

# SERVICE BULLETIN

## Unemployment Insurance Provisions in the American Recovery and Reinvestment Act of 2009 (HR1)



*TO:* T&T Clients  
*FROM:* Kris Thorngren  
*RE:* American Recovery & Reinvestment Act of 2009  
*DATE:* February 26, 2009

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The American Recovery & Reinvestment Act of 2009 (HR1) was signed into law on February 17, 2009. This legislation includes compelling incentives for states to modify their UI laws to remove certain quit disqualifications and relax the requirements relating to availability for work and search for work. We hope the increased benefit payouts will have the desired stimulative impact and promote economic recovery. Nevertheless, the one-two punch of the deteriorating economy and the legislative response has ushered in a more expensive era with respect to unemployment tax.

It is clear that 2010 will be a year when unemployment tax rates will increase significantly for most employers – even employers who have not been forced to lay off workers – because the rapid depletion of state unemployment trust funds will trigger on much higher tax rate tables and adjustment factors. Nine states already have outstanding federal loans (California, Indiana, Kentucky, Michigan, New York, North Carolina, Ohio, South Carolina, and Wisconsin). Unfortunately, it is also clear that the provisions in HR1 will sustain the higher UI tax rates for years to come. Following is a review of the provisions relating to unemployment insurance.

- (1) Section 2001 of the bill extends the Emergency Unemployment Compensation (“EUC”) program, which was scheduled to expire on March 31, 2009. The EUC has now been extended through December 31, 2009. No EUC benefits will be payable for any week beginning after May 31, 2010. The extension is financed by federal general revenue and EUC benefits are not charged to employer tax accounts.

The catch is that EUC benefits incentivize individuals to exhaust their regular UI benefits, which typically can be paid for 26 weeks. An additional 33 weeks of benefits, disregarding the permanent federal/state extended benefit (“EB”) program, await the person who remains unemployed. Extended benefits can also trigger on in a state with high unemployment, resulting in as many as 20 additional weeks of benefits, or a total of 79 weeks. As of today, EB is triggered on in ten states and Puerto Rico.

The full cost of EUC, taking into account the work disincentive, is not yet known. Currently the average duration of an unemployment claim is approximately 15 weeks, because many individuals find work before exhausting their benefits. If the prospect of 33 weeks of EUB and possibly 20 weeks of EB causes the average duration to increase by 5 weeks, the amount of chargeable, regular UI benefits will increase by one-third in 2009, having a significant impact on state unemployment tax rates for 2010 and beyond.

- (2) All unemployment weekly benefit amounts will be increased by \$25, as soon as the state enters into an agreement with the Secretary of Labor and gears up to process such payments. The additional benefits are federally funded (not charged to employer tax accounts) and available for claims filed in 2009. No additional compensation is payable for any week beginning after June 30, 2010.

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This will result in a number of low-wage workers and part-time workers receiving more in unemployment benefits than they received in earnings prior to becoming unemployed, thereby creating another work disincentive.

Controls will need to be established within each state UI agency to ensure that the additional UI benefits are not charged to employer tax accounts. It remains to be seen how rapidly and accurately this benefit can actually be rolled out. We will be monitoring the benefit charges closely.

- (3) States will receive incentive payments for agreeing to expand eligibility for benefits in certain ways, or for already having these laws in place. A total of \$7 billion is earmarked for such incentives, and we anticipate that most, if not all, states will seek their share of the funds.

One-third of the potential incentive payment is available to a state if the UI law (a) provides for a base period which includes the most recent calendar quarter before a claim is filed, or (b) in the case of an individual who would not otherwise be eligible for benefits, provides for an alternative base period that includes the most recent calendar quarter. The base period is a one-year period used to determine a person's UI benefits. Most state laws define the base period as the first four of the last five completed calendar quarters, so that the most recent calendar quarter is disregarded. This provision is intended to qualify individuals for benefits who otherwise would not receive benefits because a significant amount of their work history was in the most recent quarter. Nineteen states already have alternative base periods in place and will qualify for the one-third incentive payment without any legislative changes. The alternative base period increases benefit payouts by 1% to 6%.

The main problem with including the most recent quarter in the base period is the lack of wage information necessary to calculate an individual's potential UI benefits. When a claim is filed in January, April, July, or October, the employer has not yet submitted wage records for the most recent quarter. When a claim is filed in February, May, August, or November, the wage records have been submitted for the most recent quarter but the state UI agency may still be processing them. Even though the quarterly reporting process has been streamlined, most state UI agencies still have tens of thousands of reports submitted on magnetic media and paper to process. As a practical matter, the alternative base period often involves securing wage information from the claimant, resulting in greater inaccuracy and time-consuming disputes.

States may secure the remaining two-thirds of the incentive funds by qualifying for the one-third payment and adopting at least two of the following four provisions:

- (1) Permit the payment of benefits to a person who is seeking only part-time work and available only for part-time work. States have the option to disqualify an individual if the majority of the weeks of work in his/her base period do not consist of part-time work.
- (2) Permit the payment of benefits to a person who terminates for compelling family reasons, including domestic violence if continued employment would jeopardize the safety of the claimant or a member of the claimant's immediate family, illness or disability in the immediate family, and the need to accompany a spouse to a place from where it is impractical to commute because of a change in the location of the spouse's employment.
- (3) Provide an additional 26 weeks of UI benefits, available after the individual has exhausted all regular UI benefits, for a person who is enrolled and making satisfactory progress in approved training and preparing for entry into a "high-demand" occupation.
- (4) Provide for dependents' allowances of at least \$15 per week, per dependent. The dependents' allowances may not be capped at less than \$50 or 50% of the weekly benefit amount, whichever is less.

These four alternatives are sea-changing in several ways. They impose federal policy on matters which previously were determined at the state level. They will result in permanent increases in benefit payouts and therefore permanent increases in employer taxes. The long term costs outweigh the benefits. UWC advises that some individual states project the costs would outweigh the incentive payments within three years or less.

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HR1 encourages the states to grant benefits in three voluntary quit situations. When I started in this business in 1973, it was very rare indeed for a state law to approve a claim following a resignation unless the individual quit with good cause attributable to the employer, such as harassment or unsafe working conditions. This legislation provides further momentum to the trend to approve claims when the individual resigns for good personal cause unrelated to work. Of course, employers must fund such benefits, via state unemployment tax, despite the fact that the resignation is unanticipated by the employer, unwanted by the employer, not initiated by the employer, disruptive to the employer, beyond the control of the employer, and expensive in terms of turnover costs. The policy question is not whether a safety net is appropriate but whether the employer, already burdened by the separation, is the appropriate responder.

The provision that concerns me the most is removal of the requirement to be available for full-time work and actively seeking full-time work. A small number of states have moved in this direction already. It appears that in states adopting this provision, an individual who is available only for part-time work, and who is found eligible for benefits, could be offered and refuse full-time work and still be eligible for benefits. This seems like a very big step away from the original intent of unemployment insurance. It is understandable that individuals can find themselves in circumstances that prevent them from being available for full-time work. Historically, individuals in such circumstances have not been considered attached to the workforce. Other need-based programs would seem to be more suited under these circumstances than an employer-financed program.

A state would still be permitted to disqualify a claimant who is available for only part-time work after filing a claim if the majority of the weeks of work in the base period consisted of full-time work. However, we believe it is unlikely that any state will opt for this possible disqualifier because it would be cumbersome and expensive to administer. Most state UI agencies do not track the number of weeks worked in the base period and they certainly do not track whether such work was full-time or part-time. Most employers currently do not have the capability to include information on the quarterly UI wage reports as to (1) the number of weeks of work and (2) the number of such weeks which consisted of part-time work. The alternative would be to request information regarding base period weeks on unemployment claim forms sent to employers, which would be even more impractical than reformatting quarterly wage reports.

- (4) The act transfers \$500 million in FUTA funds to state unemployment accounts for administrative use within 30 days from the date of enactment (by March 15<sup>th</sup>). The funds may be used for expenses incurred to receive the incentive payments, improving outreach to individuals who might be eligible for benefits by virtue of changes in state law, and improvement of UI benefit and tax operations. The states definitely need these funds, which can be used to process the significant increase in unemployment claims, among other purposes. We have started to notice some glitches, backlogs, and problems related to the stresses on the system, and hopefully the funding will help expedite the adjudication of claims.
- (5) Federal law provides that interest must be assessed when a state unemployment agency is forced to borrow federal funds because the state unemployment trust fund has become insolvent. This act temporarily suspends the accrual of interest on federal advances until December 31, 2010. The nine states that currently have outstanding loans will benefit from this provision immediately.
- (6) Benefits paid under the federal/state extended benefits program are normally funded 50% by federal funds and 50% from state trust funds (impacting on employer tax rates). The act temporarily changes this formula so that 100% of such benefits are paid from federal funds through January 1, 2010 and in some circumstances through May 30, 2010. Also, the act suspends the one-week waiting period for extended benefits until the week ending before May 30, 2010.
- (7) Unemployment benefits paid in 2009 will be excluded from gross income for income tax purposes up to \$2,400 per person.
- (8) The act allows for appropriations of \$400 million for state unemployment insurance and employment service operations, \$250 million of these funds are designated for reemployment services to connect unemployment insurance claimants to employment and training opportunities.

As always, please feel free to contact us if you have any questions or comments.

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