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House Commerce and Economic Development Committee, Rep. Michael Marcotte, Chair  
Senate Economic Development, Housing and General Affairs, Senator Ram Hinsdale, Chair

January 9, 2023

RE: Vermont Legal Aid's Update on the Unemployment Compensation Program  
for Claimants

Dear Vermont Legislators,

Vermont Legal Aid represents people who are elderly, low-income, or have disabilities. This includes Vermonters trying to access unemployment compensation benefits. In preparation for your testimony from DOL this week, we would like to take this opportunity to provide you with our perspective on the Vermont Department of Labor's ongoing efforts to serve Vermonters in an economy still in recovery from the pandemic. It is clear that DOL staff are hardworking, well-intentioned people who are trying to get Vermonters the benefits to which they are entitled. However, we have concerns about the system and want to inform you about them.

1. Timeliness of DOL Hearing Unemployment Appeals, VLA Litigation Update  
Tremendous Progress by DOL

The Department of Labor assisted a multitude of unemployed Vermonters with unemployment (UI) benefits during the pandemic. Due to the immense backlog of claims, an outdated computer system and lack of staff, the Department of Labor did not keep up with their statutory requirements hold appeal hearings within 30 days, and most claimants waited more than four months to be heard on their appeal of eligibility for benefits. After many months of negotiation, in December of 2021 VLA filed litigation against the DOL. Fortunately, we were able to enter into a positive settlement agreement, and the **DOL brought itself into compliance and has been substantially hearing appeals in a timely way since August of 2022.**

2. Waiving the Pandemic Overpayments when Claimants were Without Fault  
DOL has Stalled on Forgiving Eligible Claimants

The Federal Department of Labor instructed states in February of 2022 that **states should waive federal COVID overpayments when claimants were without fault for the overpayment**, and it would be unfair to continue to send bills for these formerly unemployed Vermonters to pay the money back. Due to errors, many unemployed Vermonters received incorrect amounts of federal CARES Act unemployment benefits through no fault of their own. For most claimants (in our experience) the federal portion is between \$2,000 and \$10,000. DOL does not have a handle on how much these overpayment total, but they are likely at least \$4 million dollars and could be twice that.

The Vermont DOL wrote a policy in June of 2022 meet federal guidance to administratively waive repayment of these CARES Act (COVID related) overpayments. However, despite the well-written policy, as of the date of this letter, **we have not seen the Department effectively advertise or implement this waiver policy**. The policy is widely implemented by administrative law judges and the ESB in their decisions, but this only helps those who still had an appeal in process when the Department adopted the waiver policy. Many more Vermonters already have a final overpayment decision, and there is no public information on their website or other public platforms explaining that claimants can ask for the federal portion to be forgiven. There is not a working system to decide on these waivers when requested. We are concerned that the Department will offset Vermonters' 2023 state income tax refunds as repayment for CARES Act overpayments before those individuals learn that waiver is available and have an opportunity to apply.

3. Proposed Legislation for UI Eligibility for Vermonters who Lose Jobs Without Fault  
Allowing UI Benefits for Workers who lost jobs due to family responsibilities

Vermont Legal Aid proposes new legislation to address the eligibility gap when a person must leave a job through no fault of their own, nor any fault of their employer, but the claimant is available to work soon after. Current Vermont statutes do not allow an individual to collect unemployment benefits if they **had to leave a job for reasons such as an unexpected temporary or permanent loss of childcare, an unexpected illness, or the need to care for an ill family member**. If any of these circumstances caused a person to lose a job, under current law that person will be disqualified from receiving benefits, even if those circumstances have resolved days or short weeks after the fact. Similar to the intent of the temporary COVID rules, **our requested statutory changes allow workers in these compelling situations, who are able and available to work after the emergency has resolved, to receive unemployment benefits**. Other states around the country have similar legislation. We hope to see this important legislative change in Vermont.

4. Failing to Provide Access to UI to workers with Limited English Proficiency  
DOL is not meeting its federal obligations

Federal law has required since 2016 that state unemployment programs take steps to ensure meaningful access to limited English proficient (LEP) individuals, so they are effectively informed and able to get the same benefits that other unemployed workers do. This includes that states must include a "Babel notice" in all vital information. A Babel notice is a short notice in multiple languages that states the communication contains vital information and explains how to access the agency's language services to have the contents translated or interpreted. Other parts of the state government routinely provide the Babel notice. However, Vermont DOL does not. Vermont DOL also does not translate the *Unemployment Insurance Claimant Handbook*, nor does it include the Babel notice about how to access translation services. DOL also does not consistently send translated notices when they know that a claimant is LEP. **Vermont DOL is failing to meet federal requirements to serve LEP claimants as effectively as English-speaking**

**claimants.** This failure can have dire consequences for LEP Vermonters who do not understand The UI rules, responsibilities, filing requirements, and appeal deadlines.

5. Outdated Computer system

Vermont DOL is hamstrung by its outdated computer system. We would be remiss if we did not mention how much that impacts DOL's ability to have an effective UI system. **Vermont DOL is way behind on its timeline to even begin to modernize its computer system.** On March 14, 2022, Vermont published a request for proposals seeking to establish contracts with one or more vendors for Phase 1 of the UI Modernization Project. It does not appear that any contract has yet been awarded for the work needed to replace the Department's legacy system: [Vermont Business Registry and Bid System - Bid Detail](#).

We appreciate the hard work by the Department of Labor during these difficult times. Nonetheless, we want you to know of the problems that we are seeing. Please let us know if you have any questions.

Sincerely,

*Kelli Kazmarski*

Kelli Kazmarski  
Barbara Prine  
Staff Attorneys

Cc: Michael Harrington, Commissioner, Department of Labor  
Cameron Wood, Director of Unemployment Insurance Program