



## Unemployment Compensation

### **Testimony before the Unemployment Compensation Modernization & Improvement Council**

**Zach Schiller**

Chairs Hackett and Fraizer and members of the Unemployment Modernization and Improvement Council: Thank you for the opportunity to testify. I am Zach Schiller, research director of Policy Matters Ohio, a nonprofit, nonpartisan research institute with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. I have been following the unemployment compensation (UC) system in Ohio since 2001. My overarching message is: Make the system more accessible to claimants so that more Ohioans who have been laid off can obtain benefits on a timely basis.

That may seem obvious, but in fact it has not been the hallmark of Ohio's UC system. For most of the last two decades, prior to the pandemic, a smaller share of unemployed Ohioans qualified for benefits than the national average – just 21.6% in the fourth quarter of 2019. For many years, we have excluded many people who are paid low wages from receiving benefits with a stringent earnings standard; if you work 30 hours a week at a minimum wage job, you will not make the \$280 a week averaged over 20 weeks that is required to qualify. Thankfully, Congress made Pandemic Unemployment Assistance (PUA) available to many such workers who lost their jobs because of COVID-19. But many claimants have no idea whether they belong in the traditional UC system or the Pandemic Unemployment Assistance system—and the burden is on them to figure it out. This was a function in part of creating a separate PUA system and requiring claimants to apply first for regular benefits.

We encourage you to review the official notices that are sent to claimants by the agency. Lawyers who assist unemployed low-income workers have often said that they are difficult to comprehend—for the lawyers, not just the claimants. Though the agency has taken steps to improve access, it is still difficult for many who lack internet access; it can be difficult also to work with the online system using a mobile phone, which is the only way available for many claimants. The COVID relief legislation Congress passed in December allows for waivers of PUA overpayments that were not the fault of the claimant for equity and good conscience, which the agency is working to implement. Ohio lawmakers need to adopt such a policy for overpayments in the regular unemployment system, which is the practice of 29 other states.

Organized criminal efforts have stolen billions of dollars in fraudulent unemployment claims across the country, even while individual fraud where someone is not reporting wages is still low. It's important to recognize where the actual fraud has been

concentrated: In the PUA system. As Director Henderson detailed, the overwhelming majority of fraudulent claims that have been paid out have been in the PUA system – 50 times as much last year as in the traditional UC system. Recently, what Gov. DeWine has referred to as “international gangsters” have been attempting to raid the traditional UC system as well. While this is unfortunate, the council should make sure that its evaluation of the fraud issue in the regular unemployment system is not equated with the attempted fraud in the PUA system. In taking steps to verify identities of UC claimants, a balance should be maintained so that all claimants aren’t lumped together and subjected to the same level of verification.

An overemphasis on fraud and excessive reliance upon automated computer-based tools to manage UC can create havoc, as it did in Michigan. Following 2011 legislation targeting UC fraud, Michigan’s Unemployment Insurance Agency implemented its Michigan Integrated Data Automated System (MiDAS). Beginning in the fourth quarter of 2013 until it was cut back in September 2015, MiDAS determined that over 34,000 claimants had committed fraud. Roughly 85% of those cases were later shown as incorrect, mostly because MiDAS computer algorithms were based on flawed assumptions. As is usually true when state UC agencies have technology needs, MiDAS was a program created for Michigan by outside IT firms promising to root out UC fraud. Instead, MiDAS wrongly assessed over \$69 million in overpayments and penalties.<sup>1</sup> Lawsuits arising from MiDAS are still under way and 2018 and 2019 corrective legislation has partially remedied MiDAS errors.

As you know, the DeWine administration has brought in experts from the banking and insurance industries to help ODJFS. While technical assistance is welcome, let’s remember that this is a public benefits system, not a profit-making enterprise. Unemployment compensation is an earned benefit. We recommend that the council ask for specific, regular reports on what the public-private partnership has recommended, and how claimants have been included in reviewing solutions that are proposed. The public was never informed who all the 16 members of this group are, or whether their companies do business with ODJFS or the state. More transparency from this partnership is a must.

ODJFS has relied heavily on private for-profit vendors to cope with the avalanche of claims and new federal programs initiated over the past year. Their record has not been good. Deloitte, which was hired to create the new PUA system, has had security breaches exposing personal information to other claimants. Ohio has not led in making PUA benefits available to claimants. Instead, the existence of two separate systems for PUA and regular unemployment has led to countless headaches for claimants. From what I understand, an appeals process was not instituted as an initial part of the PUA system, nor was a mechanism created at the outset to transfer appeals to the Unemployment Compensation Review Commission. The PUA system does not provide notices by mail, making access difficult for those who do not have readily available Internet connections.

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<sup>1</sup> Robert Charette, “Michigan’s MiDAS Unemployment System: Algorithm Alchemy Created Lead, Not Gold,” IEEE (Institute of Electrical and Electronic Engineers) Spectrum (January 24, 2018), <https://spectrum.ieee.org/riskfactor/computing/software/michigans-midas-unemployment-system-algorithm-alchemy-that-created-lead-not-gold>, and Ryan Felton, “Criminalizing the Unemployed,” Detroit Metro Times (July 1, 2015), <https://www.metrotimes.com/detroit/criminalizing-the-unemployed/Content?oid=2353533>.

Ohio is not the only state where Deloitte has had problems. In November, the Wall Street Journal reported:<sup>2</sup>

“California turned to Deloitte to help handle a flood of claims engulfing its antiquated benefits system—a system Deloitte has billed the state millions for over the years, part of more than \$250 million of work for the employment department. This spring, the firm was awarded a new \$5 million contract to help upgrade systems to pay pandemic benefits. Deloitte also won an \$11.1 million, two-month contract to supply call-center staff to quickly increase the employment department’s capacity. In August, the state increased the contract to \$42.6 million.

“It didn’t fix either problem. The department’s two call centers – including one partly staffed by Deloitte – are overwhelmed, an official state report in September found. And a huge backlog of unresolved claims, tallying more than a million, was growing by at least 10,000 every day, the report said.”

The criminal syndicates looking to steal from Ohio’s PUA system have added to delays in getting support to Ohioans who have been laid off. But our experience with PUA does not suggest that private-sector management is a solution to our UC problems; far from it.

Director Henderson cited 11 different vendors that have been hired for everything from call center staffing and fraud assistance to communications crisis management and enhancements to the computer system—and that was not a comprehensive list. I would wager that many unemployed Ohioans would find the \$138 million spent was not a bargain.

According to state data, ODJFS’s overall employment of permanent full-time staff barely budged between February 2020 and a year later: It was up 58 positions, or just 2.8%. The number of part-time intermittent employees grew from just 17 to 685. The bulk of these positions are limited to 1,000 hours. While it may have seemed at the outset of the pandemic that it wouldn’t last this long, this would appear to limit the effectiveness of many such staff. As part of your evaluation of staffing and training efforts, we hope the council will review appropriate hiring policies.

As you have heard, the agency’s goal is to get back to meeting federal standards by the second quarter. In fact, timeliness performance actually declined last summer, after the volume of new claims had peaked. In December, eight states, including Minnesota but not Ohio, were meeting the Department of Labor’s standard that 87% of first payments be made within 21 days. We recommend that the council bring in experts from some of these states as well as the U.S. Department of Labor Employment and Training Administration to describe strategies that have worked in other states to expedite claims-handling. We also suggest that the council ask the agency to break down into categories: What claims are being held for longer than the Department of Labor standard processing time, and for what reasons?

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<sup>2</sup> Eaglesham, Jean and Kirsten Grind, “States hire consultants for COVID-19 help, with mixed – and expensive – results,” The Wall Street Journal, Nov. 2, 2020, at <https://www.wsj.com/articles/states-hire-consultants-for-covid-19-help-with-mixed-and-expensiveresults-11604313683>

A critical piece of the council's work will be reviewing the overhaul of the benefits and appeals IT systems now in process. This process must include a major role for claimants and claimant representatives, early on, to be sure that the new processes are designed for maximum customer responsiveness and accessibility. Other states have taken this route. Pennsylvania, for instance, created a Benefit Modernization Advisory Committee with employer, technologist, labor and claimant representatives, along with agency staff. The committee meets at least quarterly with agency and project leadership, receives monthly updates and monitors the implementation of the project, providing feedback and both formal and informal recommendations. Massachusetts has a similar advisory council, which requires feedback from vulnerable communities: Specifically, it is to "solicit input on the criteria utilized for the selection of bid evaluation from low-wage unemployed workers, people with disabilities who use assistive technology, community-based organizations that advocate for people with limited English proficiency, people of color, recipients of unemployment benefits and individuals with technological expertise in systems designed to maximize user accessibility and inclusiveness." Such input should be sought here in Ohio before Sagitec's system is finalized and rolled out. The council also should consider calling for recommendations from U.S. Digital Response, a network of pro bono technologists that is working on a set of UC technology recommendations that will be addressed to the U.S. Department of Labor.

There is a precedent for seeking input from claimant advocates. In the early 2000s, when a new Interactive Voice Response (IVR) telephone system was implemented for weekly claim filing by telephone, and in the implementation of the OJI computer system, the agency invited specialists from Ohio's legal aid societies to review the two systems and provide input. Advocates attended several meetings where the design of the new computer system and the new IVR system were explained. During these in-person meetings, conference calls and through written communication, computer screens and computer-generated notices were reviewed, as was the IVR script. Advocates were able to identify language and procedures that claimants would find confusing or which might cause problems in implementation. The agency was able to modify notices, computer screen language and systems to avoid such problems before the systems went live. The IVR system was modified so that claimants could verify their responses prior to submitting information. As a result of this input by legal service unemployment advocates, the agency was able to implement a system which claimants could better understand and utilize.

We recommend to the council a recent study of IT modernization of state UC systems put together by long-time experts (See "Centering Workers: How to Modify Unemployment Insurance Technology," at <https://tcf.org/content/report/centering-workers-how-to-modernize-unemployment-insurance-technology/>). Andrew Stettner, a long-time UC expert and one of the coauthors, added a cautionary point when the study was released. "Our analysis shows that states were able to pay benefits more quickly after modernizing their systems," he said, "but workers were more likely to be denied assistance and too many of these denials were inaccurate."

The council should also devote some effort to reviewing access for people with low incomes and people of color. How well is the UC system serving those without checking accounts? The average weekly benefit in the regular UC system plunged from \$377.42 in 2019 to \$336.90 last year as lower-wage workers were especially hard-hit with layoffs.

The council should ensure that the agency is following nondiscriminatory practices, especially in its staffing and in the automated functioning of its computer systems. The agency should publicly report demographic data on cases that are being held and benefit denials.

The council also should see what can be done to expand and better promote Ohio's Shared Work program. Under this voluntary program, instead of laying off employees, employers can share the work, and workers can receive unemployment benefits on a pro rata basis for the days they don't work. Since March 15, the agency has approved more than 2,200 shared work plans, covering more than 54,000 employees. Such plans can be used not just to avoid layoffs, but to ramp up when full-scale operations may only become possible over time. While use of such plans has grown dramatically in Ohio, many employers and workers are not aware of this alternative. There also may be ways to further streamline the process, such as employer filing of such claims.

The council also should review whether the state is providing sufficient funds to support an accessible UC system. Federal funding has grown dramatically, in part because ongoing support for UC administration is based on claims volume. However, as experience has shown, we can't depend on that. Beyond the \$10 million a year that the DeWine administration has proposed to support the IT overhaul, is the state going to spend General Revenue Fund dollars to ensure the system works well?

Our major recommendations are summarized on the next page. Thank you for the opportunity to testify. I would be glad to answer any questions.

#### Recommendations for the Unemployment Compensation Modernization & Improvement Council

- Change overpayment policy to allow hardship waivers in the regular UC program
- Make notices more understandable; further improve mobile access
- Don't equate federal Pandemic Unemployment Assistance and the regular unemployment compensation (UC) program
- Don't overemphasize automated tools for fraud prevention or look to private, for-profit vendors as the solution
- Request regular reports and transparency from the "public-private partnership" advising ODJFS
- Reevaluate staffing and use of part-time "intermittents"
- Bring in experts from the U.S. Department of Labor, other states and U.S. Digital Response
- Ask the agency to break into categories reasons claims are being held up
- Involve claimants and claimant representatives to ensure that the information-technology overhaul maximizes customer responsiveness and accessibility
- Review access for people with low incomes and people of color; publicly report demographic data on cases being held and benefit denials
- Expand and promote the Shared Work program
- Review state funding for UC administration and make sure support is adequate