

**Oregon Employment Department Advisory**

**Council Meeting**

**DATE:** March, 22 2019  
**TIME:** 10:00 a.m. – 12:00 p.m.  
**LOCATION:** Employment Department, Central Office

<b>Council Members</b>	
Barbara Byrd, Council Chair	Present via phone
Kurtis Barker, Council Member	Present
Steven Ferree, Council Member	Present
Josh Hall, Council Member	Unable to attend
Laurie Hoefer, Council Member	Present via phone
Robin Quon, Council Member	Unable to attend
Terry Reigle Jr., Council Member	Present via phone
Tiffany Thompson, Council Member	Present
Employment Department Director: Kay Erickson, Ex Officio Member	Present
<b>Additional Participants and Guests</b>	
Jenn Baker, Governor’s Labor and Workforce Policy Advisor	Present via phone
Paloma Sparks, Oregon Business and Industry	Present
David Gerstenfeld, Unemployment Insurance (UI) Division Director	Present
Andrea Fogue, Legislative Affairs and Communication Director	Present
Katie Morrison, Legislative Coordinator and Council Liaison	Present

<b>Action Owner</b>	<b>Action Item List</b>
Barbara Byrd	Council appointment recommendations
David Gerstenfeld	Information UI can provide on workforce participation trends
Kay Erickson	At next meeting report out on department philosophy on communication
Kay Erickson	Feedback from stakeholder board on collaboration between the department and other service providers

## Meeting Notes

### Welcome and Opening Comments

Kurtis Barker, Council Vice-Chair, called the meeting to order and welcomed attendees.

### Introduction – Jennifer Baker, Labor and Workforce Policy Advisor

Jenn Baker made an introduction to the council as the governor's new Labor and Workforce Policy Advisor. Prior to joining the governor's office Jenn worked for the Oregon House Democrats as the executive director of FuturePAC and before that spent seven years with the Oregon Nurses Association. Jenn is looking forward to working with the council.

### Employment Department Update – Kay Erickson, Oregon Employment Department Director

The department presented the agency's budget before the Ways and Means subcommittee on Transportation and Economic Development on February 11<sup>th</sup> and 12<sup>th</sup>, 2019. This biennium, the department had very few requests for expansions of current programs. The department is requesting new positions to provide support services for people receiving certain benefits administered by the Department of Human Services who are required to search for work, provide Trade Act program functions, support the foreign labor certification process, and staff the unemployment insurance modernization project.

The department also gave a presentation reviewing our modernization and our information technology programs before the Joint Committee on Information Management and Technology. This committee makes a recommendation to the Subcommittee on Transportation and Economic Development related to the technology projects in our budget.

The agency Modernization Program is making progress according to schedule. We received our stage gate two endorsement from the Office of the State Chief Information Officer and Legislative Fiscal Office. This endorsement allows the department to move out of the planning phase and into the procurement process. The department is working on the request for proposal to go out for solicitation in May. We are in the process of hiring staff for this biennium and will begin pre hiring for the next phase of the process. Most of the work in the next phase of the process will be the procurement process of finding a vendor. Due to the longevity of this process, the Modernization program will hire 37 permanent positions that include core program members, unemployment core function experts, and technical experts. These additional positions are expected to sunset around 2025 which is when it is anticipated that all of the systems will be through the modernization process, though timelines and staffing needs are subject to change depending on information received from vendors.

### Legislative Update – Andrea Fogue, Legislative Affairs and Communications Director

This legislative session we have seen over 2,600 bills and are tracking around 400 with a possible impact to the Employment Department. As two major funnel dates approach, the work session deadline on March 29<sup>th</sup> and the first chamber deadline on April 9<sup>th</sup>, we will most likely see a number of these bills drop off our list.

Summary of Legislative Issues:

**Senate Bill 722 – Federal Government Shutdown**

A partial shutdown of the federal government began on December 22, 2018 due to a partial lapse in federal appropriations. Approximately 800,000 federal employees nationwide did not receive pay during the federal shutdown. While some workers were not allowed to work while not receiving pay, other workers were “excepted” from the federal furlough. These workers were required to work but were not receiving pay. On January 25, 2019, a continuing resolution to fund impacted agencies through February 15, 2019, was signed by the President.

The department estimates that approximately 10,800 federal employees in Oregon were impacted by the federal shutdown. While furloughed employees may be able to receive unemployment insurance (UI) benefits under a specific federal UI program called UCFE, “excepted” workers cannot. The department estimates that 50% (5,400) of the impacted federal employees in Oregon were “excepted” from the federal furlough, meaning that they were required to work without being paid until the shutdown ended. These “excepted” employees did not qualify for UI benefits because they were working full-time and therefore did not meet Oregon’s definition of being unemployed.

There were an estimated 1,200 U.S. Coast Guard servicemembers who were also “excepted.” These individuals also did not qualify for UI benefits because they were working full-time and therefore did not meet Oregon’s definition of being unemployed. These “excepted” servicemembers also were not eligible for unemployment benefits because the applicable federal benefit program, UCX, requires them to be discharged or released from military service to get benefits.

Senate Bill (SB) 722, as originally introduced, would enable workers in certain scenarios who are unable to meet UI eligibility requirements under current Oregon law to be eligible for UI benefits. SB 722 would:

- 1) Grant Unemployment Insurance (UI) benefits to workers who are legally compelled to work full time, and therefore do not currently meet Oregon’s definition of being “unemployed,” and whose pay is not received on their regular payday (this would include the “excepted” federal workers); and
- 2) Establish a new state-funded UI benefit program to enable U.S. Coast Guard servicemembers who are also “excepted” from the federal furlough to receive UI benefits, repay those benefits if they subsequently receive back pay, and give the Employment Department the authority create rules about these benefits.

SB 722 was amended to include components of our original LC components of backpay flexibility. The -5 amendment made four significant changes to the introduced version of SB 722;

- 1) Removes the conformity risk of changing the definition of unemployed for workers who are legally compelled to work without pay.
- 2) Expands the group of people who would be eligible for UI benefits under a new state funded program from only U.S Coast Guard servicemembers to all federal active duty military servicemembers and federal civilian employees who cannot receive benefits under the UCFE or UCX programs. It also makes payment of benefits dependent on any future appropriation to fund this program.
- 3) Modifies the department’s authority to recover non-claimant caused overpayments.

- 4) Considers back payment awards as earnings for the purposes of UI.

SB 722 is currently sitting in the Joint Committee on Ways and Means.

### **Prevailing Wage**

This session a number of prevailing wage bills were introduced. The Employment Department, at the direction of the Bureau of Labor and Industries (BOLI), conducts an annual Construction Industry Occupational Wage survey. The commissioner of BOLI uses the data from the survey to make wage rate determinations. Two bills introduced this session proposed changes to the method by which the wage data is collected.

House Bill (HB) 2407 – Currently, the survey collects data in 14 regions in which public works projects are performed and BOLI sets a wage rate for each of these regions. HB 2407 would increase the size of these districts by reducing the number of districts from 14 to five.

House Bill (HB) 2409 – This bill would change the method for determining the prevailing wage from the survey to the rate of wage in the collective bargaining agreement for the trade or occupation in each region. In the case that a collective bargaining agreement does not exist for certain occupations in a region, the rate will then be determined by conducting an independent wage survey in the region.

### **House Bill 2498 – Independent Contractor Test**

This bill would add another factor to the independent contractor test in ORS 670.600 which would ask whether or not the individual provides services for another person that are within the usual course of business for the other person. A proposed amendment adds this determination as a subcomponent of a four out of six factor assessment necessary to be classified as an independent contractor.

### **Paid Family Medical Leave**

Paid family and medical leave (PFML) legislation was introduced in the 2017 legislative session with the Department of Consumer and Business Services (DCBS) as the administering agency. In 2018, a legislative work group continued to work on PFML policy with DCBS. The Employment Department was not part of these initial conversations however, in February of this year, the department was asked to begin analysis on what a PFML would look like if it were to be administered by the Employment Department. David Gerstenfeld, Unemployment Insurance Division Director, has taken the lead on the policy development and we are engaged with conversations with DCBS to understand the work they have done and have had conversations with the Washington State Employment Security Department as they are in the process of designing and implementing a PFML program for Washington. If a bill passes creating a PFML program at the Employment Department, the program would require years to design and implement.

There are still broad policy decisions that must be made by the legislature about a PFML program before the details of implementation can be defined. In addition to a state agency administering a program there is also the possibility of contracting the administration of a program to a third party. House Bill 2005 asks the Employment Department to implement a program and also gives the option for a third party as the administrator.

Two public hearings for public testimony will be held on Monday, March 25 to discuss PFML before a joint meeting of the House Business and Labor and Senate Workforce Committees. Andrea Fogue and Nick Beleiciks will be testifying at the 8:00 a.m. meeting.

**Oregon Taxpayer Reimbursement Act**

House Bill 3262 - The Oregon Taxpayer Reimbursement Act would impose an assessment on large employers whose employees or employees' minor children receive certain types of public assistance from the state. This assessment on the employer would be in an amount equal to the amount of public assistance paid to the employees. The Employment Department is asked to share data necessary in identifying qualifying employers and in calculating the amount of public assistance that is owed with the Department of Revenue and the Department of Human Services, which is something we already do. This bill had an initial public hearing and work session in the House Health Care Committee and was referred to the House Revenue Committee.

**Employer Participation Program**

House Bill 2269 – Creates an Employer Participation Program at DCBS to ensure health care access for low-income workers. This is accomplished by setting a minimum threshold for spending on health care and collecting contributions from the employers that do not meet this minimum. Though we do not currently have an explicit roll in the bill, we have been involved in discussions leading up to this legislation and will be watching for amendments. This bill had an initial public hearing and work session in House Health Care and was referred to House Revenue.

**Council Member Appointments and Transitions – Katie Morrison, Legislative Coordinator**

The council will be undergoing some transition this year as a number of members are unable to renew their appointments. Terry Reigle and Robin Quon will not be continuing on the council and were thanked for their service on the council. Jennifer Baker welcomed recommendations from the group and Barbara Byrd said she would work on getting together a list of recommendations.

Barbara Byrd will be phasing out as Chair this year and will be replaced in that position by Vice-Chair Kurtis Barker. The council will then need to elect a new Vice-Chair.

**Action:** Barbara Byrd will work on council appointment recommendations.

**Unemployment Insurance Program Updates – David Gerstenfeld, UI Division Administrator**

The department engaged in a rulemaking process earlier this year to maintain consistency between our rules and federal law. The Internal Revenue Service (IRS) is being listed as exempt from the audit requirements for entities that have access to Employment Department confidential information. The U.S. Department of Labor (U.S. DOL) has agreed that the safeguards the IRS has in place are adequate to appropriately protect confidential information that the Employment Department shares with the IRS.

At the national unemployment insurance level, two high priority topics include:

1. Improper payments – The benchmark is 10% or less which the national program has never been able to meet. In Oregon we are a little under the national rate.

2. The next recession – Oregon has done recession planning that has been recognized at the national level.

The department is launching The Oregon Payroll Reporting System (OPRS) which is a web-based employer payroll reporting system later this year. OPRS will replace several reporting options with a more user-friendly system. We are rolling this application out slowly with small groups of employers being invited to access the system and the process is going well. OPRS will function as an easier to use bridge application until we have completed the modernization process.

Strategic Services on Unemployment & Workers' Compensation (UWC) is a broad-based, country-wide association exclusively devoted to representing the interests of the business community on national unemployment insurance (UI) and workers' compensation (WC) public policy issues. UWC is holding their national conference in Portland this year on June 26 – 28. Additional information about the conference can be found on the [UWC website](#).

#### Ideas and Discussions for the Year Ahead – Barbara Byrd, Chair and Kurtis Barker, Vice-Chair

A discussion was held to determine potential topics to discuss at future meetings. The following topics were of interest to the group as possible topics to be included on the agenda for council meeting throughout the year:

- Workforce development activities
  - Possible speakers: Ken Madden and Workforce Operations Division
- Workforce participation trends related to UI benefits
  - **Action:** David can look into what UI could provide
- Trade Act Programs
- Department philosophy on communication
  - **Action:** Kay will report out at next meeting
- Follow up presentation to Bob's research presentation on what employees are looking for
  - Is there a gap between what employers are looking for compared to what employees are looking for?
  - Workforce changes including, generational, gig economy, labor and business relations, demographics, succession planning
- Collaboration between the department and other service providers specifically focused on enabling information sharing and coordination
  - **Action:** Kay will get feedback from stakeholder board

#### Wrap-up and Closing Comments

Kurtis Barker thanked everyone for their attendance and adjourned the meeting.