
National Employment Law Project
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Overview

- Part I - The Extensions and Reemployment Services
- Part II - New State Program Mandates and Options
  - Overpayment Requirements
  - Drug Testing Option
  - Wage Subsidy Demonstration Project
- Part III - New State Funding Opportunities
  - Short-Time Compensation
  - Self-Employment Assistance
H.R. 3630

- The Middle Class Tax Relief and Job Creation Act of 2012
  - Title II Unemployment Benefit Continuation and Program Improvement
  - Sections 2001-2184
  - Unemployment Insurance Program Letter 04-10 Change 9 (March 5, 2012)
  - Unemployment Insurance Program Letter 20-11 (March 16, 2012)
Emergency Unemployment Compensation (EUC08) and Extended Benefits (EB)

• EUC08 Program reauthorized from March 1, 2012 through January 2, 2013.

• New Law gradually adjusts rates at which states trigger on to EUC tiers as well as the number of weeks available in certain tiers.

• By leaving 3-year look back feature in place, states trigger off EB program (final 13-20 weeks) between now and October.
March to May

- Current EUC Configuration remains the same
  - EUC Tier 1 – 20 Weeks (All States)
  - EUC Tier 2 – 14 Weeks (All States)
  - EUC Tier 3 – 13 weeks (6.0% TUR)
  - EUC Tier 4 – 6 weeks (8.5% TUR)
- Special Rule: States on Tier 4 EUC but EB program triggers off or inactive qualify for up to additional 10 weeks of Tier 4 benefits (States likely to fall in this category: AZ, CA, FL, GA, KY, IL, IN, MI, MS, NC, OR, RI, SC, TN, WA)
June to August

- Changes in Unemployment rate triggers
  - Tier 1 – 20 weeks (All States)
  - Tier 2 – 14 weeks (6.0%)
  - Tier 3 – 13 weeks (7.0%)
  - Tier 4 – 6 weeks (9.0%)

- Nearly all states triggered off EB by August

- Special 10-week supplement for Tier 4 states no longer available
September to December

- Changes in the number of weeks available in each tier:
  - EUC Tier 1 – 14 weeks (reduced by 6)
  - EUC Tier 2 – 14 weeks (same)
  - EUC Tier 3 – 9 weeks (reduced by 4)
  - EUC Tier 4 – 10 weeks (increased by 4)
- No Phase-out: Final week of EUC payable is the week ending December 29, 2012
## Number of UI Benefit Weeks: Current Law Compared to HR3630

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<th>Current Law</th>
<th>Congressional Proposal (Required unemployment rate in parentheses)</th>
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<td>March to May</td>
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<td><strong>Regular State Benefits</strong></td>
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<td><strong>Emergency Unemployment Compensation</strong></td>
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<td>Tier 1</td>
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<td>Tier 2</td>
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<td>Tier 3</td>
<td>13 (6.0%)</td>
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<td>Tier 4</td>
<td>6 (8.5%)</td>
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<td><strong>Extended Benefits</strong></td>
<td>13 (6.5%)</td>
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<td>20 (8.0%)</td>
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<td><strong>Maximum Number of Weeks</strong></td>
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Non-Reduction Rule Preserved (Sort of)

- Non-reduction rule prohibited states from changing the formula for calculating UI benefits in a way that would reduce the average weekly payment so long as the state had an EUC08 agreement with the Secretary of Labor.
- A handful of states made state law changes that will result in reductions in average weekly benefits effective July 2012.
- Section 2144 effectively authorized these changes (and held those states harmless) if changes enacted before March 1, 2012.
- Non-reduction rule otherwise continued and states prohibited from law changes that reduce average weekly benefit through the end of 2012.
New EUC Work Search Requirements

- Prior to new law, applicable state law work search and employment service requirements applied to EUC claimants
- New law requires that all EUC claimants be:
  - Able to work
  - Available for work
  - Actively seeking work
“Actively Seeking Work” Defined (EUC)

○ Actively seeking work means:
  ○ Registered for employment services in such manner as prescribed by state agency
  ○ Engage in active search for work appropriate in light of employment available in light of employment available in labor market, individual’s skills and capabilities, and includes number of employer contacts consistent with standards communicated to individual by state
  ○ Maintain record of work search (including employers contacted, method and date contacted)
  ○ Provide work search record upon request to state
EUC Active Work Search

- For UI claimants typically placed through union hiring halls, union requirements may satisfy EUC active work search requirement
- States may still require no employer contacts if claimant is job-attached (short-term layoff or specific return-to-work date)
- States required to provide notice of new work search requirement to all EUC claimants
- USDOL will prescribe for each state a minimum number of EUC claims for which work search must be audited each week.
Reemployment & Eligibility Assessments (REA) and Reemployment Services (RES)

- States must provide in-person reemployment and eligibility assessments (REA) to workers establishing new EUC Tier 1 or Tier 2 claim after March 23, 2012.
- Participation in REA/RES activities is eligibility condition for week in which individual is referred.
- However, state can waive requirement if claimant previously participated or there is justifiable cause for failure to participate.
REA and RES

- **Required REA activities:**
  - Provide labor market & career information
  - Assess individual’s skills
  - Orientation to services of One-Stop Career Center
  - Review eligibility related to job search activities

- **Optional Reemployment Services**
  - Specialized Assessments
  - Counseling
  - Training services
  - Individual reemployment plans
Seven More Things to Remember About the REA/RES Requirements

1. Notice given by 3rd week of eligibility; scheduled by 6th week.
2. Services must be in-person but can be delivered in groups.
3. State can provide REA/RES remotely where in-person requirement would impose hardship on claimant.
4. USDOL says states should exercise some flexibility in rescheduling.
5. States should be using work search logs that can be completed in advance of REA interview.
6. States must adjudicate failure to report for REA and disqualification applies until claimant reports.
7. Justifiable cause for failure to report/participate generally tracks state good cause definition but may consider similar prior services.
Part I

Questions
EUC Overpayments – Key Worker Protections Preserved

- The new law removes the 50% cap on EUC overpayment collections from weekly benefits.
- Waivers of overpayments still permitted in cases of equity and good conscience (DOL Guidance).
- States can’t collect until the claimant has had a opportunity for a hearing and the decision is final (DOL Guidance).
State UI Overpayments – Key Worker Protections Preserved

- Amends federal law to say states “shall” recoup state UI overpayments, not “may.”
- Consistent with DOL’s EUC guidance, states can continue to waive overpayments in hardship cases.
- The new law does not prevent the states from also partially offsetting overpayments against future benefits (NELP Position).
Drug Testing – Narrowly Limited

- Drug testing provisions require DOL regulations, including notice and comment.
- Drug testing limited to two situations:
  1. Claimant terminated from most recent employment because of unlawful use of controlled substances.
  2. Claimant for whom suitable work is only available in an occupation that regularly drug tests.
Drug Testing – Key Restrictions

- Three criteria limit drug testing under the suitable work restriction.
  1. Is the position suitable to the worker, as defined by state law?
  2. Is the suitable position in an occupation that regularly drug tests, meaning on-going testing, not just on a one-time basis.
  3. Is the only suitable position one that regularly drug tests or are there other suitable positions?
Wage Subsidy Demonstrations – The Basics Features of the Program

- The initiative is limited to wage subsidy programs, not other state experiments.
- DOL can approve 10 state applications, waiving federal laws that now prevent states from diverting UI funds for other purposes.
- The state programs can’t last more than three years and must be evaluated.
Wage Subsidy Demonstrations – What Programs are Covered?

- UI benefits can subsidize two types of programs that expedite reemployment of people collecting unemployment benefits:
  1. A wage subsidy provided directly to the worker.
  2. A subsidy provided directly to an employer.

- UI benefits cannot be used for other programs, including “training”, “wage insurance,” etc.
Governors submit applications to DOL, which detail the following:

1. The justification for a waiver of the federal law to operate the program.
2. The goals and outcomes that contribute to reemployment of people collecting UI.
3. Assurances that the program will not result in any “increased net costs” to the state’s UI fund.
5. Assurances that the program will comply with the worker protections.
Wage Subsidy Demonstrations – The Key Worker Protections

The Express Statutory Restrictions:

1. All the jobs created by the wage subsidy program must meet the state’s suitable work requirement.
2. All the jobs created meet the federal “prevailing conditions of work” requirement, meaning the wages, benefits and working conditions can’t fall below the standard for similar work in the community.

Additional Worker Protections:

1. Strict compliance with FLSA’s minimum wage and overtime rules.
2. Voluntary, not mandatory, participation.
3. Protections against displacement or interference with collective bargaining rights of the employer’s workforce.
4. No reductions in UI benefits during or after completion of the wage subsidy program.
Part II

Questions
Work-Sharing (Short-Time Compensation)

- Work-sharing (STC) option within state-federal UI system for employers to reduce hours instead of laying off workers
- Example: Instead of one worker being laid off and filing for UI, 5 workers take 20% reduction in hours and each collect 20% of weekly UI benefit.
- Currently 23 states and DC have active work-sharing programs.
HR 3630 Promotes Expansion of STC

- New Law clarifies federal requirements and establishes federal definition of STC to which state laws must conform.
- HR 3630 provides financial incentives (100% reimbursement of STC benefits) for states to enact conforming STC laws and to expand existing work-sharing programs.
- Provides option/incentive for entering agreement with USDOL to operate temporary federal work-sharing program (50% reimbursement of STC benefits).
- Provides $100 million in additional grants for start-up and implementation, improvements in program administration and increased education and outreach to employers.
Required Elements of STC Program

• Employer participation is voluntary.
• Employers reduce employee hours in lieu of layoffs.
• Employees whose hours are reduced by at least 10 percent but not more than 60 percent are not disqualified from unemployment compensation.
• Employees receive a pro rata share of the unemployment benefits that they would have received if totally unemployed.
• Employees meet work availability and work search requirements if they are available for their workweek.
Required Elements of STC Program

• Eligible employees may participate in appropriate training approved by the state UI agency.

• Employers are required to certify that, if health and retirement benefits are provided, those benefits will not be reduced due to participation in STC program.

• Employer must submit a written plan to the state UI agency describing how it will implement STC requirements (including a plan to give advance notice, where feasible, to employees whose workweek will be reduced), as well as estimate of the number of layoffs that would have occurred but for STC.

• The employer’s plan must be consistent with employer obligations under applicable federal and state laws.
Self-Employment Assistance

- Self-Employment Assistance (SEA) program encourages unemployed workers to start their own small businesses. States can pay a self-employed allowance, instead of regular UI, to help unemployed workers while they are establishing and getting a new business off the ground.
- Currently 7 states (DE, ME, NJ, NY, OR, PA, WA) have active SEA programs.
- Individuals may be eligible for up to 26 weeks of SEA even if they are engaged full-time in self-employment activities - including entrepreneurial training, business counseling, and technical assistance.
Self-Employment Assistance

• Subtitle E (Sections 2181-2184) based on START-UP Act sponsored by Sen. Wyden

• Authorizes up to 26 weeks of SEA benefits to eligible claimants receiving EUC and/or EB if UI agency has “reasonable expectation that individual will be eligible for at least 13 weeks of benefits.

• Authorizes $35 million in SEA grants for:
  – Improved administration of existing programs
  – Development, administration and implementation of new programs
  – Promotion of SEA programs and enrollment of unemployed workers
Other Changes

• FUTA amended to require that all state UI laws include requirement that “claimant must be able to work, available to work and actively seeking work”
  o All state UI laws have provisions that include these requirements
  o “Actively seeking work” definition for state UI purposes controlled by state law, not EUC definition
  o Expect existing exemptions (job attachment) to continue

• Order of Payment: EB must always follow EUC
What’s Next?

- Already Issued: Guidances on EUC/EB & REA/RES
- More Operating Guidances on STC (including how to enter agreement for new federal program) & SEA
- Guidance on Subsidized Employment Demonstration Project Application Process
- Model Legislative language: STC, SEA, FUTA conformity (work search & overpayment language)
- Drug Testing regulations: occupations that regularly conduct drug testing
Part III

Questions
For More Information

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