Commission on Unemployment Compensation

June 17, 2003
Meeting Summary

The Commission on Unemployment Compensation, established by the General Assembly in 2003, held its first meeting on June 17, 2003. The new Commission continues the work of the Joint Subcommittee Studying the Unemployment Trust Fund, which was established by joint resolution in 1977. At its organizational meeting, the Commission elected Senator John Watkins as chairman and Delegate Bob Purkey as vice-chairman.

Report on the Unemployment Compensation System

In 2001, the General Assembly authorized the Joint Subcommittee Studying the Unemployment Trust Fund to retain a consultant to conduct a two-year actuarial analysis of Virginia's unemployment compensation system. Dr. Wayne Vroman of the Urban Institute conducted the analysis, and his final report was presented to the joint subcommittee in December 2002. Because a quorum of the joint subcommittee was not present, the report was not formally accepted. At this meeting, the Commission unanimously adopted a motion that to accept Dr. Vroman's report, with the clarification that acceptance of the report does not constitute an endorsement of the report's recommendations.

One recommendation in Dr. Vroman's report is that the Virginia Employment Commission (VEC) should analyze Virginia's low first payment rate. In his analysis, Dr. Vroman found that "Among those who file UI claims there is [a] low first payment rate (first payments as a ratio to new initial claims) in Virginia....For the 34 year period from 1967 to 2000 the national first payment rate averaged 0.74 whereas the rate in Virginia averaged 0.67, an average differential of 10 percent." *An Analysis of the Virginia Unemployment Compensation System*, October 2002, Chapter 2.

VEC spokesman James B. Ellenberger presented an analysis of 108,000 claims filed between January and June 2001. Of these, 65 percent received benefits, 5 percent were monetarily ineligible, and 29.6 percent were monetarily eligible but did not receive benefits payments. Of this group not receiving a first payment, the VEC found that 57 percent were denied benefits for reasons related to the circumstances of their job loss, such as quitting or being fired for misconduct, or other disqualifying circumstances. Twenty-three percent of those not receiving a first payment were denied benefits because they refused to make themselves available for employment, refused employment, or violated reporting requirements. The analysis could not account for the remaining 20 percent, which represents 6.2 percent of total claims. Some may have returned to the work, moved, or dropped out of the workforce. Other possible reasons identified by Dr. Vroman included actions by employers and program administration.

The VEC has discussed this issue with researchers from VCU, but has decided that it is not appropriate to authorize the conduct of a survey at this time. The VEC reported that it will continue to review claims, and informed the Commission that it would revisit this issue at a future meeting. The finding regarding the low first payment rate cannot be separated from the finding that Virginia has a very low benefit recipiency rate. The recipiency rate, which has average one-half of the national rate, is due in part to the fact that the Commonwealth has had lower-than-average unemployment rates that have allowed unemployed persons to obtain replacement employment with relative ease.

Preliminary Report on the Status of the Trust Fund

The level of solvency of the Unemployment Trust Fund is determined annually by dividing the Fund's balance on June 30 by the amount, determined through a statutorily-prescribed formula, to be required for an adequate fund balance. The amount required to have a solvent trust fund is equal to (i) 1.38 multiplied by (ii) the average of the three highest ratios of benefits to total wages during the preceding 20 years multiplied by (iii) total wages paid by taxable employers for the year ending June 30. For the years 1997 through 2001, the solvency level was at least 100 percent. For 2002, the solvency level declined to 83 percent.

Preliminary projections provided by the VEC predicted that the solvency level as of June 30, 2003, would be 41.2 percent. The drop below the 50 percent solvency level will trigger the imposition on employers of the "fund building" tax. The decline in the Trust Fund's solvency level from 2002 to 2003 of over 40 percentage points was attributed to the fact that payouts of unemployment compensation benefits significantly exceeded tax and interest revenues. By the end of 2003, the balance in the Fund is expected to drop to $187 million. The declines in the Trust Fund solvency level automatically triggers the imposition of higher unemployment taxes on employers. The average annual tax per employee, which ranged between $48 and $51 between 1998 and 2001, is expected to increase to $62 in 2003, $161 in 2004, and $183 in 2005.

Impact of 2003 Legislation

The VEC reported that the net effect of legislation enacted in the 2003 Session of the General Assembly will be to decrease Trust Fund solvency commencing in 2004 and to result in slightly higher tax levels commencing in 2005. The elimination of 50 percent of the pension offset applied to Social Security and Railroad Act pensions is expected to add 0.5 percent to annual benefit costs. The implementation of an optional alternative base period for claimants who would not qualify for benefits using the current base period determination is expected to add one percent to annual benefit costs.

House Bill 1929 and Senate Bill 890 restore the wage replacement rate to 52 percent (excluding claimants subject to the statutory cap on weekly benefits) for claims filed on or after July 6, 2003, rather than for claims filed on or after January 1, 2004. This change will produce a savings in benefit costs in fiscal year 2004 estimated at $59 million. However, these bills also increase the maximum benefit amount, which was scheduled to fall back to $268, to $316 effective July 6, 2003, and to $326 in July 2004, which will increase benefit costs by between $29 and $36 million in each year from 2004 through 2009.

House Bill 2722, introduced by Delegate Reid, requires the Virginia Employment Commission, when sending information for the purpose of collecting fines, penalties, and costs owed to the Commonwealth or its political subdivisions, to send such information to a designated agent of the Commonwealth or political subdivision. The legislation was prompted by an audit last fall that showed that one law firm, as agent to a county with a population of about 262,000, had accessed the VEC's employment and wage database 736,000 times in one year. The VEC responded by curtailing the firm's access to the database. House Bill 2722 was introduced to overturn the VEC's refusal to provide access by a locality's agent to the database, though new agency guidelines will not allow disclosure of wage information.

Overpayment of TEUC Benefits

An audit in late 2002 revealed that the VEC, as the result of a computer programming error, overpaid special federal Temporary Extended Unemployment Compensation benefits to 6,265 claimants by an average of $387. The error involved the change in benefit amounts to claimants who had commenced receiving benefits prior to September 9, 2001, at a lower level than was provided after that date under Governor Gilmore's executive order that increased benefits for all claimants, including those who has been drawing benefits on that date.

The VEC and the federal Department of Labor have agreed on a process to notify all persons who received overpayments of benefits and to either recover the overpayments or waive repayment in the case of a financial hardship. The VEC will refund to the federal government the money it collects from claimants who do not establish that repayment would result in a financial hardship. The Trust Fund will not be required to pay any collection shortfalls and general funds will not be requested to reimburse the federal government for the uncollected overpayments. The overpayments were fully funded by the federal government, and will not affect employers' experience ratings.

Next Meeting

The Commission's next meeting is scheduled for the afternoon of November 17, 2003. The agenda will include a report on the status of the Trust Fund as of the end of fiscal year 2002 and tax rate structure data. The Commission asked the VEC to provide information regarding the agency's sources and uses of funds and to examine whether there is a correlation between the size of employers and their unemployment tax rate. Senator Wagner asked that the Commission's work plan examine whether employers who relocate operations from Virginia to other jurisdictions can continue to be held liable for the resulting unemployment benefit costs. The Commission also asked the VEC to measure the extent to which increases in deductible unemployment tax payments by employers will reduce their taxable incomes and thereby exacerbate the State's fiscal woes by decreasing state income tax revenues. In the interim, the VEC will monitor federal legislation that calls for revamping the current system of assessing and distributing FUTA taxes.

The Honorable John Watkins, Chairman
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