UI 101: Federal Law and Conformity Issues

Suzanne Simonetta
Chief, Division of Legislation
Office of Unemployment Insurance
U.S. Department of Labor
Overview of UI
Unemployment Insurance Program

- Authorized by Social Security Act of 1935
- Temporary income support to workers unemployed through no fault of their own
- Economic stabilizer during recessionary times
- Operates counter-cyclically
- A federal-state cooperative partnership, based on federal law, but administered by states under state law
Functions of Federal Government

- Ensure state laws conform to federal law
- Provide administrative funds to states
- Set broad policies for administration of program, and monitor state performance
- Invest state UI tax revenues in Unemployment Trust Fund
Functions of States

- Establish program requirements:
  - Earnings and length of employment needed to qualify for benefits
  - Benefit amounts
  - Duration of benefits
  - Eligibility and disqualification provisions

- Devise operational procedures

- Administer program: process applications for UC, determine eligibility, make benefit payments

- Collect state UI taxes from employers
Financing the UI Program
Federal Tax

- Funded by employer-paid payroll taxes – federal and state UI taxes
- Employers are subject to federal tax if pay wages of $1,500 or more during a quarter, or if employ at least 1 worker in 20 weeks of current or preceding year
Financing the UI Program
Federal Tax

Federal tax pays for:

- Federal and state UI administrative costs
- Federal share of extended benefits during periods of high unemployment
- Loans to states
- Benefits for special federal supplemental/emergency programs
- Public employment services and some labor market information activities
Financing the Program
State Tax

- Rate of employer’s UI state tax depends on amount of reserves in state UI trust fund accounts and on employer’s history of laying off workers
- State tax rates vary. Apply to wages ranging from $7,000 - $37,300
- 3 states (AK, NJ, PA) tax employees in addition to employers
- State UI taxes finance benefits to eligible unemployed workers and pay state share of extended benefits
Administer Payment of Benefits and Employment Services

States (UI, ES, VETS, BLS)

UI Trust Fund

Federal

Discretionary Federal Budget

Mandatory Federal Budget

Unemployed Workers

Benefits to Workers

Workers purchase goods and services and obtain new jobs

Employers

States

Taxes

Federal

Administrative Funding

States

Workers purchase goods and services and obtain new jobs
Eligibility

- Prior workforce attachment
  - Wages or hours worked.

- Unemployed through no fault of own
  - Layoff, quit for good cause, or no discharge for misconduct connected with work.

- Able to work and available to work
Scope of UI Program (In General)

- Broad coverage – applicable to 98% of all wage and salary workers in U.S.
- Most states pay regular benefits to unemployed workers for up to 26 weeks.
  - Exceptions:
    - MA pays up to 30 weeks;
    - MT pays up to 28 weeks;
    - AZ and IL pay up 25 weeks;
    - FL pays up to 12-23 weeks (depends on unemployment rate); and
    - MI, MO, and SC pay up to 20 weeks.
- An additional 13 to 20 weeks of Extended Benefits may be paid in periods of very high and rising unemployment
  - Funded 50% state funds and 50% federal funds.
Average Weekly Benefit Amount (AWBA) varies by state

- national average $295

AWBA represented about 33% of average weekly wage.

Average duration of regular UI benefits – 18 weeks.
Federal UI Law "Requirements"
Approval for Tax Credit

- States must:
  - Pay compensation through public employment agencies or other approved agencies;
  - Deposit all funds into the Federal unemployment trust fund (UTF);
  - Withdraw money from UTF ONLY to pay unemployment compensation, refund amounts erroneously paid into the fund, or other specified reasons;
Approval for Tax Credit

- States must:
  - Not deny compensation because a claim is filed in another state or Canada;
  - Pay EB under provisions of Federal-State Extended Unemployment Compensation Act of 1970; and
  - Reduce tax rates for employers **ONLY** on the basis of their experience with respect to unemployment (additional credit).
Approval for Administration Grant

- **States must provide:**
  - Methods of administration which will insure full payment of UI when due;
  - Fair, impartial hearings to individuals whose claims for UI have been denied;
  - Reports required by the Secretary of Labor;
  - For limitation of expenditures for proper and efficient administration of the state UI law **ONLY**;
Approval for Administration Grant

- States must provide:
  - For establishment and use of a system of profiling new claimants to identify those likely to exhaust benefits & need job search assistance; and
  - A requirement that, as a condition of eligibility, claimants participate in reemployment services if referred under the profiling system.
UI Conformity Issues
Conformity Issues: Fact or Cause

- 1964 Secretary’s decision on means testing UI in SD:

[I]t was the intent of Congress to create a social insurance system under which entitlement to benefits was a **matter of right** on the part of those who became involuntarily unemployed because of **lack of work**, e.g., laid off from work or otherwise unemployed through no fault of their own, and who are able to work and available for work, but who are unable to find suitable work. In short, what Congress was prescribing was wage insurance for the relief of the unemployed, to compensate for wage loss resulting from unemployment due to lack of work, **without regard to any . . . criteria of entitlement having no reasonable relationship to ‘unemployment.’**
Conformity Issues: Fact or Cause

• Individuals’ eligibility must be determined solely on the fact or cause of their unemployment.

• Conformity issue if states would require, as a condition of eligibility for the receipt of UC, that an individual:
  √ Pass a drug test.*
  √ Take a skills evaluation.*
  √ Impose a means test.
  √ Perform community service.
  √ Be current in child support or other financial obligations.
  √ Meet any other requirement not related to the “fact or cause” of the individual’s unemployment.

* Such provisions, under certain circumstances, may be permissible as conditions of continuing eligibility.
Conformity Issues: Cancellation of Wage Credits/Total Reduction of Benefit Rights

- **Section 3304(a)(10) FUTA:**

  Compensation **shall not** be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than **discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income.**

- **Conformity issue if overly broad definitions of misconduct.**

  - E.g., inability to perform the work, or arrest for a crime not related to the individual’s employment or not while working (i.e., non-work related DUI, drug use, etc.).
Conformity Issues: Seasonality

- Restriction of payment of UC to workers earning wages in seasonal employment is NOT a cancellation of wage credits since it only limits use of wages to a specific period of time.

- However, if a state were to restrict the use of wages earned in non-seasonal employment there would be an issue.
Conformity Issues: Tax Credits

- 3303(a)(1) FUTA requires, as a condition of employers receiving credit against the FUTA tax, that employers’ SUTA tax rate be based on their “experience with respect to unemployment or other factors bearing a direct relation to unemployment risk…”

- Credits against SUTA tax liability are tantamount to a reduction in taxes.

- If the credit has no relation to employers’ experience with unemployment (e.g. hiring an individual who received UC), there would be an issue.
While Federal law requires, as a condition of receipt of FUTA tax credits, states to experience rate employers when determining their SUTA rates, states are not required to charge all benefits to individual employers’ accounts. (See UCPL 78.)

Determination of employers’ risk of unemployment is the guiding principle when determining whether non-charging is permissible.

- E.g. states may non-charge if unemployment is the direct result of a worker’s action, or is beyond the direct or indirect control of the employer except when unemployment is due to general economic, trade, or other business issues.
Contact Information

Suzanne Simonetta
(202) 693-3225
simonetta.suzann@dol.gov