

Mike Ferrant

From: Chan, Thomas D - ETA <Chan.Thomas.D@dol.gov>
Sent: Thursday, July 29, 2021 9:51 AM
To: Wood, Cameron
Cc: Beebe, Michelle E - ETA; Roberson, Nicole - ETA; Pasquale, Karen - ETA; Rousseau, Tracy G - ETA; Harrington, Michael; Anderson, Dirk; Hays, Daniel - ETA
Subject: RE: Vermont SB 62
Attachments: Letter_USDOL_Act51Interpretation_Signed_7.28.21.pdf

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Good morning Cameron,

We're looking to schedule another conversation re VT SB 62. Does a one hour meeting work for you next Friday, August 6, between 10:30am-1pm or 2-4pm?

Thank you,

Tom Chan
Division Chief, Division of Workforce Security – Boston
U.S. Department of Labor – ETA
JFK Federal Bldg., Room E-350
Boston, MA 02203
(617) 788-0114
Chan.Thomas.D@dol.gov

From: Wood, Cameron <Cameron.Wood@vermont.gov>
Sent: Wednesday, July 28, 2021 3:19 PM
To: Hays, Daniel - ETA <Hays.Daniel@dol.gov>
Cc: Beebe, Michelle E - ETA <Beebe.Michelle.E@dol.gov>; Roberson, Nicole - ETA <Roberson.Nicole@dol.gov>; Chan, Thomas D - ETA <Chan.Thomas.D@dol.gov>; Pasquale, Karen - ETA <Pasquale.Karen@dol.gov>; Rousseau, Tracy G - ETA <Rousseau.Tracy.G@dol.gov>; Harrington, Michael <Michael.Harrington@vermont.gov>; Anderson, Dirk <Dirk.Anderson@vermont.gov>
Subject: RE: Vermont SB 62

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Good Afternoon Mr. Hays,

Please find attached the Department's official response to your email below regarding VT Act 51 (2021). As I have mentioned in my letter, I looked forward to discussing with you the next steps regarding this matter. I am more than willing to find a time that works best for you to discuss at your earliest convenience.

Sincerely,



Cameron T. Wood, Esq.

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From: Hays, Daniel - ETA <Hays.Daniel@dol.gov>
Sent: Monday, June 14, 2021 12:11 PM
To: Wood, Cameron <Cameron.Wood@vermont.gov>
Cc: Beebe, Michelle E - ETA <Beebe.Michelle.E@dol.gov>; Roberson, Nicole - ETA <Roberson.Nicole@dol.gov>; Hays, Daniel - ETA <Hays.Daniel@dol.gov>; Chan, Thomas D - ETA <Chan.Thomas.D@dol.gov>; Pasquale, Karen - ETA <Pasquale.Karen@dol.gov>; Rousseau, Tracy G - ETA <Rousseau.Tracy.G@dol.gov>
Subject: Vermont SB 62

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Cameron,

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 has the potential of raising 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.

If the State of Vermont interprets and implements this provision such that it is changing the formula for calculating an individual’s weekly benefit amount (WBA) uniformly and applies this new calculation to individuals receiving benefits for all programs (*e.g.*, regular UC, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX)), then it would be permissible under federal law to pay for this benefit using monies in the state’s unemployment trust fund. As such and absent additional changes to other areas of Vermont’s UC law, any activities that currently affect the calculation of the individual’s WBA, such as “earnings disregard” or separation pay, would also apply to the additional \$25 amount.

Vermont should also be aware that if the provision is interpreted to change the formula for calculating an individual’s WBA, the entire amount paid for a week of unemployment must be charged, unless the week of unemployment qualifies for noncharging under state UC law. Failure to charge the entire WBA would be a violation of 3303(a)(1) of the Federal Unemployment Tax Act (FUTA), as federal UC law requires “any reduced rate of contributions be based on all, rather than a portion, of an individual employer's experience. . .

.” (See the Under Secretary’s decision in a conformity proceeding involving Minnesota, an attachment to [UIPL No. 12-85](#), published at 50 Fed. Reg. 48274 (November 22, 1985).)

However, if the State of Vermont interprets this provision as not changing the formula for calculating an individual’s WBA, but rather as providing a separate supplementary benefit to individuals receiving regular UC, then the funding source for this supplemental payment would have to originate from a source other than the state’s unemployment trust fund, otherwise it 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.) If the additional \$25 benefit proposed in SB 62 is interpreted to be a supplementary 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.

Please provide us with Vermont’s interpretation of this provision so that we may determine whether it raises a conformity issue.

If you have any questions please do not hesitate to contact me.

Sincerely,

Daniel L. Hays

Pronouns – He/Him/His
Supervisory UI Program Specialist
State Conformity & Compliance Team
200 Constitution Ave. NW - Room S4524
Washington, DC 20210
202-693-3011

Any advice provided in this email represents an informal staff-level opinion. If you would like a formal opinion, please contact Jim Garner, Acting Administrator, Office of Unemployment Insurance, 200 Constitution Ave. NW, Washington, DC 20210.

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