



# Employment Security Department

WASHINGTON STATE

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June 17, 2013

TO: David Schumacher, Director  
Office of Financial Management

FROM: Nan Thomas, Deputy Employment Security Commissioner *N.T.*

SUBJECT: Contingency planning for state-agency operations after June 30

In response to your June 12 request, following is the Employment Security Department's list of activities that may be authorized if a state budget has not been approved by July 1, 2013. We have determined that Employment Security doesn't have any activities related to categories 1 (transportation budget) or 4 (public safety). Our activities subject to categories two and three are described below.

**2. Services that do not require an appropriation, e.g., from non-appropriated funds.**

ESD has the following services that are funded with non-appropriated funds.

**The Unemployment Trust Fund** ~ This fund is used solely for paying unemployment benefits to qualified unemployed workers. There are no operating costs charged to this fund source. **Staffing to support this activity is addressed in category 3.**

**Accessible Communities** ~ This activity supports administrative costs associated with state law (RCW 50.40.071) promoting accessible communities for people with disabilities, and it provides grants to local and county entities to assist with disability programs.

**Approximately 0.6 full-time equivalent (FTEs) employees are needed to support this activity.**

**3. Services directed by constitutional mandates or federal law.**

The unemployment-insurance program is fundamentally a federal program and must comply with federal law. At a minimum, we must do two things: Pay benefits to eligible claimants in a timely manner, and ensure that tax payments and benefit repayments (overpayments) received by ESD are immediately deposited in the Unemployment Trust Fund. In order to make timely benefit payments, we also must process federal cash draws and fund transfers to ensure we maintain enough cash to cover those payments, and we will need to retain a core level of staffing to maintain the technology systems used for all of these functions.

**Processing and paying unemployment benefits** ~ Section 303(a)(1) of the Social Security Act (SSA), 42 U.S.C. 503, and Section 3304(a) of the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3304 provide criteria that the U.S. Department of Labor (USDOL) will

consider in determining whether the state is administering the unemployment-insurance system consistent with federal requirements. Pursuant to Section 303(a)(1), a state must administer the program in a way that is "...reasonably calculated to ensure full payment of unemployment compensation when due." In interpreting the effect of a 1971 U.S. Supreme Court decision, *California Department of Human Resources Development v. Java*, 402 U.S. 121 (1971), which analyzed Section 303(a)(1), the USDOL in a directive, Unemployment Insurance Program Letter 11-26, stated the following: "To meet the Court's interpretation, as we view it, a State's law and procedure must provide for: Paying benefits promptly, after a determination has been made in the claimant's favor, regardless of the pendency of the appeal period or of any appeal that has been taken from the determination[.]"

Section 6011 of the Employment Security Manual, which has been codified as part of Appendix A to 20 C.F.R Part 602 and Appendix B to 20 C.F.R. Part 614, states, in part, that the Secretary of Labor interprets Section 303(a)(1) to mean that state law must include provisions to ensure that the state agency "obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably ensure the payment of benefits to individuals to whom benefits are due."

Also, pages V-11 through V-16 of the USDOL Employment and Training Handbook No. 301, *UI PERFORMS: Benefits Timeliness and Quality - Nonmonetary Determinations Quality Review*, outline the minimum criteria necessary to satisfy the requirement that states make reasonable attempt(s) to obtain the necessary information to make eligibility determinations.

In analyzing federal law as it relates to paying unemployment benefits, it is clear that ESD is required to provide benefits to eligible claimants in a timely manner. Therefore, any action by the department to curtail the ability of claimants to receive unemployment benefits in a timely manner would be inconsistent with federal law, and suspending benefit payments based on a labor shortage at ESD would deny claimants the right to those benefits.

**FTEs needed to meet absolute minimum federal statutory requirements for processing new and continued benefit claims: 390.** (This estimate is of staffing needed for a brief period to meet the minimum level of service required by federal law. In the event of a prolonged shutdown, we might have to increase staffing to maintain this minimal standard.)

**Depositing tax payments and benefit repayments, and making fund transfers** ~ ESD is required to promptly deposit tax payments received from employers and benefit repayments from claimants. (Many of these payments are sent by mail, so we must continue processing the daily mail to sort out these submissions.) The department also must draw cash from the federal treasury and transfer funds between accounts in a timely manner to maintain enough cash to pay unemployment benefits.

Section 3304(a)(3) of FUTA requires that, except for certain refund payments, all money received by ESD must be paid immediately to the U.S. Treasury and placed in the Unemployment Trust Fund. According to UIPL 22-96, "The exact time moneys become part of the State's unemployment fund is statutorily controlled by the immediate deposit requirement, which requires the payment by the State of all money received in the

unemployment fund . . . immediately upon such receipt...” UIPL 22-96 clarifies that the State unemployment fund receives the money at the instant the State or its agent receives the money.

Based on federal and USDOL’s interpretation, ESD is required to immediately deposit tax payments received from employers and benefit repayments (overpayments) from claimants. The department also must draw cash from the federal treasury and transfer funds between accounts in a timely manner to maintain enough cash to pay unemployment benefits.

Federal law also contains a variety of other requirements relating to the use of grant funds and administering special projects, such as the Training Benefits and Shared-Work programs. Although the federal requirements pertaining to these programs must be followed by the state, failing to meet all of the federal deadlines, schedules and reporting requirements would not place the state’s entire unemployment-insurance system out of conformity with federal law the way failing to pay benefits in a timely manner or failing to immediately deposit tax payments and benefit overpayments in the Unemployment Trust Fund would conflict with federal requirements.

**FTEs needed to process fund transfers, tax payments and benefit repayments on an ongoing basis: 2.5; FTEs needed during quarterly wage reporting and tax payment period, July 15 through August 16: 22.5**

**FTEs needed to provide a minimal level of technology support on an ongoing basis for claims processing, benefit payments, fund transfers and deposits: 21; FTEs needed during quarterly wage reporting and tax payment period, July 15 through August 16: 28**

### **AmeriCorps**

42 U.S.C. Chapter 129, National and Community Service, provides the statutory authorization for the AmeriCorps programs that include the Washington Service Corps, Washington Reading Corps and Vista programs. 45 C.F.R. Chapter XXV, Corporation for National and Community Service, provides the requirements for operating these various programs. The current program year runs until September 1, 2013. ESD is required to continually collect and submit performance and evaluation data for the programs under 45 C.F.R. § 2522. In addition, ESD is required to make regular payments of the cost of living stipend to AmeriCorps members under the same CFR. ESD currently pays the cost of living stipend to members on the regular state payroll cycle.

**FTEs need to manage program compliance: 1-6**

**FTEs to provide cost of living stipend disbursement: 2 employees for two days each payroll cycle.**

