



Testimony
House Commerce, Labor and Economic Development Committee
May 12, 2020
Zoom Meeting - Statehouse
Kansas Department of Labor
Secretary Delia Garcia

Chairman Tarwater and Members of the Committee,

The national April Labor Report, released last Thursday, revealed a national unemployment rate increase of 10.3 percentage points to 14.7 percent. This magnitude is on par with the Great Depression, however, the speed is immensely faster. It took the Great Depression 2.5 years to see the employment declines we are seeing in six weeks. Kansas joins states across the country as we grapple to confront these capacity challenges. While our state April labor report is not released until May 22nd, in the interim, our unemployment data cements this historically unprecedented health and economic crisis. Between March 15 and May 09, 2020, we received 236,412 total initial claims. Last week, we had 115,536 continued weekly claims, with 93,888 individuals receiving benefit payments. So far, payments have totaled roughly \$325 million, including Federal Pandemic Unemployment Compensation (FPUC) being \$142 million. This amount will continue to increase as we begin to pay the retroactive additional \$600 payment. I want to **Thank You** for supporting the emergency declaration in order for us to accept these funds for our hard working Kansans to receive. As you can see this will not be over this month, and we continue to receive updated guidance from the U.S. Department of Labor on a weekly basis. We will need flexibility to continue working with the federal government for the rest of this year. Congress may pass further legislation to address continuing or new needs for employers and employees. We could face significant challenges or roadblocks to receiving further funding if the Kansas Legislature is not in session. I ask for your continued partnership and support in the coming weeks and months in order to continue serving your hard working constituents.

Despite these unprecedented challenges, I am thankful for the ingenuity and dedication of my staff, in combination with the swift actions and partnership of our Governor and our State Legislature. The Legislature's initial action of extending unemployment benefit weeks and suspending the waiting week, in tandem with the Governor's actions, like her Disaster Declaration, have been crucial for our hard working Kansans. These actions have allowed my agency to receive vital federal funding and implement essential operations, like allowing us to reassign staff from other agencies and divisions to assist with the immense volume of UI. Without these actions, I am confident we would be in a worse position.

Now, I want to share with you how we will need to continue serving our Kansans moving forward. We will need to maintain compliance with the Families First Coronavirus Response

Act (FFCRA) and extend the Kansas Legislature's previous actions on this. We must pass these federally mandated requirements in order to receive vital federal funding for your constituents.

On March 18, 2020, the President signed the families first coronavirus response act (FFCRA), which makes emergency supplemental appropriations in response to the spread of COVID-19 and includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA). EUISAA sets out requirements for emergency administrative grants to states, and provides: (1) emergency administrative grants to states; (2) emergency flexibilities to states relating to temporarily modifying certain aspects of their UC laws; (3) a short-term waiver of Title XII interest payments due and interest accrual on Title XII advances to states; and (4) full federal funding, under certain circumstances, of extended benefits paid through December 31, 2020. On March 27, 2020, the President signed into law the coronavirus aid, relief, and economic security act (CARES Act), which provides states with additional flexibility in meeting the UC application requirements to receive Allotment I of the emergency administrative grants.

EO 20-17 allowed the state to meet these requirements to receive emergency administrative grants (Allotments I and II) under FFCRA. Many of these requirements involved waiving statutory requirements on a temporary basis. EO 20-28 extended EO 20-17; thus, the state's ability to meet these requirements will end on or before May 31, 2020. If the state does not continue to meet these requirements on or before September 15, 2020, it will not be eligible for Allotment II under FFCRA. One of these requirements (waiting week waiver) also allows the state to receive additional federal reimbursement funding under the CARES Act.

In anticipation of EO 20-17 expiring at the end of this month, KDOL is proposing the following legislation:

- Section 1 (State's commitment to UC system) – meets FFCRA Allotment II requirement. See page 1.
- Section 2 (waiving work search requirement) – meets FFCRA Allotment II requirement. See page 2.
- Section 2 (waiving the waiting week) – meets FFCRA Allotment II requirement and CARES Act federal reimbursement funding. See page 2.
- Section 3 (employer notification to employees) – meets FFCRA Allotment I requirement. See page 3.
- Section 4 (noncharging allowance for contributing and rated governmental employers) – meets FFCRA Allotment II requirement. See page 7.
- Section 4 (reimbursing employers) – specifies that the charge of payments will be reimbursed to employers under the CARES Act federal reimbursement funding process. Also, expands allowance to reimbursing employers by authorizing the state to provide additional relief to such payments. See page 13.
- Section 6 (Kansas register publication) – requesting earlier enactment into law since EO 20-17 expires on or before May 31, 2020. See page 17.



Certain contributing employers have also reached out to us for a waiver of the “negative account employer” requirement. This waiver will allow them to participate in the state’s shared work unemployment insurance program. An employer may use Shared Work in lieu of a temporary or total layoff of employees as it allows for a partial workweek and partial unemployment benefit for employees. Contributing employers—which are the majority of Kansas employers and all private employers—are further required to not have a negative account. A negative account employer is one whose total benefits charged to the employer’s account exceeds all contributions paid by the employer for all years. Under Section 2108 of the CARES Act, payments under Kansas’ shared work UI program (e.g., UI payments) will be reimbursed by the federal government for weeks of unemployment beginning on or after March 27, 2020, to December 31, 2020. KDOL is proposing the following legislation to allow those employers to participate:

- Section 5 (shared work program) – in response to constituents’ requests, but the state will also receive federal reimbursement funding under the CARES Act for payments made under this program. See page 15.

When evaluating the status of the Unemployment Insurance system, it is important to understand the overall structure and the challenges presented. As has been discussed, the primary processing tool for the UI system is a legacy mainframe system. While reliable, mainframe systems do present challenges. Specifically, the ability to rapidly respond to numerous changes at once is extremely difficult. In the current crisis, KDOL IT staff are tasked with implementing the removal of the waiting week, an extension of Kansas benefits to 26 weeks from 16 weeks, a federally funded increase in benefits of \$600 per week, an additional 13 weeks of federally funded benefits for certain qualifying claims, and creation of the entirely new system to provide benefits to self-employed and others not traditionally eligible for unemployment insurance benefits. These changes all utilize the same payment file, so the changes must work in concert with one another. This requires painstaking code review and testing. Further, the ability to utilize additional outside resources is limited due to unfamiliarity with the KDOL mainframe environment. Even for current programming staff, inherent challenges are presented due to code documentation issues that have occurred over a period of several years.

In addition to the mainframe, KDOL also utilizes an internet web environment and a Siebel case management functionality. These distinct environments are part of previous modernization efforts that have increased functionality in certain areas. However, they are not a comprehensive technology stack and have not been upgraded and maintained over time. The result is that our unemployment system is extremely vulnerable to the types of massive data that is currently hitting the system due to the ongoing public health and economic crisis. As technology changes around the mainframe, the code does not and is inflexible, meaning it takes more effort to put changes into production.



As a result, our team must expend considerable resources trying to keep the system from crashing. This includes a multi-day effort to address issues with a software known as “Rocket” that links the web environment to the mainframe. When we installed Rocket in 2015, replacing an even older and less reliable technology called “Attachmate” that performed the same function, there was simply nothing included in that project design or implementation that imagined handling the amount of data that is currently required. Due to round the clock efforts by our KDOL IT team, OITS staff, outside contractors and vendors, the website is maintaining the ability to file claims. Further, we are constantly monitoring the situation and evaluating additional options to ease the data burden on our existing infrastructure.

I am inviting you, the State Legislature, to work together with my agency to be part of the solution to help our fellow Kansans by investing in modernizing Kansas and building a better system. We can do this in partnership as we move forward to respond to the current crisis, while also being proactive in preparing for a future crisis. By doing this, we can better position our state to be prepared for the next state emergency. This is especially important as we evaluate the longevity of COVID-19 and its impacts. About twenty years ago, we were amongst the first in the country to launch the ks.gov technology, which was a result of a public - private partnership, and I am confident we can utilize this once successful model to better serve our fellow Kansans.

In addition to the challenges presented by the IT infrastructure, the UI Contact Center was not adequately staffed for the historic levels of claims we are now receiving. The administrative costs of the unemployment insurance system are federally funded. Because federal funding links to the unemployment rate, when claims numbers are low, as they have been for the last few years, the administrative funding goes down dramatically. The underfunding of the unemployment insurance system has been a consistent area of concern over the last few years from advocacy groups such as the National Association of State Workforce Agencies. The number of customer service representatives in our contact center numbered in the low 20’s at the onset of this crisis. The problem is simply one of basic math.

We have taken multiple steps to increase the number of contact center representatives, and I will expand on this in a moment. It is important to understand why there is no easy path to rapidly increase the number of customer service representatives available. First, the unemployment law is complicated in normal times, and we are now adding multiple law changes and program enhancements at the same time that it must be learned. Second, the lack of a coherent system outlined above creates numerous challenges for frontline workers. CSR’s must navigate between both a mainframe screen and a Siebel screen while taking a call. These screens are difficult to learn and make customer service less efficient. The normal training class for a CSR is 4 weeks of classroom learning, followed by close monitoring once a CSR is on the “floor.” So, there is no easy way to simply hire 50 customer service representatives and have them start working claims the next day. This issue is exacerbated by a finite number of supervisors and training staff to work closely with new CSR’s and ensure they are not making mistakes on claims that will only



increase the workload. Finally, any effort to increase staff must also navigate the challenges of keeping our workforce safe through social distancing and working from home, which are the same challenges that are currently leading to the unprecedented numbers of unemployed workers across the country.

USDOL has authorized the states to ignore previous restrictions on utilizing private contractors to assist in the unemployment claims process. Even if KDOL hired 100 private call center workers to assist, those workers would still have to receive detailed training on the unemployment insurance and the technology systems that support the program. Again, those workers would have to be supported by a number of experienced supervisors and trainers that do not exist. Where private industry could potentially provide assistance would be in a lower-skilled virtual contact center that provided informational services without the knowledge and expertise to do actual work on claims. KDOL, in partnership with the Office of the Governor, the Kansas Department of Agriculture and the Kansas Department of Commerce, has utilized such an approach by standing up a virtual contact center through Amazon. With the addition of the “triage” contact center, our number of intake representatives grew to well over 100. Since then we continue to increase staffing by hiring former employees to assist not only with intake, but also with some of the back end processes necessary to operate our system. However, instead of utilizing private sector employees as allowed by the recent federal guidance, we have utilized our own state employees who are currently considered non-essential workers. Now, we are focused on long-term staffing solutions.

Finally, I will provide an overview and update on the status of the new federal programs. Some of these programs may look familiar to you, and that is because they are included in our first UI bill. Passing this bill will allow us to continue what we have been doing in addition to retaining vital federal funding. I cannot emphasize enough how important that is.

The **CARES Act** was signed into law on March 27, 2020. The law included a number of provisions on various topics, including: unemployment insurance such as Pandemic Unemployment Assistance (PUA); Emergency Unemployment Relief for Governmental Entities and Non-Profit Organizations; Federal Pandemic Unemployment Compensation (FPUC); Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment; Emergency State Staffing Flexibility; Pandemic Emergency Unemployment Compensation (PEUC); Temporary Financing of Short-Time Compensation (STC) Payments in States with STC Programs; and Grants for STC Programs.

Pandemic Unemployment Assistance (PUA) provides relief to those not traditionally eligible for unemployment compensation, such as contract labor, self-employed, and “gig” workers. A covered individual is eligible for weeks of unemployment caused by COVID-19 beginning



January 27, 2020, and ending no later than December 31, 2020—eligibility ends when the unemployment is no longer COVID-19 related. The amount payable under the program cannot be less than \$192 or more than \$488 in the state of Kansas. Payment of these benefits also include applicable “push-up” dollars authorized by the Act.

Governor Kelly signed the agreement for Kansas to participate in PUA on March 28, 2020, and I submitted the agreement to the United States Department of Labor (USDOL) on the same day. The KDOL UI, IT, and Legal teams have been working together to interpret the CARES Act and federal guidance from the United States Department of Labor in order to implement this new program. We are utilizing a phased approach. Phase 1 involves creating a new system to be able to accept applications for those with no covered wages such as individuals that are fully self-employed and was completed on May 12, 2020. Phase 2 will allow our developers to process those applications and issue payments with payments being issued no later than May 25, 2020. Phase 3 will involve issuing payments to claimants that are eligible for partial UI payments and/or claimants that have exhausted UI benefits will be completed no later than June 16, 2020.

Emergency Unemployment Relief for Governmental Entities and Non-Profit Organizations offers relief to governmental entities and non-profits by covering benefit costs at 50%. The benefit applies to weeks from March 13, 2020 to December 31, 2020.

Governor Kelly signed the agreement for Kansas to participate in this program on March 28, 2020, and I submitted the agreement to the United States Department of Labor (USDOL) on the same day. At this point, we are evaluating the best way to implement this law within the state of Kansas. Current USDOL guidance requires KDOL to bill the governmental entities and non-profit organizations for the full 100% of their benefit costs and only offers relief after that money is received.

Emergency Increase in Unemployment Compensation Benefits provides Federal Pandemic Unemployment Compensation (FPUC), which has also been referred to as a “push-up” payment. A payment of \$600 is added to each week claimed by an individual in addition to their calculated weekly benefit amount. The benefit is payable for weeks after the necessary agreement is entered into, but ends no later than July 31, 2020.

Governor Kelly signed the agreement for Kansas to participate in FPUC on March 28, 2020, and I submitted the agreement to USDOL on the same day. On April 22, 2020, FPUC payments began. Back payment of prior weeks began on May 6, 2020.



Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with no Waiting Week provides for 100% funding for states who do not have, or have waived, the traditional waiting week. The 100% funding includes actual benefit costs as well as administrative costs.

Governor Kelly signed the agreement for Kansas to participate in this program on March 28, 2020, and I submitted the agreement to USDOL on the same day. We continue to work toward compliance with the requirements. March 31, 2020, Governor Kelly issued Executive Order 20-17 to waive the waiting week requirement for claims related to COVID-19. The mainframe programmers in our IT team worked to write and deploy code that would waive the waiting week for claims related to COVID-19 with the first attempt at deployment made on March 26, 2020; however, the attempt was not successful. After numerous attempts to fix the issues by the mainframe team with the assistance of Unemployment Insurance staff, there are still claims in which the waiting week has not paid out. The mainframe team will continue to work with Unemployment Insurance staff to address this issue as our fiscal team will work to receive reimbursement from USDOL for the costs.

Emergency State Staffing Flexibility lifts the usual merit staffing requirements that apply to unemployment insurance through December 31, 2020, in order to facilitate quick hiring and rehiring of staff.

When we started the week of March 15, 2020, we had just over 20 people working as intake representatives answering the phones for KDOL in the Unemployment Insurance Division. During the week of March 22, 2020, I acted quickly to double our staffing by bringing back staff that had previously worked in intake, but had been promoted internally. During the week of March 29, 2020, we brought in staff from other sections of the Unemployment Insurance Division to work in intake answering the phones, which provided us with approximately 60 intake representatives. A triage contact center was created with the assistance of the Governor's Office, Department of Agriculture, and Department of Commerce. The triage contact center answers basic unemployment insurance questions, which leaves the KDOL intake staff for the more difficult questions that require access to our complicated system. With the addition of the triage contact center, our number of intake representatives grew to well over 100.



With Department of Agriculture and Department of Commerce employees returning to their normal job duties on May 18, 2020. We begin moving away from the triage contact center model and focusing on our more long-term solutions. It is imperative that we increase our number of skilled intake staff to meet the needs of the claimants and employers across the state. We are working to hire consecutive small intake classes that can be trained while still social distancing. On May 11, 2020, our first class of five began taking calls full-time, and our second class of seven began training. We are currently interviewing for our next intake class.

Throughout the pandemic, we have also been heavily recruiting former employees and rearranging staff within KDOL to best respond to this crisis; we currently have 109 employees that fall into one of these categories. We continue to look for strategies to increase staffing throughout the unemployment insurance division of KDOL.

Pandemic Emergency Unemployment Compensation (PEUC) details the additional unemployment compensation benefits for those claimants who exhaust regular unemployment under state law. The program is optional for states, and states wishing to take part will have to enter into necessary agreements with the Secretary of the United States Department of Labor.

To be eligible, the individual must have exhausted all rights to unemployment compensation otherwise already available under state and federal law for their current benefit year. Eligibility for PEUC requires the individual to be able for work, available for work, and to actively seek work; however, that eligibility is determined under the same flexibility and guidance provided by the United States Department of Labor and is already in place due to COVID-19. This benefit is available upon the execution of an agreement through December 31, 2020.

Individuals are eligible for payment at the same weekly benefit amount they had for regular unemployment, but it also includes the “push-up” payment if PEUC is paid during the “push-up” eligibility period.

Governor Kelly signed the agreement for Kansas to participate in PEUC on March 28, 2020, and I submitted the agreement to USDOL on the same day. USDOL released guidance on PEUC through UIPL 17-20 on April 10, 2020. Unemployment Insurance staff at KDOL completed business requirement on April 13, 2020. The KDOL IT team will begin taking action on this project this week. They have not been able to focus their efforts on this project prior to this week as it requires significant mainframe programming, and the mainframe programmers have been focused on the previous mentioned efforts.



Temporary Financing of Short-Time Compensation (STC) Payments in States with STC Programs provides for 100% reimbursement to states for benefits paid under the State's STC program. Reimbursement may be made for up to a maximum of 26 times the weekly benefit amount.

In Kansas, this program is referred to as Shared Work. An employer/business owner may use Shared Work in lieu of a temporary, total layoff of employees. It allows for a partial workweek and partial unemployment benefits for employees. It is not available for seasonal layoffs.

Governor Kelly signed the agreement for Kansas to participate in this program on March 28, 2020, and I submitted the agreement to the United States Department of Labor (USDOL) on the same day. We plan to seek reimbursement for weeks after enactment of the Act through December 31, 2020, which is the maximum time period for which reimbursement may be sought under the federal law.

Grants for Short-Time Compensations (STC) Programs provides for administrative grants to states to enact STC programs or to promote and assist enrolling employers in existing STC programs. The total pool of grant funds available is \$100,000,000. The pool is subject to allocation as provided for under federal law. Kansas will seek these grant funds when available in order to promote our Shared Work Program.

Aside from all the above mentioned Unemployment Insurance programs, I would like to share with you one more separate issue related to COVID-19 that my agency has been working on. The Kansas Department of Labor submitted a Regulation regarding protections for our first responders and healthcare workers as they risk their lives battling COVID-19 on the frontlines by providing lifesaving care to Kansans, even if they may not have healthcare or resources of their own. We would join other states like our neighboring state of Missouri, to ensure the safety of our frontline workers so they can know while they are risking their lives to take care of our fellow Kansans, we are taking care of them. That Regulation was denied and we are exploring all options to serve our Kansas workers and would ask for your support in this as well.

In closing, thank you for this opportunity to update your committee on the unemployment services and activity of the Kansas Department of Labor. As we all adjust to our new normal, I am looking forward to our continued partnership to build a better Kansas and move our state forward. At this point, I am happy to stand for any questions. I have key staff on the line to assist with questions you may have. Thank you.