



Economic Stimulus - An Update on UI Modernization

The Situation

One of the major unemployment insurance (UI) provisions in the recently enacted American Recovery and Reinvestment Act of 2009 encourages states to enact "UI Modernization" – expand benefit eligibility to cover more workers. States will receive a portion of a special one-time \$7 billion distribution, if they permanently pass laws implementing an "alternative base period" and two benefit expansions covering part-time workers, persons in approved training programs, dependents' allowances or separations due to compelling family reasons.

About the Special Distribution to States

The \$7 billion distribution will come from the Federal Unemployment Account (FUA). How much a state receives will be based on its proportionate share of total FUTA taxes paid and which benefit expansions it chooses to enact. States will receive a one-third payment for enacting an alternative base period. The remaining two-thirds payment is contingent on permanent passage of at least two of the above provisions. States must certify with the federal government that such laws will take effect within 12 months of certification.

A number of states are concerned about tying temporary economic stimulus funds to permanent UI changes, including AK, GA, IN, LA, SC, TN and TX. Governor Bob Riley of Alabama recently issued a press release indicating he would not recommend state legislators change the law in order to get the special distribution, pointing out that while the stimulus funding would end, the changes would remain, resulting in an annual \$17 million tax increase to employers to continue supporting the UI expansions.

About the Alternative Base Period

One-third of the special funding in the stimulus legislation is payable to states that enact an alternative base period, which takes into account a person's earnings in the most recently completed calendar quarter.

The "base period" is an earnings period used to determine if a worker has earned enough wages to establish a valid unemployment claim. Generally, the standard base period is the first four of the last five completed calendar quarters from the claim filing date. By taking into account more recent wages, persons who are found ineligible under the standard earnings period could establish a UI claim by using the alternative base period.

States that already have alternative base period provisions in their UI laws include: DC, CT, GA, HI, IL, MA, NV, NJ, NY, OH, MI, NH, NM, NC, RI, VT, VA, WA and WI. Minnesota recently enacted provisions and Oregon has legislation pending. Most are expected to follow.

About the Remaining UI Modernization Elements

No state may qualify for the two-thirds incentive distribution, if alternative base period provisions are not enacted. In addition, UI laws must contain at least two of the four following eligibility expansions:

Part-time Work Search – UI benefits may not be denied with regard to work availability, work search or work refusal solely because a person is seeking only part-time work. A state may hold a person ineligible, if the majority of work weeks in his or her base period do not include part-time work.

Approved Training – Persons who have exhausted regular weekly UI payments may continue to receive up to 26 weeks of benefits, if they are enrolled and making progress in a state-approved training program or an authorized Workforce Investment Act (WIA) job training program. The training must prepare persons for entry into a “high-demand” occupation. States may not allow continued UI benefits if an individual is receiving other training allowances or stipends.

Dependents’ Allowances – Persons with dependents may receive an allowance of at least \$15 per dependent per week, with an aggregate limit of the lesser of \$50 or 50% of an individual’s weekly unemployment benefit amount.

Compelling Family Reasons – UI benefits may not be denied if the separation is due to compelling family reasons, which must include: 1) domestic violence; 2) illness or disability of an immediate family member; and 3) the need to relocate with a spouse to a place from which it would be impractical to commute and due to a change in the spouse’s employment location.

What to Expect

The UI Modernization elements open the door for increased costs, because more benefits will be paid for which employers could be charged. Even if an employer was not directly charged, benefit payments would be socialized among all employers by charging them to the state UI trust fund. Increases in benefit payments are likely to exacerbate current UI trust fund insolvency issues, all of which points to higher taxes.

UI Modernization is in the hands of individual states, so it is difficult to predict an outcome on which provisions each state might enact. It is unknown, right now, if or how employers might be liable for costs associated with benefit expansions. What is known is that the \$7 billion distribution is one-time funding and the benefit expansions will remain after the funding is gone. And, while the incentive distribution is to be used for the payment of such benefit expansions, states have discretion to use the funds for administrative purposes.

At a recent forum of state administrators, UWC president Doug Holmes cautioned states to assess the long-term impact on unemployment program administrative costs, trust fund solvency, benefit payouts and employer tax rates before implementing any of the UI Modernization provisions. Analyses by some individual states suggest that costs would outweigh benefits in 3 years or less.

The U.S. Department of Labor has issued guidance on the UI provisions of the Recovery Act, but it is up to individual states to decide if these expansions will be enacted, and if so, how employers might be impacted. Such decisions will likely involve input from each state’s governor, legislature and UI agency.

TALX will continue to inform clients of new developments.