2011 Legislative Changes to Florida Unemployment Compensation Law

Valory Greenfield
Florida Legal Services
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First: the bad stuff they didn’t enact (small comfort)

- Drug testing for UC participants
  - Pilot bill plus statewide bill proposed
  - We did enact drug testing for TANF applicants
- “Community Service” for UC participants
  - Alleged opportunity to network
  - Chance to demonstrate/try-on employer
  - Bills for voluntary as well as mandatory
    - Venues could have been public or non-profits
Two bad provisions weren’t enough; five were just right

- Rule of Liberal Construction watered
- Job Search stricter
  - Online or in-person, no phone
- Misconduct broader
  - Non-work conduct included
  - Conscious, not willful/wanton, disregard
- Hearsay-based finding more allowable
- Skills Review Assessment prerequisite
  - Online, no paper
Context = Technology-driven program without in-person help

- The call centers have been inadequate since before 2008
  - Inordinate wait times, dropped calls, recordings telling people to call-back
  - Yet, it’s the only way to get
    - Official agency information
    - Translations of vital documents like eligibility decisions
    - Special requests
- As of August 2011, the option to report weeks by phone was eliminated
Closer Look at Skills Assessment; a brand new provision

- Fla. Stat. 443.036(26) [definitions]
  - “Initial skills review” means an online education or training program, such as that established under s. 1004.99, that is approved by the Agency for Workforce Innovation and designed to measure an individual’s mastery level of workplace skills.

- Fla. 443.091(1)(c) [eligibility conditions]
  - To make continued claims for benefits, [claimant] is... participating in an initial skills review as directed by the agency.
Theory of SA Requirement

- Initial skills review results reported to the RWB or the one-stop career center as directed by the workforce board.

- RWB uses the initial skills review to develop a plan for referring individuals to training and employment opportunities.

- If individual fails to comply with skills review requirement, s/he will be determined ineligible for benefits
  - for the week in which the noncompliance occurred
  - and for subsequent weeks until requirement is satisfied.
Effect on Benefits

- If all 3 parts not completed within 17 days of applying online, the first “check” will be stopped (never shows up)
- A contact card will be sent telling applicant to call and provide additional information
- A denial notice will be sent stating that disqualification continues until SA done
  - Hearing rights listed on the notice
- Lose ability to report weeks if no appeal
As a Practical Matter

- Claimants not told of the 17 day deadline
  - Just told: do it or benefits delayed/denied
    - English-only notice sent with Wage Transcript
    - Also warned online in 3 languages
- Only a Spanish and English online version
  - No Creole or any other foreign language version
- No online entry point to make affirmative attestation of exemption status
- No online entry point to request disability accommodation
So, First Attack

- Local non-profit center filed civil rights complaint based on language and disability discrimination
  - Miami Workers Center
    - Has filed Amicus briefs on UC issues
    - Organized opposition during legislative session
- Filed with CRC of DOL
  - copy to DOJ
- Press releases sent out resulting in some Florida media coverage plus calls to DOL
  - Putting DOL on the alert from the outset
What Else is Wrong with a state doing Skills Assessments

- Potential impact of SA on continuing eligibility determinations where
  - LEP or illiterate claimants use surrogates to complete skills assessment OR
  - Claimants guess because there’s no “don’t know” selection option AND
  - Agency issues re-determination
    - Job refusal when claimant turns down job RWB refers him to
    - Not “able and available” when claimant limits himself to looking for jobs at levels higher than skills review says are suitable
Does the state have to make the SA meaningful?

- Fla. Stat. 443.091 (1)(c)2.
  - “The workforce board SHALL USE the initial skills review to develop a plan for referring individuals to training and employment opportunities.”
    - Maybe not such a clear right as to any individual, so long as there is an overall plan by a given workforce board?
    - But is there even a plan?

- Yet we could not get a copy via public records act request
  - To see how skills measured
Why worry?

- In 2012, Governor Scott plans to make Skills Assessment meaningful
  - but not in a good way
- Low score on Skills Assessment = [mandatory?] training in exchange for UC benefits
And coming soon?

- “Re-employment Assistance” name change for benefits
  - In lieu of Unemployment Compensation
- Allow garnishment of wages to recover UC OP without necessity of court order
- “Florida Works” on a back, back burner