



STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT

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June 26, 2015

TO: David Schumacher, Director
Office of Financial Management

FROM: Lisa Marsh, Deputy Commissioner

SUBJECT: Contingency planning for ESD operations after June 30

In response to your March 4th request, the Employment Security Department (ESD) provided, on March 18, 2015, its list of activities that may be authorized if a state budget has not been approved by July 1, 2015. We had determined that ESD didn't have any activities related to categories 1 (transportation budget) or 4 (public safety). One of the activities within category three (directed by constitutional mandates and federal law) was to manage AmeriCorps program compliance and to provide cost of living stipend disbursement. On June 17, ESD was notified by Debbie Schuffenhauer, Executive Director of Serve Washington, that all program activities would be suspended if the state was unable to reach a budget by June 30. We are therefore removing the section from our contingency plan that relates to managing and paying AmeriCorps workers.

Our revised activities subject to categories two (from non-appropriated funds) and three (directed by constitutional mandates and federal law) 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.

Unemployment Insurance

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 minimum federal statutory requirements for processing new and continued benefit claims: 311

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 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: 31

Title III of the Social Security Act provides for payments from the federal UTF to the states to meet the necessary cost of administering the UC programs in the state. All of the funds collected under the state program are deposited in the federal UTF (Title IX of the SSA prescribes the distribution of the tax revenue among the various accounts of the trust fund. Sections 3303 and 3304 of the Internal Revenue Code of 1986 represent some of the minimum federal requirements and provide that the Secretary of Labor shall approve a state law for basic and additional tax credit if under the state law: All of the funds collected under the state program are deposited in the federal UTF (Title IX of the SSA prescribes the distribution of the tax revenue among the various accounts of the trust fund).

As part of the Department of Labor’s “UI Performs” states are required to have a quality revenue operation. UI performs reviews the following major tax functions: Status

Determination, Cashiering, Report Delinquency, Collections, Field Audit and Account Maintenance. Several of the units that operate these areas are behind in day to day work due to budget cuts and defects in our new (one year old) tax system. The opportunity to allow staff to continue working during the shutdown will allow us to provide business customers the new accounts and account maintenance they need to report wages and pay taxes. Collection of report and money delinquencies ensures wages reported for use on unemployment claims as well as monies in to the UI Trust fund.

FTEs needed to operate the tax program: 54

FTEs needed to provide a minimal level of technology support on an ongoing basis for claims processing, benefit payments, fund transfers and deposits: 20; additional FTEs needed during quarterly wage reporting and tax payment period, July 15 through August 16: 27

Foreign Labor Certification Program

In administering the H-2A visa program for admission of temporary foreign agricultural workers under 8 U.S.C. § 1188, the Department of Labor relies on ESD to initially screen all applications for compliance and to initiate recruitment by posting a job announcement. 20 C.F.R. § 655.121. Failure to do so would require employers to file emergency applications at the federal level and may result in processing delays that would limit ability for growers using temporary agricultural workers to have access to labor force to harvest their perishable crops. This could also result in employment provisions being approved in contracts that would undermine worker rights.

FTEs need to maintain program: 1

Please contact Deputy Commissioner Lisa Marsh at (360) 902-9301 or LMarsh@esd.wa.gov with any questions.