



Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on House Bill 1014

Before the:
Pennsylvania House Labor and Industry Committee

Presented by:

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Harrisburg, PA
May 9, 2017

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Chairman Kauffman, Chairman Galloway and members of the House Labor and Industry Committee, my name is Alex Halper and I am Director of Government Affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy association in Pennsylvania. We represent employers, both for-profit and nonprofit, of all sizes, crossing all industry sectors throughout the Commonwealth. Thank you for the opportunity to testify today on House Bill 1014.

Unemployment compensation is a program which, according to the Pennsylvania Department of Labor & Industry's website, is: "...money paid to people who have lost a job through no fault of their own. It is temporary income meant to help make ends meet while people look for a job."

Unemployment compensation is indeed a critical safety net, which has benefited millions of Pennsylvanians over the last 80 years of its existence. The PA Chamber supports unemployment compensation – both as a concept and literally, as it is typically funded exclusively by employers – but we also recognize that it is a program with a particular purpose and specific intended beneficiaries. It was clearly not the intention to make benefits available to anyone who was currently not working: claimants are required to meet specific eligibility standards related to attachment to

the workforce, wages earned, circumstances of the separation, readiness and ability to work and continual efforts to find a new job.

House Bill 1014 focuses on one of these eligibility requirements: circumstances of the separation. Current law sets forth policy dictating when benefits are not provided to individuals who get fired or quit their job. House Bill 1014 is necessary because terms used within these policies are vague, which has created an unpredictable environment in which the rules are unevenly enforced by those tasked with resolving disputes and too often lead to individuals being awarded benefits when the intent of the law would suggest they should probably not be eligible.

House Bill 1014 removes some vagueness in the law by expounding on the definition of “willful misconduct” (i.e. the circumstances under which a firing triggers ineligibility for benefits) and clarifying that an individual whose separation from employment was due to “voluntary leaving work without cause of necessitous and compelling nature” is only eligible for benefits if he or she quits for reasons attributable to the job or workplace. These amendments will refocus Pennsylvania’s unemployment compensation law on those for whom the program was created to assist after losing a job and while looking for employment. The bill will also help address significant problems with administration of the UC system and service

centers, which have been the subject of much recent scrutiny, as well as ongoing fiscal challenges that have strained the Unemployment Compensation Trust Fund for years.

Article I, section 3 of Pennsylvania's Unemployment Compensation Act sets forth the Declaration of Public Policy and states that unemployment benefits are

"compensation for loss of wages by employees during periods when they become unemployed through *no fault of their own*." (emphasis added) One of the provisions included in the Act to help achieve the "no fault of their own" policy was Section 402(e) which states that a claimant shall be ineligible for benefits if the

"unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work..." In other words, if an individual is fired from his or her job for a legitimate reason, that person is indeed at fault for his or her unemployment and therefore is not the type of circumstance for which the unemployment compensation system was created.

The problem is that the term "willful misconduct" is not defined within the statute, which gives overly broad discretion to those tasked with resolving eligibility disputes and too often leads to benefits being granted to individuals fired for reasons that would lead an objective observer to almost certainly conclude should be disqualifying. These situations conflict with the purpose of unemployment compensation; drain resources from a program already stretched thin and which should be preserved for

those for whom the program was intended; and can result in tax increases on the employer, whose unemployment compensation tax rates are partially based on experience.

Unfortunately, we hear frequently of employers in this precise situation: a former employee whom they were forced to fire for good cause still manages to qualify for benefits. Examples are too numerous to list comprehensively but include everything from chronic absenteeism and altercations with fellow employees to the individual arriving at work clearly under the influence of illegal drugs.

One incident involved a mid-state non-profit healthcare provider. An employee with the responsibility of administering medication to patients had been given three warnings and additional training following medication errors. Finally, the individual was fired after yet another incident in which the former employee provided the wrong medication to a patient, which clearly and obviously violates workplace policy and federal and state laws regulating healthcare facilities. Ultimately, this individual was awarded unemployment compensation benefits.

Though the actions that led to the dismissal were extremely serious and could have been life-threatening, this example is far from the most egregious in the context of determining eligibility for unemployment compensation benefits. It does, however,

demonstrate the exceedingly difficult and at times impossible standard to prove that misconduct was “willful.” A claimant can always claim certain conduct or behavior was not willful or intentional. Maybe the chronic absenteeism is the result of a faulty alarm clock. Or the altercation with a co-worker was the other guy’s fault or the culmination of stressful day. Or the employee forgot he or she was scheduled to work before using a drug that violates not only the law but also the employer’s drug-free workplace requirement. Or, despite the warnings and additional training, the employee just mixed up medications by accident. Proving beyond a doubt that any of these causes for dismissal constituted “willful misconduct” can be impossible depending on the official hearing the case. Truly adhering to the original “no fault of their own” principle demands making it the policy in Pennsylvania that such actions or negligence are grounds for benefits ineligibility, as provided in H.B. 1014.

House Bill 1014 also clarifies that an individual whose separation from employment was due to “voluntary leaving work without cause of necessitous and compelling nature” is only eligible for benefits if he or she quit for reasons attributable to the job or workplace. This clarification would also serve to refocus Pennsylvania’s unemployment compensation law on its intended purpose and reinforce that this program is not meant to apply to all unemployed individuals – even if a former employee had a legitimate personal reason for a voluntary departure. House Bill 1014

provides exceptions if the employee is married to a member of the military who is reassigned or if an employee quit due to a threat of domestic violence.

Some of have suggested that this clarification of the so-called “voluntary quit” provision is wrong because it might disqualify an individual who quits to care for an ailing family member. No doubt it is difficult to set policy that might have an adverse impact on someone already going through trying times. Yet, in this case, it is necessary to recognize that programs – like the Family and Medical Leave Act – already exist for this purpose and that Pennsylvania law requires those collecting benefits to demonstrate they are actively looking for a job – a requirement that would seemingly be impossible to satisfy if the claimant is actually not seeking new employment in order to care for the family member.

The fact is unemployment compensation was established for individuals laid off and looking for a new job. Should a public program exist to financially support someone who quits a job in order to care for a sick relative? Perhaps. But such a program should be created through an act of the Legislature – not by unelected officials who have chosen to stretch the interpretation of terms in Pennsylvania’s unemployment compensation law to address this particular policy objective.

This bill represents good public policy but its consideration is particularly timely given recent significant challenges with unemployment compensation service centers and administration of the program, including extraordinarily long wait times for claims to be processed and disputes adjudicated. This committee held a hearing in March to explore these issues with the Secretary of the Department of Labor and Industry and some of the discussion focused on why there are so many disputes and why individual disputes seem to take so long to be resolved. One exchange delved even deeper into the role of unemployment compensation referees and others involved in the adjudication process and the extent to which part of the problem stems from the amount of discretion afforded to these individuals in deciding claims.

This legislation is not a panacea for addressing problems with Pennsylvania's unemployment compensation systems; but there is no doubt it will help significantly. Providing specific statutory guidance and clarification to help dictate decisions will remove much unpredictability in the system and allow for a quicker and more uniform approach to dispute resolution. You cannot blame Department of Labor and Industry personnel for the current lengthy deliberation process that often occurs when disputes are considered: the lack of guidance means each claim gets analyzed and judged individually with decisions ultimately based on the individual preference of unelected officials as opposed to deliberate decisions from policymakers. While

precedent from previous cases may be factored into a decision, that is often not the case.

Not only does the lack of specificity in the law create an inefficient system, we believe it creates an environment in which claimants who have justifiably been denied benefits are more likely to challenge that decision, since the law allows for more discretion throughout the adjudication process.

Consider the job of a referee in the NFL. We all know referees penalize players for “unnecessary roughness” – but examples of what specifically constitutes unnecessary roughness is outlined in the Official Playing Rules of the National Football League; this includes throwing a player to the ground (Section 6(f)) or grabbing and twisting a helmet (Section (j)). It’s difficult to imagine anyone preferring a system in which a rule like prohibiting unnecessary roughness lacks any guidance or specificity: players wouldn’t know on any given week what conduct is or is not a violation and coaches would likely be more inclined to argue penalties given that the referee is making the decision as opposed to rules set a head of time that are applied uniformly. Referees – both in the NFL and in the unemployment compensation system under a H.B. 1014

framework – are still critically important to ensure fair enforcement of the rules/law as written; but rightfully defer most discretion to the rule-making body.

By refocusing Pennsylvania’s unemployment compensation system, H.B. 1014 will not only help facilitate a more efficient claims administration process, it will also help address fiscal challenges that for years have plagued the unemployment compensation trust fund.

Pennsylvania’s trust fund falls well below the U.S. Department of Labor’s recommended solvency level; and while significant progress has been made in recent years, – primarily through Act 60 of 2012 – Pennsylvania’s unemployment compensation system remains in a tenuous financial state. Pennsylvania employers pay some of the highest unemployment compensation taxes in the country (6th highest average in the country, according to the most recent data from the U.S. Department of Labor) and that does not account for an additional tax paid to service debt incurred during the Great Recession. In fact, the Tax Foundation’s *2017 State Business Tax Climate Index* ranked Pennsylvania as the 45th worst state in the country for employers in terms of Unemployment Insurance taxes. Despite significant contributions from employers, the state of the trust fund means that another downturn in the economy

could lead to a scenario in which employers are forced to incur new debt before the existing debt is paid off. That will lead to higher and higher taxes for years to come.

On the other hand, USDOL data shows high-level outlays from the trust fund for unemployment benefits. In addition to typically ranking among the top states in total benefits paid, current data shows Pennsylvania also has one of the highest average weekly benefit amounts (9th in the country), an average duration that is above the national average (19th in the country), and the Commonwealth has one of the highest rates of unemployed individuals receiving benefits.

Pennsylvania clearly has one of the most generous unemployment compensation programs in the country – both in terms of the amount of benefits received and who can qualify. While Pennsylvania employers pay for this program, it is certainly the General Assembly's prerogative to maintain Pennsylvania's status as a relatively generous benefit state. We simply urge lawmakers to carefully consider measures such as H.B. 1014 to help ensure the program is maintained for those for whom it was intended. This legislation refocuses Pennsylvania's unemployment compensation law, will help address challenges related to claims administration and the financial health of the system and we urge you to support it.

Again, thank you for the opportunity to testify. I am happy to answer any questions.