



Department of Workforce Services

Employment Security Act Amendments Legislative Brief

August 15, 2012

Proposal:

- **Amend Section 35A-4-506 of the Employment Security Act** to require, effective October 1, 2013, that 15 percent of any Unemployment Insurance (UI) fraud overpayment penalty collected by the Department of Workforce Services (DWS) be deposited into the Unemployment Insurance Compensation (Trust) Fund.
 - This legislation is required to be in compliance with Section 303(a)(11) of the Social Security Act, as enacted in Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (Public Law 112-40). The legislation requires the State, as a condition to receive federal administrative grant funds, assess a penalty of not less than 15 percent to any individual who is determined to have fraudulently received unemployment compensation, and any amounts collected be deposited in the UI Trust Fund.
 - Utah currently assesses a 100 percent fraud penalty; however, all UI fraud overpayment penalties collected are deposited into the Special Administrative Expense Account established under Section 35A-4-506. Most recently, these restricted funds have been used for employer job development activities and funding retirement shortfalls.
 - The Department has collected approximately \$2.2 million per year in fraudulent benefit overpayments over the past five years; thus, approximately \$330,000 (15%) per year, effective October 1, 2013, will be required to be deposited into the Unemployment Compensation Fund, limited to the payment of UI benefits.
- **Amend Section 35A-4-405(5) of the Employment Security Act** to clarify that an individual who is determined to have committed UI fraud is ineligible for benefits for an additional 13 weeks for the first week the fraudulent misrepresentation was made and 6 weeks for each week thereafter, not to exceed 49 weeks. The period will begin on the Sunday of the week the determination was issued, rather than the Sunday following the week of the determination.
 - The legislation is requested so the department can effectively issue timely fraud overpayment decisions, and, under certain limited circumstances, avoid assessing an incorrect disqualification period.
 - The Department does not anticipate this legislation will result in any fiscal impact.

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35A-4-506. Special Administrative Expense Account.

(1) There is created a restricted account within the General Fund known as the "Special Administrative Expense Account."

(2) (a) Interest and penalties collected under this chapter, less refunds made under Subsection [35A-4-306\(5\)](#), shall be paid into the restricted account from the clearing account of the restricted account at the end of each calendar month.

(b) A contribution to the restricted account and any other money received for that purpose shall be paid into the restricted account.

(c) The money in the restricted account may not be expended in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would in the absence of the money be available to finance expenditures for the administration of this chapter.

(3) Nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures, necessary and proper under this chapter, for which federal funds have been duly requested but not yet received subject to the charging of those expenditures against the funds when received.

(4) Subject to Subsection (6) ~~and (7)~~, money in the restricted account shall be deposited, administered, and dispersed in accordance with the directions of the Legislature.

(5) Subject to Subsection (6), money in the restricted account is made available to replace, within a reasonable time, any money received by this state under Section 302 of the Social Security Act, 42 U.S.C. Sec. 502, as amended, that because of any action of contingency has been lost or has been expended for purposes other than or in amounts in excess of those necessary for the proper administration of this chapter.

(6) If money in the restricted account is used for a purpose unrelated to the administration of the unemployment compensation program as described in Subsection 303(a)(8) of the Social Security Act, 42 U.S.C. Sec. 503(a)(8), as amended, the division shall develop and follow a cost allocation plan in compliance with United States Department of Labor regulations, including the cost principles described in 29 C.F.R. 97.22(b) and 2 C.F.R. Part 225.

~~(7) Effective October 1, 2013, fifteen percent of any fraud overpayment penalty collected under Section 35A-4-405(5) must be deposited into the Unemployment Compensation fund under Section 35A-4-501 as required under Section 303(a)(11) of the Social Security Act.~~

~~(78)~~ Money in the restricted account shall be available to the division for expenditure in accordance with this section.

~~(89)~~ The state treasurer shall pay all warrants drawn upon it by the division or its duly authorized agent in accordance with rules made by the department.

~~(910)~~ (a) The state treasurer is liable on the state treasurer's official bond for the faithful performance of the treasurer's duties in connection with the Special Administrative Expense Account described in this chapter.

(b) Liability on the official bond exists in addition to any liability upon any separate bond that exists on the effective date of this provision or that may be given in the future.

(c) Any money recovered on any surety bond losses sustained by the Special Administrative

Expense Account shall be deposited in the restricted account or in the General Fund if directed by the Legislature.

35A-4-405. Ineligibility for benefits.

Except as otherwise provided in Subsection (5), an individual is ineligible for benefits or for purposes of establishing a waiting period:

(1) (a) For the week in which the claimant left work voluntarily without good cause, if so found by the division, and for each week thereafter until the claimant has performed services in bona fide, covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount.

(b) A claimant may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification.

(c) Using available information from employers and the claimant, the division shall consider for the purposes of this chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(d) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so without good cause for purposes of this Subsection (1).

(e) A claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so with good cause for purposes of this Subsection (1) and is eligible to receive benefits if:

(i) the claimant's spouse is a member of the United States armed forces and the claimant's spouse has been relocated by a full-time assignment scheduled to last at least 180 days while on:

(A) active duty as defined in 10 U.S.C. Sec. 101(d)(1); or

(B) active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6);

(ii) it is impractical as determined by the division for the claimant to commute to the previous work from the new locality;

(iii) the claimant left work voluntarily no earlier than 15 days before the scheduled start date of the spouse's active-duty assignment; and

(iv) the claimant otherwise meets and follows the eligibility and reporting requirements of this chapter, including registering for work with the division or, if the claimant has relocated to another state, the equivalent agency of that state.

(2) (a) For the week in which the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which is deliberate, willful, or wanton and adverse to the employer's rightful interest, if so found by the division, and thereafter until the claimant has earned an amount equal to at least six times the claimant's weekly benefit amount in bona fide covered employment.

(b) For the week in which the claimant was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with the claimant's work as shown by the facts, together with the claimant's admission, or as shown by the claimant's conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks.

(c) Wage credits shall be deleted from the claimant's base period, and are not available for this or any subsequent claim for benefits.

(3) (a) (i) If the division finds that the claimant has failed without good cause to properly apply for available suitable work, to accept a referral to suitable work offered by the employment

office, or to accept suitable work offered by an employer or the employment office.

(ii) The ineligibility continues until the claimant has performed services in bona fide covered employment and earned wages for the services in an amount equal to at least six times the claimant's weekly benefit amount.

(b) (i) A claimant may not be denied eligibility for benefits for failure to apply, accept referral, or accept available suitable work under circumstances where it would be contrary to equity and good conscience to impose a disqualification.

(ii) The division shall consider the purposes of this chapter, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(c) In determining whether work is suitable for an individual, the division shall consider the:

- (i) degree of risk involved to his health, safety, and morals;
- (ii) individual's physical fitness and prior training;
- (iii) individual's prior earnings and experience;
- (iv) individual's length of unemployment;
- (v) prospects for securing local work in his customary occupation;
- (vi) wages for similar work in the locality; and
- (vii) distance of the available work from his residence.

(d) Prior earnings shall be considered on the basis of all four quarters used in establishing eligibility and not just the earnings from the most recent employer. The division shall be more prone to find work as suitable the longer the claimant has been unemployed and the less likely the prospects are to secure local work in his customary occupation.

(e) Notwithstanding any other provision of this chapter, no work is suitable, and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or
- (iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) For any week in which the division finds that the claimant's unemployment is due to a stoppage of work that exists because of a strike involving the claimant's grade, class, or group of workers at the factory or establishment at which the claimant is or was last employed.

(a) If the division finds that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However, if the division finds that the strike is caused by the failure or refusal of any employer to conform to any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike may not render the workers ineligible for benefits.

(b) If the division finds that the employer, the employer's agent or representative has conspired, planned, or agreed with any of the employer's workers, their agents or representatives to foment a strike, that strike may not render the workers ineligible for benefits.

(c) A worker may receive benefits if, subsequent to the worker's unemployment because

of a strike as defined in this Subsection (4), the worker has obtained employment and has been paid wages of not less than the amount specified in Subsection [35A-4-401](#)(4) and has worked as specified in Subsection [35A-4-403](#)(1)(f). During the existence of the stoppage of work due to this strike the wages of the worker used for the determination of his benefit rights may not include any wages the worker earned from the employer involved in the strike.

(5) (a) For each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this chapter, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and six weeks for each week thereafter; the additional weeks not to exceed 49 weeks.

(b) The additional period ~~shall commence on~~ will begin on the Sunday ~~following of the week the issuance of a~~ the determination finding the claimant in violation of this Subsection (5) was issued.

(c) (i) Each claimant found in violation of this Subsection (5) shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment.

(ii) The overpayment is the amount of benefits the claimant received by direct reason of fraud.

(iii) The penalty amount shall be regarded as any other penalty under this chapter.

(iv) These amounts shall be collectible by civil action or warrant in the manner provided in Subsections 35A-4-305(3) and (5).

(d) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this Subsection (5) remains unpaid.

(e) Determinations under this Subsection (5) shall be appealable in the manner provided by this chapter for appeals from other benefit determinations.

(f) If the fraud determination is based solely on unreported or underreported work or earnings, or both, and the claimant would have been eligible for benefits if the work or earnings, or both, had been correctly reported, the individual does not lose eligibility for that week because of the misreporting but is liable for the overpayment and subject to the penalties in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).

(6) For any week with respect to which or a part of which the claimant has received or is seeking unemployment benefits under an unemployment compensation law of another state or the United States. If the appropriate agency of the other state or of the United States finally determines that the claimant is not entitled to those unemployment benefits, this disqualification does not apply.

(7) (a) For any week with respect to which the claimant is receiving, has received, or is entitled to receive remuneration in the form of:

(i) wages in lieu of notice, or a dismissal or separation payment; or

(ii) accrued vacation or terminal leave payment.

(b) If the remuneration is less than the benefits that would otherwise be due, the claimant is entitled to receive for that week, if otherwise eligible, benefits reduced as provided in Subsection 35A-4-401(3).

(8) (a) For any week in which the individual's benefits are based on service for an educational institution in an instructional, research, or principal administrative capacity and that begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave

provided for in the individual's contract if the individual performs services in the first of those academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in that capacity for an educational institution in the second of the academic years or terms.

(b) (i) For any week in which the individual's benefits are based on service in any other capacity for an educational institution, and that week begins during a period between two successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the

services in the second of the academic years or terms.

(ii) If compensation is denied to any individual under this Subsection (8) and the individual was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this Subsection (8).

(c) With respect to any services described in Subsection (8)(a) or (b), compensation payable on the basis of those services shall be denied to an individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(d) (i) With respect to services described in Subsection (8)(a) or (b), compensation payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be denied to an individual who performed those services in an educational institution while in the employ of an educational service agency in accordance with the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(iv).

(ii) For purposes of this Subsection (8)(d), "educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing the services described in Subsection (8)(a) or (b) to an educational institution.

(e) With respect to services described in Subsection (8)(a) or (b), compensation payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be denied to an individual who performed those services:

(i) to or on behalf of an educational institution in accordance with the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(v); and

(ii) while employed by a governmental entity, Indian tribe, or nonprofit organization, to which the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3309(a)(1) applies.

(f) Benefits based on service in employment, defined in Subsections [35A-4-204](#)(2)(d) and (e) are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter.

(9) For any week that commences during the period between two successive sport seasons or similar periods if the individual performed any services, substantially all of which consists of participating in sports or athletic events or training or preparing to participate in the first of those seasons or similar periods and there is a reasonable assurance that individual will perform those services in the later of the seasons or similar periods.

(10) (a) For any week in which the benefits are based upon services performed by an alien, unless the alien is an individual who has been lawfully admitted for permanent residence at

the time the services were performed, was lawfully present for purposes of performing the services or, was permanently residing in the United States under color of law at the time the services were performed, including an alien who is lawfully present in the United States as a result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(A).

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.