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HOUSE OF REPRESENTATIVES

COMMONWEALTH *of* PENNSYLVANIA

House Democratic Policy Committee Hearing

Construction Workers and Unemployment Compensation

Monday, February 14, 2022 | 12:00 p.m.

G-50 Irvis Office Building and Virtual

Representative Jennifer O'Mara

12:00 p.m.

Todd Farally, Political Director
Sheet Metal Workers Local 19

Jesse DiRenna, President
IUOE Local 66

Chris Petrone, Operating Engineer
IUOE Local 66

Warren Santone, Organizer
Laborers Local 413

Q&A with Legislators

12:30 p.m.

Secretary Jennifer Berrier
Pennsylvania Department of Labor and Industry

Q&A with Legislators

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Written Testimony of Todd Farally pertaining to the Unemployment system and Construction Workers

Good afternoon and thank you for allowing me time to testify on UC issues and how they affect workers in the construction industry. The past two years I have been working with members of Sheet Metal Workers' Local 19 to help them rectify issues with their unemployment compensation in the Commonwealth of Pennsylvania. I understand that this has been a very challenging time for Labor & Industry and the UC system. No one saw the pandemic effecting our way of life the and the department had to rework the way in which they dealt with the public and their employees. I am not here today to deride or point the finger at anyone, because none of this has been easy on L&I, their workforce, or the general public who are experiencing these issues.

I know that no one here wants to see anyone suffer needlessly and I hope perhaps some solutions can come out of this conversation to help workers around the Commonwealth who are dealing with these issues. So, I just want to beak things down into segments describing the issues Local 19's members have experienced and some possible solutions.

Instances of Fraud and subsequent investigations

As we all know there have been instances where fraud has occurred. Either a claimant attempts to open an initial claim or reopen an existing claim and they find that another party has partially or completely exhausted the benefit. Or in some cases the claimant notices that the direct deposit account was changed without their authorization.

When UC discovers or is notified of the fraudulent activity, an investigation is triggered. The problem that we are seeing here is that while the investigation is ongoing, the claimant who has been identified through various methods (ID.ME, etc) and committed no act of fraud cannot receive payments for the weeks in which they are out of work until the investigation has concluded. And I am told that these investigations can sometimes take up to 18 weeks.

This places an extreme hardship on the worker and their family. Also, from an economic standpoint this keeps money that the claimant would otherwise be spending out of their local economy. This also translates to less sales tax revenue for the Commonwealth.

A possible suggested solution for this would be if a third party such as the employer or union (if the worker is a member) could back up the worker's claim that they are in fact unemployed. So, at least during the investigation the worker is able to receive payment for their weeks they are legitimately out of work. If the investigation finds that the worker did in fact claim while they were working, couldn't UC site an overpayment and work to recover monies owed back to the Commonwealth?

Another or additional solution here could be if the claimant signs a document stating that they committed no act of fraud and will incur repercussions if the investigation finds otherwise.

We are finding that the number of workers who are experiencing these fraud issues have increase dramatically over the last several months, especially for union construction workers. If left unchecked this could cause significant undue financial harm to hard working Pennsylvanians.

W2 being issued for Flagged Fraud Cases

Another issue which is affecting members who have been caught up in cases of fraud is that after the fraud has been flagged, the worker contacts all necessary parties to give notification that they have been defrauded. They also file a police report as well. The issue after the fact is that some have received a W2 from UC where the worker has to pay taxes on all the defrauded monies.

A case in point is one of our members found out in October that a fraudulent claim was opened in their name. They went through all the necessary steps to notify parties of the fraud. However, on Monday February 7th, they received a W2 from UC stating that they owe Federal taxes on \$15,000. If the worker notified all parties, why would the W2 be issued? This statement is being made to flag this sort of issue. If it is happening to one worker, it most likely is happening to others throughout the Commonwealth.

Rotation issues (start stop)

In the construction industry certain times of the year and depending on the ebb and flow of the economy worker rotations are sometimes instituted by the contractor to ensure the work they currently have on the books can be sufficiently staffed without losing their entire workforce. So, a worker is laid off for one week due to lack of work and is brought back the following week, and then off the week after that. This sort of rotation could also present itself in several forms. Week on/week off, two weeks on/two weeks off, three weeks on/one week off, etc.

The problem many members are experiencing is that when they enter into this sort of rotation they file their initial claim (or reopen an existing one), the first week is accepted. When they go back to work the following week and file that they have worked that week two things sometimes occur. Either the system will state that they cannot claim any subsequent weeks being that they are now back to work full time or the claim is flagged for fraud. Which then places their claim under investigation, as stated prior in this testimony, these investigations can take several months to reconcile.

While certainly not simple, and I am by no means am I a programmer, but I feel this is a situation where the system needs to be reprogramed to address this issue. And I am sure you're aware of this, but I just wanted to submit this for the record, because this is a real issue that affects many construction workers throughout our Commonwealth.

Claims Stopping with no explanation

There have been several instances where a member has been certifying every week with no issue only to have their claim either disqualify that week they are attempting to certify, or the system would state that the certified week is “in progress” and payment had not been released. This would continue for every subsequent week until the claimant could speak with someone from the UC Service Center.

Not receiving a letter when UC benefits are exhausted

This doesn't pertain to non-union workers in the construction industry. However, for those workers who are union members with a hiring hall this is a very important issue. If a claimant is a unionized construction worker and they exhaust their unemployment benefits, many union hiring halls will place that worker on a priority hiring list. Without a letter stating that all benefits have been exhausted, workers are unable to attain that priority status. If there were a way that UC could have a form letter set up to either be mailed, emailed, or sent to the claimant's messages in their dashboard, that would solve a big problem that many construction workers are facing throughout the Commonwealth.

Todd Farally

Sheet Metal Workers Local 19

Thank you for inviting me here today to discuss issues related to the new unemployment system. My name is Jesse DiRenna and I'm the President of Operating Engineers Local 66. Our organization represents over 7000 members and our jurisdiction covers half of the commonwealth. We are primarily heavy equipment operators and mechanics. As most of you know, construction work is impacted heavily by weather conditions, economic conditions and, certainly, seasonal impacts that drastically reduce the amount of work that can safely be performed outdoors.

Many people outside of the construction industry are unaware of certain dynamics that are uncommon in other industries. Construction projects begin and end at anytime during the year. Some jobs last for years and some last for days, sometimes just a single day. Considering the fact that our members get employment through a hiring hall, an individual could find themselves filing for unemployment at various times throughout the year. They also may have been employed by multiple employers throughout the year. Many of our members are the primary income earners in their family. For these reasons and others, a reliable, prompt and well-funded unemployment system is crucial to the survival of the construction industry.

Initially the pandemic flooded the system with claimants. Various federal relief programs that required managing and monitoring seemed to have stretched resources very thin which resulted in some delays. It is impressive to me that the delays and problems weren't more significant considering the volume of extra work created by the pandemic.

At times during the height of the pandemic we would get phone calls from our members regarding issues with their claims. But again, considering the circumstances, those calls to us were relatively few. It was early July 2021 when the call volume picked up. The calls steadily increased from late summer and through fall of 2021. Around Thanksgiving, our typical slow-season starting point, and throughout the holiday season and, frankly, up to the present, we are fielding many daily calls from our membership asking for assistance.

I could share hundreds of distressing stories from conversations I've had with our members. But instead I'll try to paint a picture of what issues they are facing. Obviously, long delays are what prompts members to call us to begin with. Typically, the individual has been waiting 8 weeks and oftentimes over 12 weeks and they feel helpless. Unsurprisingly to me, by and large, our members have been able to weather this to an extent. Most of our members understand how this industry works and prepare for the ups and downs. However, 12 weeks of zero income can strain even the most frugal among us.

Claims flagged for fraud have certainly caused delays. Sadly, many of those affected were not aware that their delay is caused by fraud until many weeks have passed. Attempting to correct it after having already waited so long has tested the mettle of even the most level-headed individuals.

A very common complaint centers around issues logging in or creating a Keystone ID. Often an individual will enter all information and get all the way to the end only to be sent back to the beginning with, seemingly, no ability to get out of this loop.

The ID Me portion of filing has proved to be an issue for a very small percentage of members that I've spoken to. Often those with limited technological skills are able to be helped by more tech savvy relatives or those helpful individuals at Career Link or elected representatives' offices.

I could go on and on but I'm sure many of you have heard many of the same issues that I am hearing. But I would rather look to find solutions. Short term solutions to ease the real time concerns of those impacted. Medium range solutions to avoid problems when the soon-to-start construction season winds down in the fall. And long-range potential solvency issue solutions that will prevent future painful benefit modification discussions.

I'm keenly aware of the need to continuously update and modernize systems. We are obligated to our membership to always search for ways to be more efficient, just as the state is obligated to taxpayers to allocate revenue appropriately. Attempts to modernize the 50-year-old UC system have long been in the works. But along the way a key component was, at best, overlooked and at worst, disregarded. Past decisions to not fully fund UC Service Centers, which resulted in hundreds of laid-off claims representatives, has come back to haunt us. Currently, turnover seems to be an issue also. A retention problem indicates to me a possible pay issue. One thing is for sure, when our members finally talk to a claim's representative, their issues are very often corrected in a matter of minutes.

One final point I'd like to make relates to retaining skilled construction workers and attracting a future skilled construction work force. We are about to see a once in a generation, multi-year investment in infrastructure. I fear that uncertainty related to Unemployment Compensation will push people away from the construction industry and, unfortunately, it probably already has.

Thank you again for the opportunity to speak about this important issue.

Respectfully,

Jesse DiRenna
President
IUOE Local 66



**Testimony of Secretary Jennifer Berrier
Department of Labor & Industry (L&I)
Before House Democratic Policy Committee
February 14, 2022**

Good morning, Chairman Bizzarro and members of the House Democratic Policy Committee. Thank you for the opportunity to speak with you today about the expiration of Unemployment Compensation (UC) benefits for workers, specifically in the construction industry.

Eligibility for Unemployment

Generally speaking, UC serves as a bridge between jobs for claimants who were laid off due to no fault of their own. Any unemployed person can file an application for benefits and a claimant's potential eligibility is based on the information provided to L&I by the claimants themselves as well as their employer. To be eligible for UC, a claimant, among other requirements, must have earned sufficient wages in his or her base year. The way each state defines a 'base year' varies slightly, but every state does have some form of time prior to when a claim was filed where a claimant must have earned sufficient wages and have been attached to the workforce. The 'base year' in Pennsylvania specifically consists of wages earned in the previous five quarters, excluding the most recent quarter (known as the 'lag quarter'). For example, if a claimant was to file an unemployment claim tomorrow their base year would begin in October 2020 and end at the end of September 2021. A visualization of this is below.

| Claim filed | Base year begins | Base year ends |
|--------------------|------------------|-------------------|
| 10/3/21 – 1/1/22 | July 2020 | End of June 2021 |
| 1/2/22 – 4/2/22 | Oct 2020 | End of Sept. 2021 |
| 4/3/22 – 7/2/22 | Jan 2021 | End of Dec. 2021 |
| 7/3/22 – 10/1/22 | April 2021 | End of March 2022 |
| 10/2/22 – 12/31/22 | July 2021 | End of June 2022 |

To further complicate a claimant's potential eligibility, in Pennsylvania a claimant cannot simply make a lump sum of wages in their base year to be eligible for unemployment. Currently, the UC law requires a claimant to be sufficiently tied to the labor force for at least two quarters of the four quarters that make up their base year. On top of that, a

claimant must have qualifying base year wages where they make at least \$116 per week for 18 or more weeks during the base year – known as credit weeks. An additional barrier is that at least 37% of wages must be earned outside of the claimant's highest income quarter of the period. To recap, a claimant must have made at least \$116 in 18 separate weeks over at least two separate quarters in their base year, and at least 37% of the wages must have been earned outside of the claimant's highest income quarter of the base year period.

How did this become so complicated?

To be frank, this is an incredibly convoluted and complex way to calculate benefit eligibility. These complications are a recent, purposeful development, enacted during the Corbett Administration. As part of the response to fiscal pressures on the UC Trust Fund following the Great Recession, Republicans in the state legislature passed Act 6 of 2011 which, among a myriad of other changes, created the credit week formula for benefit eligibility. This has the intended effect of saving the Trust Fund money by ensuring fewer UC claimants are eligible for benefits and tying up additional claimants in webs of red tape.

Pennsylvania is one of only two states that require claimants to have worked a certain number of weeks, or credit weeks (Ohio is the other). The credit week requirements create confusion for claimants and employers and consume administrative time and resources that would be better spent processing claims. Many monetary appeals stem from credit week issues. Many employers with employees in multiple states do not even report credit weeks to PA UC because other states do not require them to do so and therefore it is not part of their standard reporting. In fact, our estimates are that between 10 and 15 percent of employers do not report credit weeks at all. As a result, when a claimant files a new claim but their employer did not report credit weeks, UC staff must conduct a time-consuming investigation to determine whether they had enough credit weeks. These investigations can take weeks, particularly if UC staff must request information from out-of-state. This consumes valuable administrative time and resources that could otherwise be devoted to processing claims; precious days and weeks that out-of-work claimants cannot afford to waste are lost to an unnecessary requirement.

In short, the implementation of the credit weeks formula by the Corbett Administration made the system more complicated, more convoluted and more difficult for claimants to receive benefits.

How to help workers

This topic is especially pertinent as the effects of the COVID-19 pandemic continue to ripple through the Pennsylvania economy and disproportionately affect sectors of the economy such as the construction industry. In December 2021 alone, the construction industry accounted for over one quarter of all initial claims for UC.

Complications with UC eligibility thus disproportionately fall on members of the construction industry.

Streamlining the process of UC eligibility would help all claimants, but especially those claimants who often engage in cyclical work, such as those in the construction industry. Thankfully, Representative Gerald Mullery introduced a bill – House Bill 549, that would do exactly this.

HB 549 would make the UC program more efficient by saving staff time and ensuring eligible claimants to receive their benefits faster. HB 549 amends confusing portions of the UC law that cause claimants to contact UC service centers and add to the phone, email, and chat queue. If HB 549 were passed, fewer claimants would need to contact UC staff to ask questions, this would allow UC staff to spend time answering more complex questions from other claimants or processing claims faster, including writing determinations.

HB 549 also eliminates the “waiting week.” The waiting week is the first week of the benefit year for which someone is unemployed and eligible for benefits. Benefits are not actually payable for the waiting week, but you must file a weekly certification for that week in order to be paid benefits for any claim weeks after the waiting week. This is not only another confusing part of the law, it means people do not get this support for a week for which they are unemployed.

Perhaps most importantly, HB 549 eliminates the credit week requirements.

Beginning to unwind the administrative burdens placed on UC claimants during the Corbett Administration is a win for workers, and I thank the Democratic Policy Committee for the opportunity to speak about this today.

At this time, I look forward to answering any questions that you may have.