NELP NATIONAL EMPLOYMENT LAW PROJECT

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AI is New. The Challenge of Mass Unemployment Isn't.

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Introduction

As employers begin to use artificial intelligence (AI) to replace significant segments of the workforce, policymakers and advocates need to seriously consider what an effective response to the next economic downturn should look like.

We do not have to know what the scale and pace of AI displacement might be to act. Workers may be laid off, their work might change substantially, while other dislocations could shutter entire industries or occupations.

We are already seeing jobseekers struggle to find reemployment in this economy, and AI could only exacerbate these challenges. Preparing for this possibility requires that policymakers ensure that workers maintain economic security while they are unemployed and have quality assistance to successfully transition back into the workforce.

The pandemic unemployment crisis offers a recent test of whether our unemployment insurance (UI) system can respond when mass job displacement happens, and a warning against waiting until a crisis is underway to build the systems we need to aid people affected by that crisis.

Years of neglect and sustained attacks aimed at reducing workers' access to UI led to the threadbare system we have in most of the United States. Any response that offers merely a patchwork of partial solutions will be akin to building a house on a broken foundation. If AI causes mass job disruption, we will need a fully functional UI system ready to go. We still have a narrow window where we can break the cycle of never fixing UI outside of a crisis. The current system excludes far too many workers, particularly those who are already the most vulnerable.

In 1980—nearly 50 years ago—the bipartisan National Commission on Unemployment Compensation published recommendations to fix UI. Similar findings were published by another bipartisan commission in 1996. Federal legislation has been introduced that adopts most of these ideas—if Congress were to pass it, we could avoid the otherwise inevitable catastrophe for workers in the event of another major economic downturn.

This policy brief makes the case for comprehensive UI reform by looking at why layering a new system on top of the existing one won't work. By examining our response to mass unemployment during the COVID-19 pandemic, when lawmakers introduced a patchwork of new programs instead of undertaking the challenging work of fundamental UI reform, we can see how a piecemeal approach is not the answer.

What We Can Learn from the Pandemic

In March 2020, NELP was thrust into the center of a sudden unemployment crisis of historic proportions. We knew that the unemployment insurance system was broken. We knew it was not in shape for another recession.

As the COVID shutdowns hit, initial unemployment claims skyrocketed from 211,000 per week (about what we see now in 2026) to 6.6 million—nearly ten times more than the previous one-week initial claims record—695,000 in October of 1982. By the time the pandemic unemployment crisis hit, it was too late to consider the kinds of sweeping reforms recommended by past bipartisan commissions.

Congress had to deal with the fact that too few people had access to unemployment insurance, that benefits didn't last long enough, and did not replace enough prior income. So, Congress added three new programs to address those problems: a new eligibility program, Pandemic Unemployment Assistance (PUA); additional weeks of eligibility, Pandemic Emergency Unemployment Compensation (PEUC); and a top-up of weekly benefits meant to approximate 100 percent income replacement, Federal Pandemic Unemployment Compensation (FPUC).

Within days of passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES) the U.S. Department of Labor (DOL) issued initial guidance to states on how to administer these new programs. As states implemented the programs, inconsistencies and questions emerged that prompted DOL to revise that guidance multiple times.

While this paper details the challenges associated with those new programs, it is critical to note that, at their core, they were remarkably successful: they saved lives and livelihoods and saved the economy. Largely because of historic economic interventions like the pandemic unemployment programs, the deep economic shock of the pandemic was relatively short-lived, the economy began to rebound quickly in May of 2020, and 53 million people were paid $850 billion in aid they needed to meet basic needs in a crisis.

Emergency Expansion on Top of a Fragile System

Backed into a corner by an unprecedented economic emergency, creating these new programs was the only real option Congress had. Prior to the CARES Act, Congress had provided states with $1 billion in additional UI administrative funding in the Families First Coronavirus Response Act (FFCRA). That turned out to be too little too late for states to manage the onslaught of new regular and enhanced claims.

Few remember the massive breakdowns that occurred in April 2020, but early in the pandemic, nearly every computer system crashed under the strain of processing massive numbers of claims and adding new programs. The human toll was also devastating. The people in state UI agencies tasked with processing claims were suddenly working inhuman hours, often newly learning how to manage teleworking.

From early morning until sometimes late at night, state workers heard stories of desperation, financial ruin, suicidal ideation, and sometimes even direct threats. In one state, a Molotov cocktail was thrown into a UI agency worker's car. Workers' family members were even stalked and threatened.

Fraud, Overpayments, and Administrative Complexity

By May, international crime rings discovered the new benefit programs and began flooding them with fake claims. While the primary concern in March and April was getting benefits to claimants quickly, safeguards against bad actors were a lower priority in the rickety legacy UI systems that had been neglected for decades. Now, however, states needed to pivot quickly—in some cases stopping all benefits entirely for a period of time to figure out how to block malicious fraudsters.

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Expiration, Extension, and the Cost of Congressional Uncertainty

The expanded weekly benefit of $600 per week was widely blamed for an alleged unwillingness of recipients to work and was allowed to expire in July 2020. Debate over an extension grew heated. At the beginning of August, with a compromise of $400 per week on the table, key White House negotiators left for vacation.

Then, on August 8, President Trump signed a memorandum announcing a new program called Lost Wages Assistance (LWA) which theoretically would provide a $400 weekly top-up to claimants receiving at least $100 per week in regular state or other unemployment benefits, with FEMA paying $300 and states the remaining $100.

States and experts doubted the feasibility of the program as states had no funding to pay their portion. The administration then announced that states could count regular UI benefits as their "match." This again created significant administrative difficulty.

On September 5, when less than half of states had even gotten Trump's LWA up and running, it ran out of funding and ended. Of all of the confusion during the pandemic, this program epitomized the problem of hastily rolling out a new emergency program that states had to scramble to implement and that added uncertainty and confusion for claimants.

Congressional wrangling continued. On October 1, the House passed a $2.2 trillion stimulus package which would have extended Federal Pandemic Unemployment Compensation (FPUC) at $600 per week. Then, on October 13, the administration offered a $1.8 trillion package which would extend all pandemic UI programs, including FPUC at the lower $400. This was not acceptable to Senate Majority Leader Mitch McConnell, who envisioned a $500 billion plan. Neither went far enough for House Speaker Nancy Pelosi after her chamber had just passed a larger package with more substantial benefits.

At this point, millions of people were due to lose benefits altogether by the end of the year, but the lame duck Congress stalled in negotiations. With the $600 FPUC expired and its return appearing unlikely, benefits for the millions eligible for Pandemic Unemployment Assistance (PUA) were on a collision course with a December 31 deadline.

Also in October, states started sending overpayment notices to PUA recipients. Overpayments were an unanticipated issue in March, and since PUA was based on the administrative structure of Disaster Unemployment Assistance (DUA), no waiver of overpayment was allowed. However, due to questions that states had about operating the program, issues arose that resulted in overpayments for people who had been correctly paid but for whom some administrative detail was incorrect.

For example, several states only asked about COVID-19 as the reason for unemployment on the initial claim. In the fall, the DOL notified states that they had to know what the reason was for each week people were unemployed. States then had to go back to everyone who had received PUA all year to find out what the weekly cause was for each week. People who didn't respond had to be considered "overpaid" even if they did not receive notice of this new requirement.

Another common misunderstanding was that because PUA is based on DUA, the PUA amount would update quarterly the way DUA does, so states updated minimum PUA amounts quarterly. However, they were supposed to have used the PUA amount published at the onset of the pandemic throughout the duration of the program—so all of those claimants could have been "overpaid."

Finally, on December 14, 2020, a bipartisan $908 billion package passed. Hours before the payment lapse deadline, on December 27, President Trump signed the Continued Assistance Act (CAA), which extended PUA and PEUC until March 14, 2021, and extended FPUC at a reduced rate of $300 per week while adding a $100 per week Mixed Earners Unemployment Compensation program (which some states never set up, despite signing agreements to do so) for workers who were eligible for a small amount of UI benefits but had the bulk of their income non-UI covered. The CAA also allowed for PUA overpayment waivers, exempted the first $10,200 of UI benefits from federal tax, and added requirements that claimants verify their unemployment and that states have some form of identity verification in place.

Finally, it fixed an issue that tends to come up during prolonged recessions—it allowed states to keep paying benefit amounts based on the original weekly benefit determination rather than setting a new benefit year amount using the meager wages people might have been able to pick up here and there. This just-in-time extension, nevertheless, caused a pause in benefits while states reprogrammed their systems. The disruption and uncertainty took an enormous toll on people, with many unsure whether they would be able to make ends meet in the new year. This was especially hard on displaced workers who had no savings to fall back on.

Challenges Facing a New Administration

In January 2021, on the first day of the new Biden administration, the president issued an Executive Order directing the DOL to ensure that workers could refuse unsafe work and still be eligible for unemployment benefits. This partially answered the question of what constitutes "suitable work" during an ongoing public health crisis.

An early issue for the Biden administration involved the taxation of UI benefits. Due to widespread identity theft fraud, by the time Biden took office, tens of thousands of workers had gotten 1099G forms for unemployment benefits they never collected. Many more may not have gotten a 1099G, but after they filed their taxes received a notice that they had unreported income. The administration immediately had to figure out how to prevent innocent people who had been impersonated by criminal fraudsters from getting hit with a tax liability and inform people what to do if they received improper forms.

On March 12, 2021, the American Rescue Plan Act (ARPA) was signed into law, extending all CARES Act unemployment provisions to September 6, 2021, but with a smaller $300 FPUC. The measure also provided DOL with $2 billion in funding to fight fraud and promote timeliness and equity. Congress understood that legitimate claimants were struggling to receive benefits, while bad actors were successfully pilfering money meant for those still struggling during the pandemic. While funding to improve benefit delivery was necessary in the moment, a large one-time lump sum was never going to fix the massive systemic problems that led to the crisis states and claimants found themselves in during the pandemic-induced recession.

The relationship between the COVID duration extension (PEUC) and the regular Extended Benefits (EB) program that provides additional weeks of benefits during periods of high unemployment, had always presented a challenge. PEUC applied to most people who exhausted regular weeks of unemployment; but people in states with fewer than 26 weeks of eligibility or those who were unemployed before the pandemic then moved into EB. When PEUC was extended, that added confusion about claimants already on EB. The DOL had to issue guidance clarifying that anyone who had begun collecting EB for any week of unemployment prior to the signing of ARPA had to exhaust EB first and then move back into PEUC.

While this effectively had little material effect on claimants, as the weekly benefit amounts were the same, the confusion for states and claimants after a year of struggle was not insignificant.

Over the next couple of months, the DOL launched www.dol.gov/fraud, a single landing page for claimants and victims of fraud to report fraud in their states. The department also sent out refining guidance about working with banks to recover fraud dollars and instructions to states about implementing and running identity verification measures. This brief will not attempt to include every piece of guidance issued on fraud detection and prevention, but it is important to note that several more sets of guidance were issued and they came out often over the course of the next few years.

The Politics of Benefits and Return to Work

As early as April 2020, Republican governors began issuing demands that workers return to work or lose benefits, foreshadowing a two-year debate about workers' willingness to work and what constitutes suitable work during a deadly global pandemic.

On May 4, 2021, Montana announced it would stop paying pandemic unemployment benefits, sparking a red-state wave of similar announcements over the next several weeks. This was exacerbated by the May 7 jobs report showing an exceptionally lackluster April labor force participation rate of 61.7 percent. On May 10, the White House issued a fact sheet and, in a public address announcing emergency measures to improve labor force participation, President Biden included comments clarifying that workers must accept suitable work, encouraging states to fully restore work search requirements, expanding Reemployment Services and Eligibility Assessment (RESEA), encouraging Workforce Development Boards to offer in-person services, highlighting work sharing—also known as Short Time Compensation (STC)—and clarifying that work sharing can be used to bring workers back, rather than only to avert layoffs. The DOL issued new guidance further clarifying how STC could be used by employers to bring back former workers at reduced hours. Had employers known about and fully utilized this tool from the start of the pandemic, it might have dramatically improved the conversation about why workers might not be returning to their old jobs.

Because the Continued Assistance Act allowed states to waive Pandemic Unemployment Assistance overpayments if the claimant was not at fault and for reasons of equity and good conscience, on May 5, 2021, DOL issued guidance on PUA overpayment waivers and allowed states two extremely narrow circumstances under which blanket waivers could be applied: in cases where the state had been using the minimum DUA amount, which changes over time, versus the minimum PUA amount which was set at the start of the pandemic; and in cases where states had paid PUA based on net instead of gross wages.

What the Pandemic Programs Teach Us

The programs, meanwhile, ended with little fanfare in September 2021. The challenges described in this brief are merely a highlight reel of some of those that both states and the federal government faced in administering these programs. Within the DOL, new questions and complexities arose on a daily if not hourly basis. Nearly every day, a state UI agency would realize they may have made a mistake which could mean people were paid or denied benefits improperly. Claimant advocates were justifiably frustrated by all the uncertainty, not to mention the difficulties in addressing slow initial payments, clarifying misunderstood questions, and helping claimants—many of whom were properly paid—clear up overpayments.

Anyone who played a role in UI during the pandemic was at least overburdened if not overwhelmed by the sheer intensity of having to do something entirely new on a grand scale with no lead time.

Fixing UI for the Future

The Biden administration did a great deal of work to clean up issues that arose during the pandemic and did what it could to help states administer benefits more smoothly. But Congress cut funding for those efforts by half in 2023, and last year the Trump administration clawed back funding that had already flowed to states. Paper after paper has been written since the COVID-19 unemployment crisis detailing how unemployment systems are still unprepared for any mass displacement of workers, whether caused by AI or an unforeseen financial or economic crisis.

From Unemployment to Reemployment

Looking at the prospect of mass unemployment due to a shifting economy, one might automatically think that we should be retooling our training systems to adapt to the changes. However, those familiar with the successes and challenges of our current system look at this differently. Jacob Leibenluft has published a thorough look at Trade Adjustment Assistance, its complexities, and its inability to meet the moment. Similarly, Molly Kinder's Substack titled "We Can't Train Our Way Out of AI's Economic Disruption" lays out a compelling argument that "we have to *create* jobs that people want, not just retrofit workers to chase them." While we need to be thinking big about shaping the economy in a way that works for workers, I would like to re-introduce an old concept—one that would serve workers better than signing massive numbers up for lengthy training programs: the Employment Service.

Why Restore the Employment Service?

Although it once played a major role in the unemployment/reemployment ecosystem, the federal-state Employment Service (ES) is now a vastly under-resourced program that has served as a solution for people who find themselves out of work and want some help getting back into a good replacement for their old job. It was established by the Wagner-Peyser Act of 1933, prior to the 1935 passage of the Social Security Act which created unemployment insurance. People who apply for UI must also register with ES, which serves as a public resource for jobseekers. ES has recently surfaced in the public debate regarding whether such programs should be staffed with well-qualified public servants selected on the basis of merit.

In his book "Solving the Reemployment Puzzle," Stephen Wandner, along with David Balducchi, lays out the long road to dismantling ES, particularly during the early 2000s, often paved with institutional skullduggery and intrigue. Wandner and Balducchi, both former senior DOL officials, have long made the case that it has been a huge mistake to bury evidence demonstrating the effectiveness of ES in order to privatize its functions and shift focus to less cost-effective job training strategies. Both experts have been advocating for restoring ES for many years, including by reinstating the U.S. Employment Service as a separate agency within DOL's Employment and Training Administration.

I have learned from surveying several states on fraudulent activities that one of the most pernicious trends is for fraudsters to set up fictitious "employers" who pose as a place for workers to apply for jobs. Through those job applications, they gain information about unemployed workers that allows them to hijack their claims. I have also spoken to unemployed workers who are frustrated by legions of recruiters running scores of applicants through lengthy screening and interview processes.

This is a phenomenon that was familiar to a USA Today reporter on the labor economics beat that I spoke with recently. On top of a confusing hiring process for openings that actually exist, the rise of ghost jobs is wasting time that unemployed people cannot afford to lose. This isn't only unfair to the unemployed; it's also a tactic specifically designed to intimidate current workers. This job market is especially difficult to navigate for folks on the lower end of the income spectrum.

State workforce agencies have extraordinarily sophisticated labor market information shops. They track unemployment data, wages, areas and industries currently experiencing growth and loss, and even make long-term projections about growing and declining industries. Employers use this data all the time, but workers often lack access to that kind of information. They should have access to services from knowledgeable government employees who can use this information to help guide them in their search for good jobs.

Imagine a world where the day after a worker loses their job, they had a place to go where a trusted government worker would have a serious conversation with them about their skills and help them make an assessment about where they might be able to reframe their current skills from a job that is on the way out to a more rewarding opportunity. A place they could get help avoiding fake scam "employers" on the internet and navigating tough hiring practices. And imagine when the government worker in that place has access to sophisticated labor market information that they can use to help workers understand workforce trends, giving them the same power in their own lives that employers already have.

That place exists already—within our state workforce agencies—but it has been buried and underfunded for decades: the U.S. Employment Service.

What we need to do now

Rather than learning how to build a better emergency response, we should actually be prepared for any kind of economic downturn. As noted earlier, in 1980 the bipartisan National Commission on Unemployment Compensation assembled a list of recommendations and suggestions to fix UI. Sixteen years later, the bipartisan Advisory Council on Unemployment Compensation put forward another set of recommendations. Those proposals, along with a discussion of current UI reform ideas, are included in the Final Report of the National Academy of Social Insurance Task Force, published in 2024.

Senators Ron Wyden and Michael Bennet and Representative Don Beyer have introduced legislation similar to the findings of those past bipartisan commissions, with a few newer ideas that have been widely vetted that address the changing nature of work in the 21st century. Martha Gimbel at the Yale Budget Lab recently published a thoughtful piece on this point. There is no creative workaround to avoid passing such legislation if we want an economy that can survive another mass unemployment crisis.

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We have a well-vetted solution that mirrors bipartisan recommendations dating back nearly 50 years. We know how to truly fix the UI system—by building a new one without the current system's flaws. We need to make it happen.

When it comes to finding new work, what unemployed people need is less retraining and more reframing of their skill sets. That's why bold public policy is needed to reimagine an economy that works for workers, where people experiencing job loss have a UI system that really works for all workers and provides at least the level of reemployment support that we decided workers deserved in 1933. In the past, we have had extraordinary economic upheaval and technological displacement, possibly not as pervasive as what some predict will result from AI.

Fortunately, we do not need some "Brand New Idea" to deal with this crisis. The emergency programs of the pandemic were life-changing, necessary interventions. Now, however, we have the time to do the things we *know* will work: reform Unemployment Insurance and restore the Employment Service.

About NELP

Founded in 1969, the National Employment Law Project (NELP) is a nonprofit advocacy organization dedicated to building a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity-building, and communications. NELP is the leading national nonprofit working at the federal, state, and local levels to create a good-jobs economy. Learn more at www.nelp.org.