2023
Offboarding
Palooza!

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UWC Update:

National, State, and Public Policy

2023

Offboarding Palooza!

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To keep our lawyers happy

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Recording

This webinar is being recorded. You can access it on-demand after the entire Palooza concludes.

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Today's Speakers

Doug Holmes

Speaker

President

UWC - Unemployment

& Workers' Compensation

Dan Tienes

Moderator

Offboarding Leader

Equifax Workforce Solutions

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Legislation and Related Issues

Summary

- Unemployment Insurance Federal and State Law Relationship
- US DOL Office of Inspector General Reports and Recommendations
- Government Accountability Reports and Recommendations
- US Treasury Rules on Use of State and Local Fiscal Relief and Recovery Funds
- President's FY 2024 Proposed Budget
- HR 1123 and S 1587
- Prospects for Legislation Through 2024

Federal/State UI System

- Federal due process requirements for state UI law benefits determinations and appeals (Title III of the Social Security Act).
- Federal requirements for state UI laws for employers to receive offset credits against the Federal Unemployment Tax (26 USC 3301 et. Seq, and [particularly Section 3304).
- State variations in tax base, contribution rates, benefit eligibility and disqualification.
- Current Issues of concern
  - Integrity
  - Access to benefits
  - Increased employer reporting burden – (NJ separation reports; UI quarterly contribution reports)
  - Labor Disputes

US DOL Office of Inspector General Reports and Recommendations

- Office of Inspector General, Office of Audit (dol.gov)
  CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions

- Office of Inspector General, Office of Audit (dol.gov)
  States Struggled to Implement CARES Act UI Programs

US Department of Labor Office of Inspector General Reports and Recommendations

US DOL OIG Report OIG Audit Report - COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or from Payment Delays , No 19-22-006-03-315 (dol.gov) Recommendations

1. Use data collected from monitoring and BAM reports to identify the areas of highest improper payments including fraud and create a plan to prevent similar issues in future temporary UI benefit programs.
2. Require states to have written policies and procedures, which apply lessons learned during the COVID-19 pandemic, to continue eligibility testing and BPC procedures during emergencies or other times of increased claims volume. These policies and procedures should include strategies to pay claimants timely.

US Department of Labor Office of Inspector General Reports and Recommendations

3. Work with NASWA to update the IDH Participant Agreement to require states to submit the results of their UI fraud investigations.
4. Work with NASWA to ensure the IDH cross-matches are effective at preventing the types of fraud that were detected during the pandemic and regularly update using the results of state fraud investigations.
5. Work with the OIG and states to recover the greatest practicable amount of the $7,092,604 paid to claimants connected to likely fraudulent claims.

Government Accountability Office Reports and Recommendations

- GAO-22-105162, UNEMPLOYMENT INSURANCE: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks
- GAO-23-106586, Unemployment Insurance: DOL Needs to Address Substantial Pandemic UI Fraud and Reduce Persistent Risks
- More Fraud Has Been Found in Federal COVID Funding—How Much Was Lost Under Unemployment Insurance Programs | U.S. GAO

President Biden’s FY 2024 Budget Proposal

- The proposed budget is available at budget_fy2024.pdf (whitehouse.gov) and includes highlights in describing UI related provisions
- UI Modernization, Fraud prevention tools and strategies, OIG increase in investigations into fraud rings
- Improve benefit levels and access, Ensuring equity and accessibility,
- Scaling UI benefits automatically during recessions
- Expanding eligibility, Improving State and Federal Solvency
- More equitable and progressive financing
- Expanding reemployment services, Safeguarding the program from fraud

Availability of State and Local Fiscal Recovery Funds for UI Trust Fund Reimbursement

- The Final Rule from the US Treasury with respect to the use of State and Local Fiscal Recovery Funds may be found at SLFRF-Final-Rule-Overview.pdf (treasury.gov)
- Many states used some amount of CARES Act and/or ARPA funds to restore amounts paid out due to the pandemic emergency.
- Under the final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the final rule (January 6, 2022).
- The estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added or subtracted to the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022.
- SLFRF funds under ARPA must be obligated by December 31, 2024.

Availability of State and Local Recovery Funds for UI Trust Fund Reimbursement

- Recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to
- (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus
- (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021.
- Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances.
- Additionally, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that balance and deposit more SLFRF funds, back up to the pre-pandemic balance.

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Availability of State and Local Recovery Funds for UI Trust Fund Reimbursement

- Recipients that deposit SLFRF funds into an unemployment insurance trust fund, or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).
- These requirements were not specified for transfers of funds under the CARES Act.

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Protecting Taxpayers and Victims of Unemployment Fraud Act (HR 1163/S 1587)

On May 11, 2023, the House passed H.R. 1163 the Protecting Taxpayers and Victims of Unemployment Fraud Act, originally introduced by Representative Jason Smith (R-MO), Chairman of the Ways and Means Committee. The bill passed the House with 10 Democrat votes despite a Statement of Administration Policy (SAP) opposing the bill.

Subsequently, Senator Crapo, with 14 original co-sponsors introduced. The text of the bill follows closely with HR 1163. Key provisions in HR 1163 and S 1587 include:

- Incentivizes states to recover fraudulent unemployment payments.
- Allow states to retain 25 percent of fraudulent federal funds recovered: Currently, state workforce agencies have little incentive to pursue costly investigations and prosecutions.
- Allow states to retain 5 percent of state UI overpayments recovered, upon meeting data matching integrity conditions, and dedicating such funds to preventing future fraud – reforms supported by DOL-IG, and in past budget requests by President Trump and President Obama.

Protecting Taxpayers and Victims of Unemployment Fraud Act (HR 1163/S 1587)

Improves program integrity and prevents future fraud.

- Allow states to use funds recovered to improve UI program integrity and fraud prevention:
- Hiring investigators and prosecutors to go after criminals to recover fraud payments;
- Modernizing state systems' ability to verify identity and income in unemployment administration;
- Additional program integrity activities as determined by the state to deter, detect, and prevent improper payments;
- Ensures UI claims are verified against the National Directory of New Hires (NDNH) and the State Information Data Exchange System;
- Stops UI payments to incarcerated and deceased people.

Protecting Taxpayers and Victims of Unemployment Fraud Act (HR 1163/S 1587)

Extends the statute of limitations for civil actions and criminal charges prosecuting fraud from 5 to 10 years, as recommended by the Pandemic Response Accountability Committee in testimony provided to the Ways and Means Committee.

The House Ways and Means Committee provided a detailed explanation of the provisions in the bill and the need for legislation to address identity theft, fraud ring prosecutions and recovery in its report at CRPT-118hrpt34.pdf (congress.gov)

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Business Supports Protecting Taxpayers and Victims of Unemployment Fraud Act

The bill is broadly supported by business associations.

- Recognizes the need to prioritize recovery of UI overpayments, improved communication with employers about identity theft and fraudulent claims, and the crediting of employer accounts
- Permits states to retain a portion of funds recovered to enable administrative funding to continue recovery efforts without relying only on federal appropriations that typically drop with the number of claims.
- Recognizes that fraudulent determinations and overpayment recovery can take longer (particularly if criminal prosecution is involved).
- Adds disincentive for individuals considering filing fraudulent claims.
- Enables more aggressive prosecution of fraudulent claimants.

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LOOKING AHEAD: 2023 AND 2024

Issues on the Horizon:
UT Trust Fund and Management

- Pandemic program phase out and audit resolution
- ARPA SLFRF: improve solvency, integrity, capacity, tax administratio and claimant access
- State Trust fund solvency measures to avoid FUTA increases and interest on loans
- Prepare for next recession
- Prioritize fraud and integrity measures on a permanent basis

Issues on the Horizon:

Benefit Eligibility and Return to Work

- Wyden / Bennet and President’s Proposals to Permanently Increase Coverage and Benefits
- Consideration of PUA-style programs
- Consideration of federal requirement to apply ABC test to define “employment” (Federal Labor Standards Act Rule)
- RESEA implementation: manage funding to reduce duration and reemployment for broader group of targeted claimants
- Consideration of better methods tracking performance from education to jobs.

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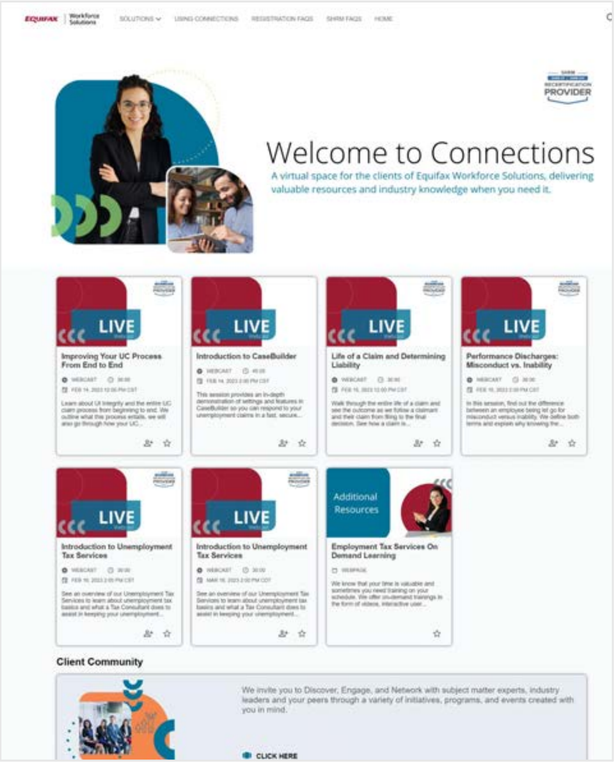
Panel Discussion/Q&A Session

Enabling Improvement with Training

Our goal is to help you optimize your program and maximize your investment by helping ensure you have everything you need to follow proper procedures and streamline your processes.



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