Commission on Unemployment Compensation
December 17, 2009
Richmond, Virginia

The Commission on Unemployment Compensation (UC Commission) is continuing to monitor the status of Virginia's Unemployment Trust Fund and the effects that its solvency level will have on the Commonwealth.

UNEMPLOYMENT TRUST FUND

Dolores Esser, Commissioner of the Virginia Employment Commission (VEC), advised the UC Commission that in 2009 unemployment rates in Virginia have averaged about 75 percent higher than the rates for the same months in 2008. The unemployment rate peaked at 7.3 percent in June, which was the highest rate experienced in the Commonwealth since March 1983. However, the VEC cautioned that unemployment rates, which have fallen to 6.3 percent since June, are projected to rise to seven percent early in 2010.

Some of the employment data provided at the December meeting was more favorable than that presented at the group's September meeting. Total initial year-to-date claims for unemployment benefits through October are up 61.9 percent from the same period in 2008 and up 96.7 percent from the same period in 2007. Initial claims are expected to jump from 356,220 in 2008 to 501,514 in 2009. In September, the projected initial clams for 2009 were expected to be 633,931.

First payments of unemployment insurance benefits from January through October 2009 are up 77.7 percent compared to the first 10 months of 2008 and up 113.2 percent from the corresponding period in 2007. The average duration for receipt of unemployment benefits in November 2009 was 15.3 weeks, which has been exceeded in Virginia only by the 15.4 weeks average duration recorded in 1976. Final payments of benefits in the first 10 months of 2009 are up 154.2 percent from the same period in 2008 and 209.3 percent from the same period in 2007. The exhaustion rate, which reflects the percentage of unemployment compensation recipients who use up all of the weeks of regular unemployment benefits for which they are eligible, was 52.4 percent in October; in October 2008, it was 37.1 percent. This figure means that over half of the individuals receiving unemployment compensation benefits will receive the full 12 to 26 weeks of benefits provided through the state's Unemployment Trust Fund without finding replacement employment. The exhaustion rate does not reflect federally funded benefit extensions.

Virginia's maximum weekly unemployment benefit is $378. The maximum weekly benefit reflects a weekly benefit replacement rate of 42 percent of the state's average weekly wage. In 2008, the same maximum weekly unemployment benefit amount provided a weekly benefit replacement rate of 44 percent. The Commonwealth traditionally has sought to maintain a replacement rate of 45 percent.

The solvency level of the Unemployment Trust Fund is calculated by dividing its balance on June 30 by an amount, determined in accordance with a statutory formula, that represents an adequate balance. At the UC Commission's meeting in September 2009, the VEC provided a forecast of the status of the Unemployment Trust Fund as of June 30. The actual data for this period was presented at the December meeting.

The Unemployment Trust Fund's solvency level on June 30, 2009, was 24.4 percent. One year earlier it was 64 percent. The Fund's solvency level is projected to be -20.1 percent in June 2010 and -21 percent in June 2011, before increasing to five percent in June 2012, 30 percent in June 2013, 52 percent in June 2014, and 65 percent in 2015. The balance in the Unemployment Trust Fund on January 1, 2009, was $546.7 million.

The Trust Fund's December 31, 2009, balance is forecast to be $-130 million, rather than -$178.5 million as had previously been expected. The balance is expected to fall to -$545.7 million at the end of 2010. As announced in September, the Commonwealth is required to borrow from the federal government in order to pay unemployment benefits. It is not alone; 40 states are expected to borrow from the Federal Unemployment Account. The VEC anticipates that Virginia will borrow a total of approximately $1.3 billion from the Federal Unemployment Account. As of November 30, Virginia's federal loan balance was $44 million.

The incoming administration will be required to decide in 2010, as unemployment tax payments are received, whether to apply receipts to pay down the balance of the federal loans or to retain the funds in the state's account and use them to pay benefits, which will delay the need to borrow additional funds for several months. The latter option may be preferable because the federal government has waived the requirement that states pay interest on borrowed funds for 2010. The VEC noted that there will be pressure on Congress to waive the requirement that states pay interest on such loans for 2011.

The decline in the solvency level of the Unemployment Trust Fund and the borrowing of federal funds will have repercussions on employers that pay unemployment taxes. Virginia is expected to be required to make interest payments of $22 million in 2011, $14.4 million in 2012, and $0.3 million in 2013. The interest payments cannot be paid from the Trust Fund or federal administrative grants, and thus, unless waived by Congress, will be paid from state general funds. In order to accelerate repayment of borrowed federal funds, employers will lose 0.3 percent of the federal unemployment tax (FUTA) credit, which will increase the per-employee FUTA amount by $21, from $56 to $77. The estimated $87 million generated from the partial loss of the FUTA credit will be applied to the state's federal loan balance. Because the Trust Fund's solvency level has fallen below 50 percent, employers will be assessed a fund builder tax of 0.2 percent of the first $8,000 of each employee's wages. The state unemployment tax (SUTA) rate will be assessed on employers at the highest of the 15 existing tax tables. The 50 percent Social Security benefit offset automatically will be reinstated through calendar year 2014. In addition, the closure of many employers will result in an increased level of pool charges.

These factors will combine to increase the average annual state unemployment tax per employee assessed on employers in Virginia from $95 in 2009 to $171 in 2010, to $234 in 2011, and to $263 in 2012 (which will total $284 when the $21 decrease in the credit now applied to the employer's FUTA liability is included).

The VEC cautioned that if Virginia's economy recovers from the recession at a slower rate than has been forecast, the federal loans could reach $1.44 billion, or $140 million more than is now anticipated. Such an increase in borrowing would increase the state's interest obligation to the federal government form $36.7 million to $44 million, and would trigger the loss of another 0.3 percent in the federal unemployment tax credit, thereby raising the annual per-employee FUTA liability by an additional $21.

Several states are addressing the poor health of their unemployment trust funds by increasing the wage base on which the state unemployment tax is assessed. In Virginia, the tax is levied on the first $8,000 of each employee's wages, while the national average is $13,841. Of the 24 states that will increase the taxable wage base this year, 17 have indexed the level to rise automatically, and seven have done so through legislation.

FEDERAL EMERGENCY AND EXTENDED BENEFITS

In addition to the maximum of 26 weeks of regular benefits available to eligible claimants under Virginia's unemployment compensation program, the federal government finances several emergency unemployment benefits programs. The Tier I emergency benefits program provides for up to 20 extra weeks of benefits at 80 percent of regular benefit amounts. The Tier II program allows up to 14 weeks of benefits in "high unemployment states" at 50 percent of regular benefit amounts, of which one week of benefits was authorized in November 2009. The Tier III program also allows up to 13 weeks of benefits at 50 percent of regular benefit amounts. In addition, Congress has funded increases in weekly benefits payments of $25 for the period February 28, 2009, through July 3, 2010.

In addition to these emergency unemployment benefits programs, the extended benefits program provides up to 13 weeks of benefits at 50 percent of regular benefits for claimants who have exhausted their regular benefits and Tier I and Tier II emergency benefits. These benefits are available in states that have certain total rates of unemployment. As a result of these state and federal programs, at projected levels of unemployment Virginians may be eligible for a maximum of 86 weeks of benefits.

EXPANSION OF BENEFITS UNDER FEDERAL STIMULUS LEGISLATION

The American Recovery and Reinvestment Act of 2009 (ARRA) is a package of economic stimulus measures enacted by Congress in February 2009. One feature of ARRA made states' unemployment trust funds eligible for $7 billion in Reed Act distributions if they "modernized" their laws to expand eligibility for unemployment benefits. ARRA made Virginia eligible for $188 million, of which $62.8 million was distributed because the Commonwealth had previously enacted legislation to provide for an alternate base period. Virginia could have received up to an additional $125.5 million by making two of four changes to its unemployment laws. The options were to provide (i) benefits to workers who left work voluntarily due to certain compelling family reasons, (ii) benefits to certain unemployed workers enrolled in approved training, (iii) benefits to part-time workers, and (iv) payment allowances for dependents of claimants.

During the 2009 Reconvened Session, the Governor proposed amendments to Senate Bill 1495 that, if adopted, would have made Virginia eligible for the $125.5 million by amending Virginia's unemployment laws to make unemployed workers enrolled in approved training, and unemployed workers with a history of part-time employment, eligible for unemployment benefits. The Governor's proposed amendments were accepted by the Senate but rejected by the House of Delegates. Because the ARRA funds remain available at the present time, the General Assembly's rejection of the Governor's proposal does not prevent the 2010 Session from revisiting the issue.

One issue raised during debate on the proposed amendments to Senate Bill 1495 was whether the amendments to state law expanding benefit eligibility could be undone at a future legislative session. ARRA requires that the statutory changes be permanent, which has been construed by the U.S. Department of Labor as prohibiting their enactment with a sunset or "trigger off" provision. However, the Department has stated that a law change will be deemed to be permanent if it is not subject to change except by repeal by future legislative action. Delegate Nixon observed that one concern some members had was that it was inconceivable that the General Assembly within a few years would reverse its decision and limit or reduce benefits. Another concern he noted was that the Commonwealth would be incurring a long-term obligation that would be paid for after the ARRA payment was spent. The VEC's analysis of the Governor's amendments to Senate Bill 1495 indicates that over an eight-year period the enactment of the amendments would increase employers' average tax per employee by $2.44. The average annual increase in state unemployment taxes triggered by the measure over the period 2011 through 2018 was estimated at $9.5 million. Over the same period, the average annual increase in benefits was projected to be about $21 million.

PROPOSED LEGISLATION

The UC Commission received briefings on several items of unemployment legislation that may be introduced in the 2010 Session. Delegate Nixon announced that he plans to propose a bill to defer, from July 2010 to July 2011, the proposed increase, from $2,700 to $3,000, in the minimum amount that a claimant must have earned in order to be eligible for unemployment benefits. A similar measure, postponing the scheduled increase by a year was enacted in the 2009 Session. Delegate Morrissey stated his intention to reintroduce House Bill 1816 from the 2009 Session. This measure would have disqualified certain seasonal or temporary employees from eligibility for unemployment compensation benefits. Senator McEachin indicated that he plans to carry a bill to revisit the issue of making Virginia eligible for the $125.5 million of ARRA funds.

Three items of possible legislation address concerns with the overpayments of benefits that result from VEC administrative error. One would authorize the VEC to negotiate the terms of repayments by recipients of such overpayments. Another would require the VEC to waive an individual's obligation to repay overpayments resulting solely because of an administrative error if repayment is not demanded within the six months and if requiring the individual to repay the overpayment would be inequitable. The third measure calls on the Joint Legislative Audit and Review Commission to study the issue of overpayment of unemployment compensation benefits resulting from administrative errors and recommend measures to prevent them.

The Honorable John C. Watkins, Chairman

For information contact:
Franklin Munyan, Staff Attorney, Division of Legislative Services