

Commission on Unemployment Compensation
September 27, 2007
Richmond, Virginia

The Commission on Unemployment Compensation is charged with evaluating the impact of legislation on unemployment compensation and the Unemployment Trust Fund, assessing the Commonwealth's unemployment compensation program, and monitoring the current status and long-term projections for the Trust Fund. At its first meeting of 2007, the Commission received reports from the Virginia Employment Commission (VEC) addressing each of these topics.

Unemployment Data

Virginia's unemployment data continues to reflect a healthy and diversified job market in comparison to other jurisdictions. In July 2007, the Commonwealth's unemployment rate was 3.1 percent, while the national rate was 4.6 percent. Among the other four states in the Fourth Appellate Circuit and the District of Columbia, the unemployment rate for July 2007 ranged from 4 percent (in Maryland) to 5.9 percent (in South Carolina). Virginia's unemployment rate has not been above 4 percent since January 2004. However, for each month of 2007 except July, unemployment rates were at or above the rate for the corresponding month of 2006.

Total initial year-to-date claims for unemployment benefits through July 2007 are up 4.4 percent from 2006 and down 2.6 percent from 2005. First payments of unemployment insurance benefits from January through July 2007 are up 7.7 percent compared to the first seven months of 2006, but down one percent from the corresponding period in 2005. The average duration for receipt of unemployment benefits was 12.6 weeks in July of this year; for the same month last year, the average duration was 12.4 weeks. Final payments of benefits in the first seven months of 2007 were up 4.3 percent from the same period in 2006 but down 8.4 percent from the same period in 2005. The exhaustion rate, which reflects the percentage of unemployment compensation recipients who use up all of the weeks that they are eligible to receive benefits, was 34.1 percent in July; in July 2006, the rate was 33.6 percent.

Virginia's maximum weekly unemployment benefit for 2007 is \$363, which reflects a weekly benefit replacement rate of 44 percent of the state's average weekly wage. Legislation enacted in the 2007 Session (House Bill 2066, patroned by Delegate Nixon) increased the maximum benefit to this level from its previous limit of \$347.

Solvency of the Unemployment Trust Fund

The Trust Fund is funded by state unemployment taxes, which are paid by employers at a rate that varies depending on the solvency level of the Trust Fund and the employer's claims experience over the preceding four years. The Trust Fund solvency level is determined by dividing the balance in the Trust Fund on June 30 of each year by an amount, determined in accordance with a statutory formula, that represents an adequate Trust Fund balance. VEC Commissioner Dolores Esser reported that the Trust Fund solvency level is projected to be 67.8 percent as of June 30, 2007; one year ago it was 71.9 percent. The Trust Fund solvency level is projected to range between 59 percent and 67 percent in each of the next six fiscal years. The

balance in the Trust Fund is projected to be \$707.1 million as of December 31, 2007, up from \$644.9 million at the end of 2006 and \$498.9 million at the end of 2005.

The average state unemployment tax paid by employers, on a per-employee basis, is projected to be \$109 in 2007, which compares to an average of \$162 in 2005 and \$155 in 2006. Between 2008 and 2012, the average tax per employee is projected to range between \$94 and \$102. The decline in the average tax per employee from the level in 2005 is attributable in part to the cessation of levying the Fund Builder Tax, which is assessed in years when the Trust Fund solvency level falls below 50 percent. Virginia's average tax per employee in 2006 (\$155) is the second lowest among the six jurisdictions in the Fourth Appellate Circuit. The average tax in the other five jurisdictions ranges from \$154 in South Carolina to \$346 in North Carolina; the national average is \$289.

State and Federal Legislation

Nicholas Kessler, Deputy Commissioner of the VEC, briefed the Commission on state and federal legislative issues. Kessler noted that the recent increase in the federal minimum wage may prompt some to seek modifications to Virginia's minimum earnings requirement and minimum weekly benefit amount. The rationale for changing these amounts is that there had been interest group consensus that the minimum weekly benefit amount should equal the product obtained by multiplying the federal minimum wage rate by 40 hours by 13 weeks, and that a change in the minimum wage justifies a recalculation of these amounts.

Two items of pending federal legislation were brought to the Commission's attention. The Unemployment Insurance Modernization Act, currently pending in Congress, may provide \$65 million for Virginia's Trust Fund. The Act also provides annual payments of \$2.7 million for program administration and the prospect for an additional \$130 million if Virginia broadens unemployment benefit eligibility in certain specified ways, including providing benefits to certain trailing spouses.

Other federal legislation that has passed the House of Representatives and is awaiting action in the Senate provides federal recognition to six Indian Tribes in Virginia. The Commission was advised that, regardless of whether the Indian Tribe recognition legislation is enacted, the Department of Labor has advised the VEC that Virginia needs to amend its Unemployment Act to be in conformity with a requirement of federal law that Congress enacted in 2001 pertaining to the status of Indian Tribes as employers for purposes of unemployment taxation. Amendments to the federal Unemployment Compensation Law made by the Consolidated Appropriations Act of 2001 require that Indian Tribes be provided the option to pay unemployment taxes by reimbursing the Trust Fund based on actual claims, which is the method by which state and local governments and some nonprofit organizations are currently assessed. The Commission received copies of draft legislation that tracks model legislative language provided by the Department of Labor. The Chairman asked that the legislation be forwarded to the Attorney General's Office and representatives of Virginia's Indian Tribes for their review.

Program Administration Issues

The VEC obtained General Assembly approval in the 2007 Session to access \$67 million of Reed Act funds for three administrative initiatives. The Commission was briefed on the status of the three business projects, which pertain to unemployment insurance systems modernization, the Virginia Workforce Network Information System, and a financial management system.

The federal government continues to reduce the percentage of the Federal Unemployment Tax Act (FUTA) payments, collected from Virginia employers, that is returned to the Commonwealth for program administration. The FUTA tax is imposed at a rate of 0.8 percent of each employee's first \$7,000 of wages, for a cost of \$56 per employee per year.

In 2004, Virginia received back from the federal government 32.8 percent of the amount of FUTA taxes paid by Virginia's employers; in 2005, the rate fell to 30.2 percent; and in 2006, Virginia's return of FUTA taxes fell to 27.6 percent. This continues to be the second-lowest rate among all jurisdictions. Adjusting for inflation, over the past four years the VEC has lost funding of over \$2 million for Job Service programs and over \$6 million for the Unemployment Insurance program. Commissioner Esser projected that the VEC will face a shortfall of \$21 million in 2009.

Steps taken to address the inequities in FUTA funding include testifying before Congress and meeting with Virginia's Congressional delegation, the Governor's staff, and staff of the Department of Labor and Congressional committees. The Virginia Liaison Office is coordinating efforts with other states to address this issue. Members of the Employer Advisory Committee and the Virginia Chamber of Commerce are also actively involved in the effort to raise the percentage of FUTA funds returned to Virginia to 50 percent.

The VEC expects to request the General Assembly to authorize the allocation of \$12 million of the approximately \$16.5 million of Reed Act funds currently in the Trust Fund. The funds would be used for administration of VEC programs. The removal of \$12 million in the Trust Fund would not cause a change in employer taxes at the current levels of benefits and current earnings requirement.

During the public comment portion of the agenda, Jeff Smith urged the Commission to involve the Office of the Attorney General in its review of the Department of Labor's model legislation giving Indian Tribes the option to be treated as reimbursing employers, in order to ensure that it does not affect the Commonwealth's ability to collect excise taxes.

The members of the Commission will be polled for their availability to meet next on November 27, 2007. At that time, the Commission will review proposals for legislation relating to the Commonwealth's unemployment compensation program that members plan to introduce in the 2008 Session.