

Oregon Employment Department Advisory

Council Meeting

DATE: July 29, 2019
TIME: 1:30 p.m. – 3:30 p.m.
LOCATION: Employment Department, Central Office

Council Members	
Barbara Byrd, Council Chair	Present
Kurtis Barker, Council Vice-Chair	Present via phone
Laurie Hoefler, Council Member	Present
Paloma Sparks, Council Member	Present
Employment Department Director: Kay Erickson, Ex Officio Member	Present
Additional Participants and Guests	
David Gerstenfeld, Unemployment Insurance (UI) Division Director	Present
Michelle Deister, Legislative Fiscal Office	Present
Katie Morrison, Legislative Coordinator and Council Liaison	Present

Action Owner	Action Item List
All	Recruit individuals for nomination to the committee.
David Gerstenfeld	Look into the availability of additional UI claimant data.
Kay Erickson	Provide a more in-depth Modernization update.

Meeting Notes

Welcome and Opening Comments

Barbara Byrd, Council Chair, called the meeting to order and attendees introduced themselves.

Employment Department Update – Kay Erickson, Employment Department Director

Deputy Director Graham Slater is retiring after 36 years with the Employment Department. Graham spent 33 years in the Economic and Workforce Research Division, including serving as head of the division. He served his last three years as the deputy. A farewell gathering will be held from 2 p.m. until 4 p.m. on Tuesday, July 30 in the Employment Department lobby.

The council reviewed an informational graphic of the Department’s strategic plan. During the development of the plan the Department asked for comments, observations, and suggestions from all staff across the agency as input for creating organizational values and operating principles. In addition, the Department asked stakeholders, customers, job seekers, employers, and claimants to provide feedback about their experiences with the Department. It took a lot of work to gather this input but it was worth the effort. Barbara Byrd asked if the Department had hired a third party to facilitate the development of the plan. The Department hired a consultant from the Department of Administrative Services to aid in the development of the plan.

The 2019 legislative session, which adjourned on June 30, 2019, was a successful session for the Department. The agency budget was approved including all requested policy packages. The approved policy packages include:

- 41 positions for work search services for Department of Human Services clients
- 7 positions to accommodate the reauthorization of the Federal Trade Act and assist workers that have lost their jobs due to foreign competition
- 1 position to meet demand for Foreign Labor Certification programs.
- 37 positions for our Modernization Program, which will enable the Department to procure and begin to implement replacement system(s) for administration of Unemployment Insurance tax and benefits.

In addition, the Department received 34 new positions for the paid family and medical leave insurance act that was passed this session (see below for additional discussion).

Legislative Update – Katie Morrison, Legislative Coordinator

The following is a summary of the priority measures that the Department tracked this session.

Priority measures passed:

Senate Bill (SB) 5508 – Employment Department Budget

The Employment Department's programs and services are supported by a variety of revenue sources including Federal Funds and Other Funds. The predominant source of revenue for the agency is unemployment insurance taxes collected by the department and held by the U.S. Treasury for payment of Unemployment Insurance benefits to eligible claimants. SB 5508 authorizes non-limited expenditures for these payments, as well as Federal Funds expenditure limitation to accommodate federally funded programs. Funding for our Modernization Program is made available to the state under the Social Security Act and is also appropriated in the bill. SB 5508 includes four packages approved by the legislature (for details see agency update above).

SB 519 – Wage garnishment

Oregon Revised Statute (ORS) 18.385 is modified to increase the amount of disposable earnings that are exempt from wage garnishments in the State of Oregon. Disposable earnings are gross earnings minus deductions required by law.

House Bill (HB) 2005 – Paid Family and Medical Leave Act

Creates a paid family and medical leave insurance program in Oregon to be administered by the Employment Department (see below for in-depth discussion).

HB 3120 – Intimidation

Amends ORS 657.176, which establishes criteria by which individuals are disqualified from being eligible for Unemployment Insurance (UI) benefits. Exceptions from these disqualifications are allowed for individuals or their family members who are victims of domestic violence, stalking, or sexual assault or if they believe that they or a member of their family may become a victim of these crimes as a result of their continued employment or acceptance of work. HB 3120 amends ORS 657.176 to include intimidation as one of the crimes excepted from disqualification in order to receive UI benefits.

HB 2660 – School recess

Amends ORS 657.221. The bill removes a prohibition that currently prevents employees of educational institutions from receiving UI benefits during school break periods from applying to individuals who perform facilities or janitorial services. Under these circumstances, HB 2660 also states that employers may not inform an employee regarding their eligibility for UI benefits until the Employment Department has made an eligibility determination.

Michelle Deister asked why HB 2660 passed this session while previous attempts to pass similar legislation have failed. Similar legislation proposed in previous sessions included all non-professional employees. This raised concerns about the potential cost to school districts. HB 2660 narrowed the employees to whom it applied to only facilities and janitorial staff which is a much smaller number of employees.

Laurie Hoefler asked about the rule making process for bills that impacted the Unemployment Insurance division. The Department will begin the rulemaking process for incorporating changes made through legislation this fall.

Priority measures not passed:

SB 722 – Unemployment Insurance benefits for federal workers

Starting last December we experienced the longest federal government shutdown in history, lasting 35 days. While thousands of federal workers applied for unemployment insurance benefits, many workers considered “essential” were required to work without receiving pay and were also ineligible for benefits. SB 722 included a statutory change that would have given federal workers and active duty members of the Armed Forces of the United States who are required to work without pay during a federal shutdown the ability to collect benefits. It also would have made some changes to how back pay is treated and how some overpayments can be recovered.

Council Member Appointments – Katie Morrison, Legislative Coordinator

During our last meeting the council had a discussion whether or not a member of the council needed to reside in Oregon to be eligible to serve. The feedback received by the Department was that the priority for membership on the council should go to those who are residents of Oregon. As a result, two council members, Steve Ferree and Tiffany Thompson, were not approved for reappointment to the council.

There are currently four members on the council: two employee representatives, one employer representative, and one public member.

Action Item: The council will work on recruiting individuals for nomination to the council.

Unemployment Insurance Program Updates – David Gerstenfeld, UI Division Administrator

David Gerstenfeld provided the following updates from the Unemployment Insurance (UI) Division:

General Updates:

The UI Division is working with the Workforce Operations Division and Worksource Centers to conduct training for staff to promote a better understanding of how the UI system works with the rest of the workforce system. The goal is for staff interacting with the Department’s customers to have a common understanding of the UI program and other parts of the workforce system.

In the past year there has been growing concern about a pending economic recession. The Department continues to work on recession planning to ensure that it is ready to respond. The Department has presented our recession plan numerous times and other states are modeling their recession plans after ours.

Representatives from the U.S. DOL Region 6 office visited the Department to conduct an in-depth review of the UI tax system. The review produced no formal findings, however there were some concerns regarding the collections process and tax field audits, specifically the strictness to which the Department follows its internal procedures. This is an area that the UI Division is continuing to make improvements on.

The Oregon Payroll Reporting System (OPRS) has been fully rolled out. This system provides a bridge until our systems have been modernized. The roll out went smoothly and the UI Division is in the process of phasing out previous payroll reporting systems. The Secure Employer Tax Reporting Online (SETRON) system has been fully phased out and replaced by OPRS, while the Oregon Tax Employer Reporting (OTTER) system is available through the second quarter of 2019 and reporting for the third quarter in October will be done through OPRS. This transition moves payroll reporting to an online system.

Due to the continued progression of the Modernization Program some UI staff is starting to shift work to support modernization efforts.

Information on UI Claimants:

Hyeyoung Kim, the UI Trust Fund analyst, compiled data from calendar year 2018 on some of the different aspects of UI claimants. There was discussion about additional data including, claimants by native language spoken, duration of benefits, and gender. There was also interest in understanding more about how racial data is collected.

Action Item: David Gerstenfeld will look into the availability of the additional UI claimant data that was suggested. If such data is available, the council would be interested in a presentation on these data.

Paid Family and Medical Leave Insurance – Kay Erickson, Employment Department Director

Oregon is an early enactor of a paid family and medical leave insurance program, joining California, Washington, and five other states. HB 2005 was passed by the Oregon Legislature during the 2019 legislative session and creates a paid family and medical leave insurance program. This program provides employees with compensated time off from work to care for and bond with a child during the first year after the child's birth or arrival through adoption or foster care, care for a family member who has a serious health condition, receive treatment for or recover from an employee's own serious health condition, or take leave related to domestic violence, stalking, sexual assault or harassment (known as "safe leave").

The Employment Department will administer the program or contract with a third party to administer the program. The Department will establish rules and processes for all administrative components of the program, including contribution collection, benefit payment, small business grants, equivalent employer plans, enforcement and collections, hearings, and general administration.

Provisions of the HB 2005 include:

- Eligible employees are those who earn at least \$1,000 in wages during the base year or alternate base year and contribute to the Fund.
- Eligible employees may take up to 12 weeks of paid leave in a year, and up to 16 total weeks of leave in a year under the paid family and medical leave insurance program and the Oregon Family Leave Act. Employees may also qualify for an additional two weeks for a pregnancy, childbirth, or related medical condition.
- The benefit amount is based on the state's average weekly wage and an employee's average weekly wage as calculated by the Employment Department.
- Employees will file a claim to receive benefits and the Department will approve or deny claims.

- Denied claims can be appealed through a process established by the Department.
- If an eligible employee's average weekly wage is equal to or less than 65 percent of the state's average weekly wage, the employee will receive 100 percent of their average weekly wage as their benefit.
- If an employee's average weekly wage is greater than 65 percent of the state's average weekly wage, the benefit amount is the sum of:
 - 65 percent of the average weekly wage; and
 - 50 percent of the employee's average weekly wage that is greater than 65 percent of the state's average weekly wage.
- The benefit will be paid out of the Fund administered by the Department.
- The contribution rate will be set by the Department but may not exceed 1 percent of employee's total wages (capped at \$132,900).
- The employee will pay 60 percent of the contribution and the employer will pay 40 percent.
- All employers with 25 or more employees are required to pay into the program through a payroll tax.
- Participation in the program is optional for employers with fewer than 25 employees. Those small employers who opt to pay their share of the contribution may get grants to help offset the costs of having to hire replacement workers to cover for employees out on leave.
- An employer and their employees are not required to contribute to the Fund if the employer offers its own benefits that the Department determines are equivalent to those offered through the program.
- Tribal governments and self-employed individuals may elect coverage under the program.
- It is prohibited to deny eligible leave or retaliate or discriminate against an employee for inquiring about their rights under the program. An employee's job and health care benefits are protected while the employee is out on leave.
- Compliance processes and penalties are available to the Department to enforce the provisions of the program.
- The Director will establish an advisory committee to review implementation and administration of the program. This committee will have four members representing employees and four members representing employers, at least one of whom will represent business with fewer than 25 employees.

The timeline of the program as outlined in HB 2005 is as follows:

- The bill takes effect on the 91st day after sine die, September 29, 2019.
- Rules will be established no later than September 1, 2021.
- Contributions will be collected beginning January 1, 2022.
- Benefits are payable beginning January 1, 2023.
- The Employment Department and the Oregon Department of Revenue may take any action before the dates specified that is necessary to enable the department to exercise the duties, functions and powers established in HB 2005.

HB 2005 appropriates \$15.7 million General Fund to the Department for the 2019-21 biennium to fund start-up costs for the program. The Department is authorized to hire 34 positions to oversee the development of rules as specified in the bill, establish processes and operations, and begin planning for the acquisition of an information technology system to deliver program services.

A question was asked about the coordination of this program with other types of leave. HB 2005 provides that any family or medical leave taken as part of the program must be taken concurrently with any leave taken under the Oregon Family Leave Act and the federal Family and Medical Leave Act, while the paid family and medical insurance program benefits are in addition to paid sick, vacation, or other leave earned by the employee.

This is a brand new program for Oregon and the Department will have to develop a business plan, including staffing resources, facilities, equipment, business and data systems. We will need to do a lot of up front work to design the parameters of a program. An important step in the initiation of the program is actuarial work. The Department must determine whether or not the program as currently defined would be financially solvent. For the first biennium we identified the resources needed to initiate a program based on the best information currently available. We expect there will be adjustments made to the program in future legislative sessions.

The Employment Department will be working with the Bureau of Labor and Industries on civil rights related regulations and with the Department of Revenue on the coordination of collection of tax contributions.

Wrap-up and Closing Comments

This will be Barbara Byrd's last official meeting with as the council chair. She will be leaving her position with AFL-CIO and her position as the chair of the advisory council in September. Barbara said she had enjoyed her time as Chair and is looking forward to retirement.

Action Item: Kay Erickson will provide more in depth details about the Modernization Program.

The next council meeting will be on September, 30 in Portland at the Confederated Tribes of the Siletz Indians office. Ken Madden and Anne Mersereau from the Workforce and Talent Development Board will be presenting.