

Response to Legislative Questions Related to the Department's Interpretation of Act 51

(As of September 7, 2021)

- 1. Why did the Department wait until August 24th to notify the General Assembly that there was a conformity issue, as opposed to when the Department spoke to USDOL in June?**

The Department was active in discussions with USDOL between June 9th and July 28th. During this time, members of the Department's senior leadership team were reviewing both the existing state statute and federal regulation while developing and drafting the Department's legal interpretation of this section of Act 51. On August 6th, the Department met with USDOL to discuss the interpretation and its potential impacts on the Department's ability to implement the supplemental benefit.

While USDOL did share, in general terms, what would be required to implement this benefit in June, many of the details and specific requirements were not provided until much later in the process. It was not until our formal interpretation letter and subsequent meetings with USDOL that it was clear this was the likely outcome, and the Department was able to begin notifying other interested parties.

It is also worth noting that the Department was not asked to testify on the legality of this supplemental benefit in either the House or the Senate prior to its adoption. In fact, the Department was only asked to testify on this benefit in House Ways and Means, with no prior notice, and only to discuss the ability of the Department to implement the benefit as it related to the Department's IT system. Additionally, the Senate Committee on Economic Development reviewed the supplemental benefit language when it met on May 19, 2021 and did not seek input from the Department of Labor when considering this new benefit.

At the time, the Department was not aware of any significant legal implications related to this benefit, which can be noted in UI Director Cameron Wood's email to USDOL stating: *"Subsequently, it looks like the legislature is now going to have us issue a similar FPUC-type additional benefit once the CARES Act programs expire. I am assuming there are no issues with this from a federal UI perspective, but if I am missing something, please let me know."*

- 2. Why didn't the Department bring this information to the Legislature during the Veto Session (June 23– 24)?**

The Department did not bring this information to the legislature during the veto session because there was no clear indication from USDOL that there would be conformity issues associated with the benefit prior to the convening of the June session.

- 3. Has the Department begun considering how to implement the supplemental benefit outside using Trust Fund dollars?**

No. The Department does not have funding to implement or administer this benefit outside of the Unemployment Insurance Trust Fund.

- 4. Does the Department have funds available that can be used to pay the \$25 supplemental benefit between October 6 and the start of the 2022 legislative session?**

No. Nor does the Department have spending authority for an expenditure of this magnitude. This benefit is expected to cost between \$125,000 and \$200,000 per week based on the estimated claims level.

- 5. Does the Department have, or is it working on, a proposal for a legislative fix that will allow it to provide the \$25 supplemental benefit to UI claimants?**

No. The Department does not have a proposal; however, there are only two options: 1) fund the benefit using non-trust fund dollars and non-federal administrative dollars, which would eliminate the restriction on the implementation, or 2) replace the UI information technology system in its entirety in order to administer the benefit in a way that complies with federal law.

Additionally, the Department will provide any recommended statutory language required by USDOL to repeal or replace the existing law that is non-conforming.

- 6. If the Department does have or will have a proposal, is it able to share information or details regarding the proposal with Sen. Sirotkin and his committee?**

The Department does not intend to submit any policy recommendations specific to a \$25 supplemental benefit.

The Department is willing to work with Legislative leadership to ensure that any future statutory changes comply with federal law and/or are able to be administered given the limitations of the current UI mainframe system.

Timeline:

May 11, 2021	Ways and Means Committee reviewed S.62 for the first time
May 12, 2021	Ways and Means submitted questions to the Department to pose to USDOL
May 12, 2021	Commissioner Harrington participated in the Ways and Means joint hearing with House Commerce
May 13, 2021	Department of Labor submitted question to USDOL
May 19, 2021	Senate Economic Development reviewed S.62 bill language with Supplemental Benefit Language provided by Ways and Means
May 19, 2021	Bill was voted out of House
May 20, 2021	Senate concurred with proposal of amendment
May 27, 2021	Bill sent to Governor
June 1, 2021	Bill signed by Governor
June 11, 2021	First meeting with USDOL
June 14, 2021	USDOL responded to initial inquiry requesting additional information
July 28, 2021	Department of Labor provided formal interpretation of Act 51 to USDOL
August 6, 2021	Commissioner Harrington met with USDOL
August 24, 2021	The Department notified committees of jurisdiction
September 1, 2021	The Department received the formal determination letter from USDOL