



State of Vermont
Department of Labor
Office of the Commissioner
5 Green Mountain Drive
P.O. Box 488
Montpelier, VT 05601
labor.vermont.gov

[telephone] 802-828-4301
[fax] 802-828-4181

Sent via electronic mail

September 1, 2021

Senator Becca Balint
Vermont State House
115 State Street
Montpelier, VT 05633

Re: Response to August 28, 2021 email regarding \$25 UI Supplemental Benefit

Dear Madam Pro Tempore,

There has been much discussion in recent days regarding the \$25 per week supplemental unemployment insurance benefit included in Act 51 of the 2021 legislative session. I recognize there are many complexities and differences of opinions on the topic, and I wanted to provide some clarifying information in the spirit of transparency and collaboration. I believe the issue is less about the way the Department has interpreted the law, and more about the State's ability to institute the benefit in the way in which the U.S. Department of Labor (USDOL) has indicated it must be done in order to comply with federal regulations. This issue is rooted in the limitations of our 50-year-old mainframe system, which will not allow us to recode the way benefits are calculated or applied. USDOL is requiring that the flat amount be applied earlier in the process, making it subject to things like offsetting remuneration and earned wages, as well as making it chargeable to employers. Unfortunately, our system does not have the capability to create supplemental benefits in this way. With that, the rest of my letter tries to address the concerns outlined in your email to me on August 28, 2021, as well as how the Department came to the determination it did when interpreting the language of Act 51 from the 2021 session.

During the 2021 legislative session, the Senate Committee on Economic Development, Housing and General Affairs chose to move forward with a \$50 per week dependent benefit, a policy decision the Administration did not support for a variety of reasons, including concerns about the capability of implementing such a program. On multiple occasions, the Department testified to major operational concerns regarding changes to UI benefits and the instability of our current system.

While adjusting the underlying weekly benefit amount was investigated in the House Commerce & Senate Economic Development Committees, the Department maintained the position that adjustments to the underlying benefit calculation determination was neither supported nor feasible given the limitations of our information technology systems currently in place. Eventually, the House Commerce Committee chose not to alter the underlying benefit amount and decided to remove the dependent benefit.



When the bill was reviewed by House Ways and Means on May 12, 2021, the Department was asked by Representative Ode to reach out to USDOL to explore the feasibility of using Trust Fund dollars and to determine whether another state agency could administer the benefit. At the same time, there were off the record conversations among members of the legislative body about instituting a \$25-per-week supplemental benefit in lieu of the proposed dependent benefit. The Department emailed USDOL on May 13, 2021 seeking guidance regarding Representative Ode's inquiry, as well as the potential for implementing a supplemental benefit. This was the same day as the joint hearing before House Ways and Means and House Commerce. It was during the hearing that committee members indicated this benefit was to be considered a "supplemental" benefit that was designed to replace the federal supplemental benefit, known as Federal Pandemic Unemployment Compensation (FPUC), when the federal benefit expired. Additionally, Joyce Manchester from the Joint Fiscal Office provided projections that further clarified this intent by reaffirming that this would be considered a supplemental, or extra benefit, to be provided in addition to the base benefit, and not a change to the base benefit itself. Representative Ancel also testified to the fact that this would be a supplemental benefit. When asked about the feasibility to implement such a benefit using our mainframe system, I responded that theoretically, the Department, from a systems perspective, could swap out the \$300 federal supplemental benefit for a state supplemental benefit. There was no discussion at this time regarding the legality of the benefit or if it complied with federal requirements, as this was the same day we posed the question to USDOL. Following the hearing, Senate Economic Development discussed the \$25 benefit once in open session and did not ask the Department of Labor to testify on the \$25 benefit.

The Legislature took action on the \$25 benefit on May 20, 2021 prior to any guidance from USDOL. USDOL responded to our inquiry on June 8, 2021 seeking more information, so the Department met with USDOL on June 11th, followed by a formal email from USDOL on June 14th outlining their position, and another meeting was held on August 6th. In the end, USDOL asked the Department to provide a formal interpretation of the statute, which we provided to USDOL on July 28, 2021.

As mentioned above, I understand that the initial intent of the Senate was to implement a dependent benefit; however, that intent changed when the Legislature passed Act 51 creating the supplemental benefit instead. As the language is written, the \$25 per week benefit is referenced as a supplemental benefit, to be added to each claimant's individual benefit payment, which is calculated on a per-claimant basis after considering the wages earned by the individual in recent calendar quarters.

21 V.S.A. § 1338(e)(2) reads: Notwithstanding the maximum weekly benefit amount computed pursuant to subsection (f) of this section, an individual shall receive a supplemental benefit of \$25.00 per week in addition to the amount determined pursuant to subdivision (1) of this subsection.

I know that you and some of your colleagues believe the legislative intent was clear that the expectation was to use UI trust fund dollars for this benefit, and I do agree that the hope was to create a benefit that used trust fund dollars; however, it was also clear that the Department was supposed to treat this as a supplemental benefit in the same nature as the current FPUC benefit. This was clear to the Department as we stated repeatedly that adjustments to the underlying weekly benefit amount calculation were not feasible. It was agreed that the FPUC programming was already in place and therefore, the Department



could use that programming to provide the new \$25 increase. Additionally, I believe we all thought that because the FPUC was a federal program, that a similar state-funded program would be allowed.

In his May 13th email to USDOL, UI Director Cameron Wood clearly states, the Department was investigating the legality of an “FPUC-type” benefit. His email goes on to state that “I am assuming there are no issues with this from a federal UI perspective, but if I am missing something, please let me know,” and that if a conformity issue would arise, the state would need to know as soon as possible. This clearly shows that the Department intended to implement this benefit in the exact manner that was discussed with the Legislature, and we had every reason to believe that we were able to do so given the current FPUC program. The notion that the Department was aware of this outcome, or could have anticipated this situation, is simply not true.

In summary, the benefit as written in Act 51, does not comply with federal regulations and unfortunately, the current system does not afford us the ability to implement the benefit in any other way. Because federal law prevents the creation of a supplemental benefit that is not tied to the underlying benefit, and the factors that contribute to benefit calculation and charging, the Department is unable to implement this benefit at this time. Should the federal government come to a different conclusion, or when our capabilities are expanded with the modernization of our system, the Department can revisit the potential of this benefit with USDOL, and I am happy to do so at such time.

I recognize that this may not be the outcome the Legislature was hoping for, and I remain available to discuss this issue in person, as I shared in my voicemail message to you on August 28th. Additionally, I have enclosed with this letter the U.S. Department of Labor’s formal response to our interpretation letter, which was received on August 31st at 7:55pm.

Respectfully,



Michael A. Harrington
Commissioner
Vermont Department of Labor

Enclosed. VDOL Act 51 Interpretation Letter to USDOL (July 28, 2021)
USDOL Response to VDOL Interpretation Letter (August 31, 2021)

- c. Representative Jill Krowinski, Speaker of the House
 Senator Michael Sirotkin, Chair of the Senate Economic Development Committee
 Representative Michael Marcotte, Chair of the House Commerce Committee





State of Vermont
Department of Labor
Unemployment Insurance Division

5 Green Mountain Drive
P.O. Box 488
Montpelier, VT 05601
labor.vermont.gov

[telephone]

802-828-4242

[fax]

802-828-4046

July 28, 2021

Mr. Daniel Hays
UI State Conformity & Compliance Team
U.S. Department of Labor
200 Constitution Ave. NW -Room S4524
Washington, DC 20210

Via USPS and email

Dear Mr. Hays:

I am responding to your email of June 14, 2021, requesting certain information regarding the Department's interpretation of the provisions of Vermont Senate Bill 62 (subsequently signed into law by Governor Scott as Act 51 on June 1, 2021). Your email was a response to my inquiry to USDOL ETA on May 13, 2021, seeking your input on the provisions of S.62. Specifically, we asked about Section 11 of the Act, which amends 21 V.S.A. § 1338 to provide a "supplemental benefit" of \$25.00 per week to all unemployment claimants, in addition to a Vermont claimant's expected underlying unemployment benefit. This would become effective 30 days after the expiration of the Federal Pandemic Unemployment Compensation (FPUC) benefit program.

The question is how the Vermont Department of Labor interprets this statutory change and intends to apply the supplemental benefit to the underlying base weekly benefit amount. There are essentially two ways the supplemental benefit can be applied:

- A) The Department considers the \$25.00 as an increase to the underlying benefit and applies all the same parameters that govern the base benefit as outlined in 21 V.S.A. § 1338(e), including earnings disregard, employer chargeability, overpayment related determinations, combined wage claims, etc.; or
- B) The Department considers the \$25.00 to be a supplemental benefit applied to all eligible claims at the time of payment and thus does not have implications with regards to the parameters identified in section "A" above.

You have advised us that paying such a supplemental benefit, as outlined in section "B", would be impermissible prior to the exhaustion of the underlying maximum benefit amount of state unemployment, and doing so would create a conformity issue with federal law.



My understanding of the legislature's intent, based both on the plain language of the bill as passed, and my participation in hearings on the bill in both the House and Senate, is that the additional \$25.00 was intended as a stand-alone supplemental benefit and not as an increase to the weekly benefit amount. I understand from your email of June 14 that this interpretation means that we may not be permitted to pay this benefit out of our State unemployment trust fund.

I look forward to discussing this matter with you further in an attempt towards resolution without creating a conformity issue for the Department.

Sincerely,



Cameron T. Wood
Director of Unemployment Insurance
Vermont Department of Labor

c: Michael Harrington, Vermont Labor Commissioner
Dirk Anderson, General Counsel



U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



September 1, 2021

Michael Harrington
Commissioner
Vermont Department of Labor
5 Green Mountain Drive
P.O. Box 488
Montpelier, VT 05601

Dear Commissioner Harrington:

We have reviewed enacted Vermont Senate Bill (SB) 62 for conformity with federal unemployment compensation (UC) law. This bill would amend the state UC law to provide a “supplemental benefit of \$25.00 per week.” This provision raises an issue under federal UC law. A detailed discussion follows.

Section 11 of SB 62 amends Section 1338 of Title 21 of the Vermont Statutes Annotated (21 V.S.A. § 1338) related to weekly benefits in part by adding a new subsection (e)(2) that provides the following.

Notwithstanding the maximum weekly benefit amount computed pursuant to subsection (f) of this section, an individual shall receive a supplemental benefit of \$25.00 per week in addition to the amount determined pursuant to subdivision (1) of this subsection.

We note that this provision of SB 62 takes effect 30 days after the termination date for Federal Pandemic Unemployment Compensation set forth in 15 U.S.C. § 9023(e)(2), as amended.

On July 28, 2021, staff from the State of Vermont provided staff from the U.S. Department of Labor with Vermont’s interpretation of this provision, describing it as providing an additional \$25.00 stand-alone supplemental benefit to individuals receiving regular UC and identifying the funding source for this supplemental benefit as the state’s unemployment trust fund. This raises a conformity issue with the requirements of additional compensation program.

Additional compensation is “compensation payable to *exhaustees* by reason of conditions of high unemployment or by reason of other special factors.” (Emphasis added. See Section 205(4) of the Federal-State Extended Unemployment Compensation Act of 1970, as amended.) Since this is a supplemental benefit it would not fall under this exception because the \$25 increase would not be paid to “exhaustees,” but to all regular UC claimants. Thus, it would not meet the criteria for additional compensation.

The payment of this supplemental benefit would not raise an issue with federal UC law if the funding source was changed to a non-UC source. Assuming a non-UC source is obtained for this supplemental benefit and since it is payable to all individuals receiving regular UC, Vermont may use its Title III administrative grant to pay for administrative costs associated with it.

We request the Vermont Department of Labor to provide written assurances that the supplemental benefit discussed above will not be paid utilizing funds in Vermont's unemployment trust fund, and that Vermont will seek a legislative remedy in the next legislative session to bring the law into conformity with federal UC law.

If you have any questions, please contact Mark Basile, your legislative liaison in our Northeast Regional Office, at (215) 861-5223 or via email at basile.mark.d@dol.gov.

Sincerely,



Jim Garner
Administrator
Office of Unemployment Insurance

cc: Leo Miller
Regional Administrator
Northeast Region