, medical verification, and nonwork-related nature of illness or injury. TDI programs vary in terms of coverage and structure, but weekly benefit amounts are

universally tied to a claimant's previous earnings in covered employment. The laws specify minimum and maximum weekly benefit amounts that a claimant may receive (between 26 and 52 weeks).

Ms. Atas mentioned that she most closely studied the New Jersey model, which is unique in its offering of two sets of benefits. Under the TDI program, individuals who become sick or disabled during employment or within 14 days of termination are eligible for TDI benefits. Under a separate program called Disabled During Unemployment, individuals who become sick or disabled more than 14 days after the start of unemployment are eligible for DDU benefits.

Some jurisdictions operate a public fund, while others allow employers to choose whether to purchase TDI through a state plan or a private plan. Rhode Island requires employers to insure through the public fund; California, New Jersey, and Puerto Rico give employers a choice; and Hawaii and New York require employers to self-insure or insure through a private plan. In some jurisdictions, the employer is given a choice of whether to require employee contribution up to a certain amount, while in others, employees are required to contribute. New Jersey and New York require employers to contribute to the cost of TDI. Payroll taxes fund administrative costs of public funds. Several jurisdictions levy assessments on private plans to cover administrative costs.

TDI programs in New Jersey, Rhode Island, and California are administered by the same agency that administers the state's UI program, while New York's State Workers' Compensation Board and Hawaii's Department of Labor and Industrial Relations administer their respective programs. The New Jersey Division of Temporary Disability Insurance employs 180 individuals and covers administrative costs based on funds in the public fund. The division reports that several recent legislative changes, which prohibited the legislature from transferring money out of the public fund and tied the employer assessment rate to the fund balance, ultimately caused a reduction in employer assessments. Although the division did not provide an estimate of staffing costs, it identified the cost-per-claim figures as examples of administrative costs. TDI claims cost approximately \$120 each to process. DDU claims, although occurring at lower volumes, involve more complicated law, take longer to process, and cost over \$200 each to process.

None of the jurisdictions limit TDI benefits to individuals with cancer, but the DLS analyst suggested that Maryland could modify one of the models to provide a narrower focus. Potential administrators of a TDI program in Maryland include (1) DLLR, which administers the State's UI benefit program; and (2) the Department of Human Resources, which administers a limited scope temporary disability benefit program to some low-income Marylanders who have filed but not yet been approved for federal disability support.

Ms. Carter provided context on the issue from the disabled workers' perspective. She explained that Maryland has a high cancer incidence and an aging population, which will exacerbate the problem over time. She shared anecdotes from individuals whom CSF has helped and urged the joint committee to support any future legislation to assist cancer patients.

The joint committee anticipates further discussing this legislative proposal during the 2013 session.