

Unemployment Compensation Modernization; Senate Sub. for Sub. for HB 2196

Senate Sub. for Sub. for HB 2196 creates the Unemployment Compensation Modernization and Improvement Council; requires the Kansas Department of Labor (KDOL) to modernize its information technology (IT) infrastructure; makes temporary changes to the membership of the Employment Security Review Board; makes changes to Employment Security Rates tables; requires the Secretary of Labor to provide tax notifications and certain Employment Security Fund Data Reporting; provides for certain employer account protections; provides for transfers of federal coronavirus relief aid to the Employment Security Fund and the Legislature Employment Security Fund; prohibits the continuation of federal unemployment compensation programs using state funds; adjusts thresholds for maximum benefits; modifies the shared work program; and makes other employment security compensation changes.

The bill is in effect upon publication in the *Kansas Register*.

Unemployment Compensation Modernization and Improvement Council

The bill creates the Unemployment Compensation Modernization and Improvement Council (Council), which consists of 13 members.

Non-legislative members are:

- Three representatives of employers, one each selected by the Governor, the President of the Senate, and the Speaker of the House;
- Three representatives of employees, one each selected by the Governor, the President of the Senate, and the Speaker of the House; and
- The Secretary of Labor or their designee with a role in the administration of the Unemployment Insurance (UI) system.

Non-legislative members serve a term of the shorter of three years or until the dissolution of the Council.

Legislative members are as follows:

- As appointed by the President of the Senate:
 - One Senate member from the majority party; and
 - The chairperson of the Senate committee to which UI legislation is typically referred;
- As appointed by the Speaker of the House:
 - One House member from the majority party; and

- The chairperson of the House committee to which UI legislation is typically referred;
- One minority party Senate member, appointed by the Senate Minority Leader; and
- One minority party House member, appointed by the House Minority Leader.

Legislative members of the Council serve during the session in which they are appointed and may retain membership while remaining members of the Legislature.

Council vacancies are to be filled in the same way as original appointments, to last for the remainder of the term of the member being replaced. A member can also be removed, reappointed, or substituted at any time by their respective appointing authority. Members of the Council are entitled to compensation for service and for any necessary expenses incurred, to be paid from the Employment Security Administration Fund.

Operation of the Council

The bill requires the following to be part of the operation of the Council:

- Members are appointed within 30 days of the effective date of the bill;
- The first meeting is held within 30 days of the effective date of the bill;
- The chairpersonship of the Council alternates at two-year intervals between the chairpersons of the House and Senate standing committees to which employment security legislation is typically referred, beginning with the chairperson of the House;
- The Council is staffed by personnel from Legislative Administrative Services, the Kansas Legislative Research Department, and the Office of Revisor of Statutes, as requested by the chairperson of the Council; and
- The Council may suggest to the Secretary of Labor rules and regulations necessary to carry out its function.

Role of the Council

The bill requires the Council to:

- Examine and recommend changes to the UI system;
- Examine the claim-filing and benefit disbursement process and any future changes thereto;

- Examine and recommend changes on topics including but not limited to:
 - Technological infrastructure;
 - Improvements to system responsiveness, integrity, security, and data verification; and
 - Methods of information sharing;
- Conduct an audit of the UI system, with a preliminary report by May 1, 2022, and a final report by September 1, 2022:
 - Examining the effects of fraudulent claims and improper payments from March 15, 2020, through March 31, 2022, and the response by KDOL to such claims;
 - Examining the amounts and nature of such claims, fraud processes, and methods, and the potential for recovery of fraudulent payments;
 - Evaluating the likelihood of a data breach contributing to fraud and improper network architecture allowing a potential breach to have occurred; and
 - Including information on the implementation of all program integrity elements and guidance issued by the U.S. Department of Labor and the National Association of State Workforce Agencies [*Note: This requirement would be ongoing for all subsequent reports.*];
- Issue an initial report within 14 days of the Council's first meeting describing the state of the process by which individuals file UI claims and receive UI benefits; and
- In coordination with the Secretary of Labor:
 - Develop a strategic staffing plan to address substantial changes in numbers of claims, including the prospective use and sources of additional employees;
 - Publish all points of contact for UI inquiries or claims to KDOL's website;
 - Recommend for adoption rules and regulations for creating a uniform UI complaint submission process; and
 - Adopt and periodically review a definition of "substantial disruption" in the benefit application and determination process.

The Secretary of Labor has additional responsibilities related to the Council:

- Post all materials from Council meetings on a public website maintained by the Secretary;

- Develop the initial written strategic staffing plan, review it annually, and revise it as necessary. After each review, the most recent version is provided to the Council and published on a public website maintained by the Secretary;
- Notify the Council Chairperson of any unauthorized third-party access or acquisition of records within five days of becoming aware of such an event; and
- Notify the Council members of any substantial disruption in the benefit application and determination process.

The bill also requires the Secretary of Labor, or their designee, to provide status reports on or before the 15th day of each month and the last day of each month to the Council. The report is required to include, but not be limited to, information regarding the timeline, progress, budget, and overall status of the unemployment information technology system upgrade. Once the upgrade is complete, the report is required to include information on system performance and process updates.

The Council is not permitted to examine the solvency of the Unemployment Compensation Fund (cf. KSA 2020 Supp. 44-710a).

The Council dissolves and all provisions related to the Council will be of no effect three years after the date of its first meeting.

KDOL Information Technology Modernization

As a supplement to the Employment Security Law, the bill establishes as the intent of the Legislature that KDOL's IT system be continually developed, customized, enhanced, and upgraded, in order to collect state employment security taxes, process UI claims, and pay UI benefits. To this end, the bill requires the Legislative Coordinating Council (LCC) to establish a deadline for completion of the new UI system.

The LCC also is authorized to extend the deadline for completion of the modernization project at any time with input from the Council.

The IT system, technology, and platform include, but are not limited to, components specified and defined by the Council in consultation with the Secretary of Labor.

The new system also includes, but is not limited to, features and benefits as specified and defined by the Council in consultation with the Secretary of Labor.

The Secretary of Labor is required to implement all program integrity elements as specified and defined by the Council in consultation with the Secretary of Labor. The bill specifically directs the Secretary to implement elements including, but not limited to, the following:

- Cross-matching of social security numbers with the Social Security Administration;

- Checking new hire records against the National Directory of New Hires;
- Verification of citizenship or immigration status through the Systematic Alien Verification for Entitlements program;
- Comparison of applicant information with local, state, and federal prison databases;
- Use of the following to detect duplicate claims:
 - Interstate Connection Network;
 - Interstate Benefits Cross-Match;
 - State Identification Inquiry State Claims and Overpayment File; and
 - Interstate Benefits 8606 application for overpayment recoveries for claims filed in other states;
- Identification of IP addresses linked with multiple claims or claims filed outside the United States; and
- Use of data mining and analytics for fraud detection and prevention.

The bill requires, should the Council become inactive or dissolved and the new information technology system modernization project is completed, the Secretary of Labor to implement and utilize all program integrity elements and guidance issued by both the U.S. Department of Labor and the National Association of State Workforce Agencies within 60 days of issuance of such guidance.

The bill requires the cross-checks described above to be carried out for new and active UI claims on a scheduled basis. Individual cases are to be reviewed for any claimants approved for benefits for whom changes of circumstances affecting eligibility are identified.

The bill authorizes KDOL to execute a memorandum of understanding with any state department, agency, or agency division for information the bill requires to be shared.

The Secretary of Labor is required to adopt rules and regulations to carry out the provisions of the bill within 12 months of the effective date of the bill and to provide an annual status update and progress report to the Council.

The bill prohibits any state agency entering into any contract for UI IT modernization until the Council has reviewed and made recommendations concerning the system and technology and platform specifications and the LCC has reviewed such recommendations. The bill requires such review to take place within 60 days of the close of the request for proposal for the modernization.

Additionally, the bill requires the procurement negotiating committee for the procurement modernization proposed by this bill to include the chairperson of the Joint Committee on

Information Technology in the position otherwise occupied by the Chief Administrative Officer of KDOL.

Employment Security Board of Review—Temporary Changes

The bill provides from the effective date of the bill to June 30, 2024, the Employment Security Board of Review (Board), currently composed of three members, will consist of six members, with no more than four of the members belonging to the same political party rather than two as in current law.

The bill provides the Board may sit in panels of three members with no more than two members belonging to the same political party, for the purpose of hearing and deciding cases before the Board.

The bill provides a member's appointment specifically for the term of the effective date of the bill through June 30, 2024, will not count as a term for purposes of the prohibition currently preventing a Board member from serving more than two consecutive terms.

Employment Security Rate Tables Changes

The bill provides for new tables for solvency and credit adjustments for the purpose of making solvency or credit adjustments to maintain the Employment Security Fund balance beginning in rate year 2022.

The bill replaces the current uniform solvency rate adjustments to the standard rate schedule with six new solvency rate schedules and six new credit rate schedules providing for solvency and credit rating adjustments to be made according the experience rating of employers.

Tax Notification

The bill requires the Secretary of Labor to inform a claimant of the federal and state tax consequences related to UI benefits on the initial determination of benefits notice. Explanations of the following are required:

- KDOL income tax withholding agreement form K-BEN 233, or a successor form;
- Tax withholding elections; and
- The tax withholding process and estimated weekly and maximum withholding amounts.

Unemployment Trust Fund Data Reporting

The bill requires the Secretary of Labor to publish certain certified data related to the UI Trust Fund on a publicly accessible website maintained by the Secretary.

The bill requires the following information to be maintained for the most recent 20 fiscal years, first published within 120 days of the effective date of the bill, and, for each fiscal year beginning in FY 2022, published on or before December 1 following the end of such fiscal year:

- Distributions of taxable wages by experience factor for each fiscal year, to include:
 - The rate group;
 - The reserve ratio lower limit;
 - The number of accounts;
 - Taxable wages; and
 - Summaries including the number of accounts and FY taxable wages for active positive eligible, active ineligible, and active negative accounts;
- The average high-cost benefit rate summary, to include:
 - The average high-cost benefit rate in effect at that time, and
 - The benefit cost rate for fiscal years used to compute the average.

The Secretary of Labor is required, for the three years following the effective date of the bill, to annually provide projections of the number and amount of UI claims, the UI Trust Fund balance, and the amount of employer premiums to be paid, to the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce.

Reemployment and Work Skills Training Services Provisions

The bill requires the Secretary of Labor and the Secretary of Commerce to jointly establish and implement programs providing reemployment and work skills training services to UI benefit recipients, to be known as the “my reemployment plan” program by June 1, 2021. The program is to be available to all claimants except for those in the shared work program, in trade readjustment assistance programs, or on temporary layoff with a return-to-work date.

The bill requires the Secretary of Labor to provide the names and contact information of claimants who have received benefits for three continuous weeks to the Secretary of Commerce. The Secretary of Commerce is then required to request the following documents and information from such claimants:

- Resume;
- Work history;
- Skills list; and
- Job search plan.

The Secretary of Labor also is required to share labor market information and current available job positions with the Secretary of Commerce.

The bill requires the Secretary of Commerce to:

- Collaborate with the KANSASWORKS workforce system to provide assistance, when requested, to claimants;
- Match open job positions with claimants based upon skills, work history, and job location;
- Facilitate and oversee the claimant and employer interview process;
- Monitor the results of job matches, including information regarding claimants who did not attend an interview or did not accept a position, and report such claimants to the Secretary of Labor; and
- Develop and implement a work skills training or retraining program for claimants in collaboration with the KANSASWORKS workforce system, the Secretary of Labor, and other organizations.

The bill authorizes the Secretary of Labor to allow claimants to participate in work training or retraining programs offered by the Secretary of Commerce in lieu of the job search requirements. Claimants attending such training are required to participate for no less than 25 hours per week, and their attendance and progress is to be monitored by the Secretary of Commerce. Claimants who fail to meet attendance and progress requirements are to be disqualified by the Secretary of Labor within five business days of receiving the report of their noncompliance. Benefits would be restored upon reestablishment of compliance and reported by the Secretary of Commerce or the Secretary of Labor finding a show of good cause by the claimant.

The Secretaries of Commerce and Labor are required to enter into appropriate agreements for sharing of relevant information and to provide an annual status update and progress report for the “my reemployment plan” program to specified legislative standing committees.

Work Refusal Provisions

The bill requires the Secretary of Labor to develop procedures enabling employers to notify KDOL when a UI claimant refuses to return to work or refuses an offer of employment. Upon receipt of such a notification, the Secretary is required to determine if the offered employment is suitable, considering if the wages offered are comparable to the claimant’s recent employment, work duties correspond to the claimant’s education level and work experience, and the wages offered are at least the amount of the claimant’s maximum weekly UI benefits.

The Secretary is required, within ten business days of receiving work refusal notification from an employer, to notify the claimant who refused work information including:

- A summary of the claimant’s duties to accept suitable work;

- A statement that the claimant has been or may be disqualified from receiving benefits;
- An explanation of what constitutes suitable work; and
- Instructions for contesting a denial of claim based upon a report by an employer that the claimant has refused an offer of suitable work.

Unemployment Rate Thresholds for Maximum Benefits

The bill raises the minimum threshold for receiving a maximum of 20 weeks of UI benefits from a 3-month seasonally adjusted average unemployment rate of 4.5 percent to a rate of 5.0 percent for weeks beginning September 5, 2021.

Benefits Disqualification for Fraudulent or Misleading Statements

The bill shortens the time an individual is to be disqualified from receiving benefits for fraudulent or misleading statements from five years to one year upon the repayment of all overpayments, interest, penalties, and fees for the first offense and five years upon the repayment of all overpayments, interest, penalties, and fees for each subsequent offense.

The bill also establishes a crime classified as a severity level 5 nonperson felony for any individual who makes fraudulent or misleading statements to obtain UI benefits if they meet the following criteria:

- Failed to engage in employment as defined in statute;
- Failed to perform any services for wages within the state not within the meaning of employment;
- Made such fraudulent or misleading statements while purporting to be another individual without their consent; and
- Communicated or caused to be communicated false statements or representations on 3 or more occasions during a 30-day period while purporting to be another individual without that individual's consent.

Employer Account Protections and Payment Certification

The bill requires employers to be held harmless and not owe any amount to the State for:

- Any paid claim reported as fraudulent to the Secretary of Labor, unless the Secretary determines the claim to be legitimate; and

- Any claim that has been improperly paid, as defined by the bill, and described below.

The bill requires the Secretary of Labor to make immediate restitution to employers, without requiring a hearing or a request from the employer, as follows:

- Credit the account of any contributing, governmental rated, or reimbursing employer for paid benefits determined to be due to fraud or improper payment;
- Refund “reimbursing employers,” who repay the State for claims paid on their behalf, for any claim paid after March 15, 2020, that is or is reported to be fraudulent or improper by the employer, unless it is determined to be otherwise by the Secretary; and
- After reviewing all reimbursing employer accounts, apply credits for any unrecovered charges for fraudulent or improperly paid claims.

For purposes of both restitution and indemnification:

- Any determination with respect to the legitimacy of a claim would be subject to appeal; and
- There is no time limit for disputing a fraudulent claim or related appeals for benefits paid between March 15, 2020, and December 31, 2022.

For the purposes of the bill, “improper payments” is defined as any payment that, according to legally applicable requirements, should not have been made or was in the incorrect amount.

The bill requires the Secretary of Labor to review all information reported by the U.S. Department of Labor regarding improper payments between March 15, 2020, and December 31, 2022, and to:

- Determine the amount of any improper payments within 60 days of such information becoming available;
- Immediately certify such amounts to the Director of Accounts and Reports; and
- Upon certification, send copies of each certification to the Director of the Budget and the Director of Legislative Research.

Federal Coronavirus Relief Aid Transfers; Legislature Employment Security Fund

The bill provides for at least the lesser of an aggregate of \$500.0 million or the maximum amount available, as determined by the Director of the Budget, to be transferred from special revenue funds to the Employment Security Fund and the Legislature Employment Security Fund

(LESF) of the LCC, which is created by the bill, during FY 2021 and FY 2022. A transfer of \$250.0 million is to be made to the Employment Security Fund and a transfer of \$250.0 million is to be made to the LESF. The transfers are to be made up of moneys identified by the Director of the Budget to be unencumbered coronavirus relief funds that may be spent at the discretion of the State, in compliance with federal requirements, and provided by federal legislation enacted in response to the COVID-19 pandemic.

The bill provides if the amount of fraudulent and improper payment identified by the audit conducted by the Council and any identified improper payments made between April 1, 2022, and December 31, 2022, exceeds the amount of federal coronavirus relief funds transferred to the Employment Security Fund and the LESF, the Secretary of Labor is required to certify the amount of such excess to the Director of the Budget. Upon such certification, the Director of the Budget is required to identify the amount of unencumbered, discretionary federal coronavirus relief funds available and is required to transfer an amount of such funds up to the amount of the excess to the LESF.

Upon receipt of certifications concerning the amount of fraudulent or improper payments, the LCC is required to notify the Legislative Budget Committee (LBC). The LBC is required to make recommendations to the LCC concerning transferring funds from the LESF to the Employment Security Fund. Upon receiving recommendations from the LBC, the LCC is authorized to transfer funds from the LESF to the Employment Security Fund.

The amount of funds transferred from the LESF to the Employment Security Fund is limited to the amount of fraud and improper payments identified by the audit conducted by the Council and any fraud or improper payments made between April 1, 2022, and December 31, 2022, less the \$250.0 million initially transferred to the Employment Security Fund.

In the event the transfer of federal coronavirus relief funds to the Employment Security Fund up to \$250.0 million is not available to be made prior to July 15, 2021, the bill stipulates contributing employers pay contributions as set forth in the standard rate schedule for rate year 2022, and no solvency credit or adjustment applies. Should the second transfer of up to \$250.0 million not occur prior to July 15, 2022, the bill requires employers to pay contributions as set forth in the standard rate schedule for rate year 2023, and no solvency credit or adjustment applies.

Federal UI Program Restrictions

The bill specifies that any federal UI program established in response to a pandemic is not to be continued using state contributions after the federal program ends.

Shared Work Program Modifications

The bill requires the Secretary of Labor to create and manage a promotional campaign for the Shared Work Unemployment Compensation Program (Program), which includes educational communications with other state agencies and stakeholders, including the Governor's office, legislators, workforce investment boards, labor unions, and local, regional, or state chambers of commerce.

The eligibility of employees to participate in the program is expanded from those whose hours of work are reduced by 20 to 40 percent of normal weekly hours to those whose hours of work are reduced by 10 to 50 percent of normal weekly hours.

The bill permits negative account employers to be approved for the Program if their most recent calculated reserve ratio has improved from the previous reporting year's reserve ratio.

The bill clarifies that eligibility for UI benefits pursuant to a Program agreement would not be conditioned upon work search or work availability limitations otherwise generally required of UI benefit recipients.

Other Provisions

The bill clarifies that individuals of identity theft are not liable for fraudulent UI claims made using their stolen identity.

The bill amends a provision of the Employment Security Law pertaining to the quarterly reporting of tax and wage data. Under current law, professional employer organizations, or independent businesses that provide leased employees to a client, are prohibited from including a client company's owners and officers in the same UI quarterly report as that company's employees. The bill removes the prohibition.

The bill revises the Employment Security Law by excluding from the definition of "employment" contractual services performed by a petroleum landman. Such services are defined to include mineral rights management and negotiations, development of minerals, research of public and private property records, and title work. For purposes of the bill, "minerals" includes oil, natural gas, or petroleum. Such services are not to include services performed for 501(c)(3) organizations exempt from federal income taxation.

The bill requires KDOL and the Department for Children and Families (DCF) to enter into a memorandum of understanding to provide for the transfer of information between agencies providing that, upon notification that a UI claimant has become employed, the Secretary of Labor shall notify DCF to determine the UI claimant's eligibility for state or federal benefits provided or facilitated by DCF.

The bill provides if the contributions collected from negative account balance employers and paid into the Employment Security Interest Assessment Fund for the purpose of paying interest on unemployment advances provided by the federal government exceed the amount of interest owed, any excess amount shall be transferred to the Employment Security Trust Fund. The bill prohibits any expenditures from the Employment Security Interest Assessment Fund other than the payment of principal and interest on such advances from the federal government.

The bill requires the Department of Labor to develop a form for claimants to establish their identity before a Kansas law enforcement officer. The form is limited to one page in length and the Secretary of Labor shall use those forms of identification identified by the I-9 list. The completion of the form and submission by the law enforcement agency require the Secretary to presume the claimant's identity has been confirmed for purposes of UI law. Law enforcement officers, agencies, and the state or any political subdivision of the state receive immunity from

civil or criminal liability related to the use of the form if the officer acts in good faith and exercises due care.