



Unemployment compensation

Testimony on Senate Bill 302 before the House Technology and Innovation Committee

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Chair Fraizer, Ranking Member Lightbody and members of the committee: My name is Zach Schiller and I am research director at Policy Matters Ohio, a nonprofit, nonpartisan organization with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio.

Senate Bill 302 is seriously flawed and needs major revisions. Most importantly, more than two years after hundreds of thousands of Ohioans were laid off because of the pandemic and found an unemployment compensation (UC) system that did not provide timely benefits, this bill does nothing to improve access for claimants. It consists nearly entirely of either new ways to tighten identity verification procedures or codify in law those that already exist. This is an inadequate and misguided response to the crisis that we have just experienced that is likely to make it more difficult for some legitimate claimants to receive benefits.

The draft report by the Unemployment Compensation Modernization & Improvement Council created by House Bill 614 of the 133rd General Assembly contains a number of recommendations aimed at making it easier for claimants to file claims and access benefits. It calls for “ensuring that all Ohioans can understand the documents” and improving access to alternative forms of communications (such as multi-lingual documents). It says claimants should be involved in the development of future communications and system changes “to ensure issues individuals may face are learned prior (to) changes going public.” The report recommends evaluating the possibility of tracking claims in real time and publicly displaying call wait times on the website.¹ None of these is included in SB 302. While some improvements have been made to the bill since its introduction and the Department of Job & Family Services (ODJFS) is working on some claimant access issues, the thousands of Ohioans who called legislative offices to complain about their difficulties with navigating Ohio’s UC system would be sorely disappointed to see that this bill makes no attempt to answer their concerns.

¹ Unemployment Modernization and Improve Council Draft Report, November 15, 2022. Initial Report Adopted Aug. 5, 2021.

Nor does the bill address other important issues raised by the pandemic. Will ODJFS have sufficient trained staff to handle the volume the next time it sees a big upsurge in claims? In Washington State, the legislature approved legislation to have a pool of adjudicators in reserve when claims levels surge.² Lawmakers should take additional steps to be sure ODJFS has enough capacity to handle increased claims volume.

Moreover, the premise upon which this bill is based is unproven, at best. Bill sponsors are right in their desire to protect the integrity of Ohio's UC system, but the legislation is not based on the facts about fraud as we know them now. Almost all of the bill aims to reduce fraud by creating or reinforcing mechanisms to weed out ineligible claimants. However, data from ODJFS so far show that instances of fraud as a share of benefits *in the traditional unemployment compensation system* held relatively steady during the pandemic. ODJFS reported that as of the third quarter of this year, there had been \$1.135 billion in fraudulent overpayments during the course of the pandemic.³ But of that, only \$65 million, or less than 6%, were fraudulent overpayments of regular UC; all the rest was in federal programs that were ended in Ohio more than a year ago. Sixty-five million dollars is still too much – but it is not too different than the amount of such overpayments as a share of benefits prior to the pandemic. There are still significant numbers of fraud-flagged claims that have not been adjudicated. But the facts now do not support a bill aimed largely at preventing fraud, versus taking steps to make the system more accessible to claimants.

One element of the bill is aimed at federal programs. It would cause the ODJFS director to establish a verification system covering UC payments made to those hired contractors who are not employees using Ohio income-tax records from the state tax commissioner. The problem with this is that such records provide only annual income information. They don't say how many weeks a contractor has worked or how much a claimant averaged per week during the period they worked, both of which are needed to determine eligibility for benefits. Nor does it take into account the alternative base period, under which two different 12-month periods are used to determine whether a claimant is eligible.⁴ Someone who applies for unemployment compensation in March, for instance, could use either the 12 months ended the previous September or the previous calendar year to determine their eligibility. Annual tax records would not say whether such an individual was eligible for benefits.

The same is true for the section of the bill that would allow for the use of state tax information if an employer failed to provide requested information within 10 days.

² Engrossed Substitute Senate Bill 5193, Chapter 271, Laws of 2021, 67th Legislature, Regular Session, Unemployment Insurance – Claims Adjudicators, Effective Date: July 25, 2021, at <https://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5193-S.SL.pdf>

³ Presentation by Director Matt Damschroder, Ohio Department of Job & Family Services, Unemployment Compensation & Modernization Council, Dec. 1, 2022

⁴ See Ohio Department of Job & Family Services, "Worker's guide to unemployment insurance," pp. 15-16, at <http://www.odjfs.state.oh.us/forms/num/JFS55213/pdf/>

Introducing records from the state taxation department is likely slow down the eligibility process for claimants, delaying payment, without adding in a meaningful way to verify income. Employers have annual reporting requirements to the Ohio Department of Taxation, but these don't break down employee pay by week. And while employers submit withholding amounts throughout the year, the taxation department has said in response to questions that "as it is remitted there is no breakdown as to what is withheld per employee, only the aggregate amount withheld per employer."⁵ Moreover, annual tax information would be useless for the purpose of determining UC eligibility midway through each year, since by then any claimant could have worked 20 weeks and earned enough since the beginning of the year that last year's tax information would be outdated.

The bill allows the Department of Public Safety to release digitalized photographic records to ODJFS to carry out its functions under unemployment compensation law. While this is an improvement over the earlier provision, which did not limit this to UC, it remains too open-ended. The use of such photos should be limited to identify verification, as existing law already does in connection with sharing of photos with the American Association of Motor Vehicle Administrators. Their use should be permitted only when there is a reasonable question as to the identity of the claimant, not for generalized screening of claimants. The agency also should be directed to add protections to allow legitimate claimants to resolve false positives quickly, and report publicly on any data breaches.

Several ID verification measures are already in place. Currently, claimants must submit their Social Security number and their driver's license number or that of a state ID. The unemployment compensation system also recently adopted the OH|ID system. The OH|ID portal requires users to input personally identifying information including their social security number.

Several sections of the bill put in state law things that the Department of Job & Family Services already does to combat fraud. ODJFS receives data from the Department of Rehabilitation and Correction and runs a crossmatch weekly. Writing in the Greenbook describing the FY 2022-23 budget bill, the Legislative Service Commission said, "Ohio has built and implemented a weekly national incarceration cross match system that matches individuals applying for UC benefits with a database of individuals identified as being incarcerated either during the week of application or recertification."⁶ ODJFS also receives a database of death records maintained by the state health department, updated daily, and compiled and released to partnering state agencies each month to check for deaths.

⁵ Emails to Zach Schiller from Gary Gudmundson, Ohio Department of Taxation, March 16 and 17, 2022

⁶ Blaine, Nicholas J. and Ryan Sherrock, Legislative Budget Office of the Legislative Service Commission, Greenbook, LBO Analysis of Enacted Budget, Department of Job and Family Services, August 2021, p. 48, at <https://www.lsc.ohio.gov/documents/budget/134/MainOperating/greenbook/JFS.PDF>

Existing law provides for employers to notify the ODJFS director if they have knowledge affecting a claimant's right to receive benefits.⁷ Thus, adding a process for employers to report that an applicant or recipient fails to meet the eligibility requirements (see Section 4141.34) duplicates what is already allowed. Under existing law, there are also provisions for how this must be done. On its web site, the agency already offers employers an opportunity to report laid-off employees who refuse offers to return to work. Existing law also provides that the name and address of the individual witnessing this must be included in the report. If there is to be any change in this provision, it should be included in this section. Since the agency already does these things, it does not add significantly to existing protections to include them in this bill.

Under the bill, benefits distributed through direct deposit can only go to a financial institution with a physical location in Ohio. No provision is made for those individuals who live in other states and may have worked in Ohio before becoming unemployed.

Requiring an annual agency report on the UC system is a useful provision. However, it should include more information regarding agency performance, such as call wait times, timeliness of benefit payments and other measures that will inform claimants and the public how well the system is functioning.

Thank you very much for the opportunity to testify.

⁷ See Ohio Revised Code Section 4141.28(F)