

NEW JERSEY



UNEMPLOYMENT INSURANCE TASK FORCE REPORT

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REVISED

CHRIS CHRISTIE, *GOVERNOR*
KIM GUADAGNO, *LT. GOVERNOR*
HAROLD J. WIRTHS, *COMMISSIONER*

NEW JERSEY DEPARTMENT OF

LWD

LABOR AND WORKFORCE DEVELOPMENT
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EXECUTIVE SUMMARY

This is the second report issued by the New Jersey Unemployment Insurance (UI) Task Force since it was established under P.L. 2010, c. 37 to study and assess an ongoing deficit crisis involving the New Jersey Unemployment Insurance Trust Fund.

The Fund is a critical provider of income security for our State's workers who become unemployed through no fault of their own. Both employers and workers contribute to the fund through an unemployment insurance tax.

Due to nearly two decades of diversions from the Fund, which totaled \$4.6 billion, and because of multiple tax table adjustments, the Fund became insolvent in 2009 as the nation plunged into a severe economic recession that resulted in sustained levels of high unemployment and benefit payments (see Fig.1). Compounding the problem was the fact that New Jersey's UI benefits were and remain among the most generous in the nation.

In 2009 and 2010, New Jersey was forced to borrow \$1.6 billion from the Federal Unemployment Account to meet the State's benefit obligations. New Jersey employers began shouldering the tax responsibility to restore the Fund to solvency and repay the federal loan. Because of the Fund deficit, New Jersey's UI law stood to trigger a series of severe and automatic increases in the employer wage tax, starting on July 1, 2010, for Fiscal Year 2011, with an average wage tax increase of \$400 per employee.

To lessen the impact on the New Jersey employers, Governor Chris Christie and the State Legislature acted on legislation in June 2010 to hold the average increase for employers to \$130 per employee. Governor Christie also attached conditions on the legislation to restrict UI eligibility for workers fired for severe or gross misconduct and to authorize the formation of the New Jersey Unemployment Insurance Task Force.

The 12-member Task Force, which convened its first meeting in October 2010, was charged with the responsibility of assessing the unemployment insurance program and reviewing the Fund's revenue collections and benefit payment methods. The Task Force also was charged with developing recommendations on how to achieve long-term fiscal stability of the Fund, as well as recommend changes that may be needed to facilitate the Fund's return to solvency, while balancing the impact of any changes against the interests of workers, employers and the overall growth of the State's economy.

The Task Force, which has six voting members, issued its first report in February 2011, offering two recommendations:

- Phase In Annual Employer Tax Increases Over the Next Three Years
- Achieve Long-Term Fiscal Stability by Returning the UI Fund Tax Bands to FY 2003 Tax Structure

In the months that followed, there were two major developments that further impacted the UI Trust Fund.

In March 2011, the New Jersey Department of Labor and Workforce Development kicked off a new anti-fraud program designed to protect the Fund from what the U.S. Department of Labor (USDOL) identified as the most common cause of improper payments being made from State UI accounts nationwide: people continuing to file UI claims after they have returned to work.

The anti-fraud program, the first of its kind in the nation, compares data on UI claimants against the New Jersey New Hire Directory and the National Directory of New Hires. These directories contain employment data that employers are mandated, by law, to provide for each new employee they hire. When a person

collecting UI benefits appears in the “new hire” directories, the “new hire” data is immediately attached by the New Jersey Department of Labor and Workforce Development to the claimant’s UI file, benefit payments are withheld and the claimant is required to speak to a claims representative to resolve the matter.

In 2011, payments were stopped, on average, for 1,650 claimants each week because the “new hire” directories indicated the claimants had returned to work.

The USDOL bestowed two innovation awards to the New Jersey Department of Labor and Workforce Development in 2011 for its anti-fraud program, which is expected to prevent at least \$98 million in improper payments within one year and improve the solvency of the UI Trust Fund.

In June 2011, Governor Chris Christie and the State Legislature again took action on legislation to prevent an average \$300-per-employee tax increase for employers due to be triggered by the State UI law for Fiscal Year 2012. The legislation passed and signed into law held the average increase to \$100 per employee.

By the end of 2011, the State’s federal loan balance was expected to decrease by an estimated \$138 million to \$1.47 billion. The loan is expected to be paid off in the summer of 2013. Currently, 28 states have outstanding loans from the federal fund totaling \$39 billion.

The Task Force, which convened for its second year in October 2011, looked at matters related to UI eligibility, contributions and payments in an effort to further improve the solvency of the Fund.

In this second report, the Task Force offers six recommendations:

- Change Employer Experience Rating in Tax Rate Table
- Identify Seasonal Industries and End UI Eligibility for Seasonal Employees at the End of Their Work Season
- Implement Stricter Work Search Requirements for UI Claimants
- Change State Law and Regulations to Include Workers’ Compensation and Severance Pay in the Determination of Unemployment Benefits
- Retain the Current “Suitable Work” Requirements and Upgrade Information Technology
- Change State Law to Eliminate Base-Year Criteria for “Benefits Charging”

The Task Force made no recommendations regarding benefits paid to striking workers and private employees in public schools. The Task Force also deferred until next year any consideration of changes to the maximum weekly benefit rate and changes to the formula for determining the wage base rate.

It should be noted that all changes made to the UI system or law will be subject to a conformity review conducted by the U.S. Department of Labor to ensure the changes match federal law and requirements.

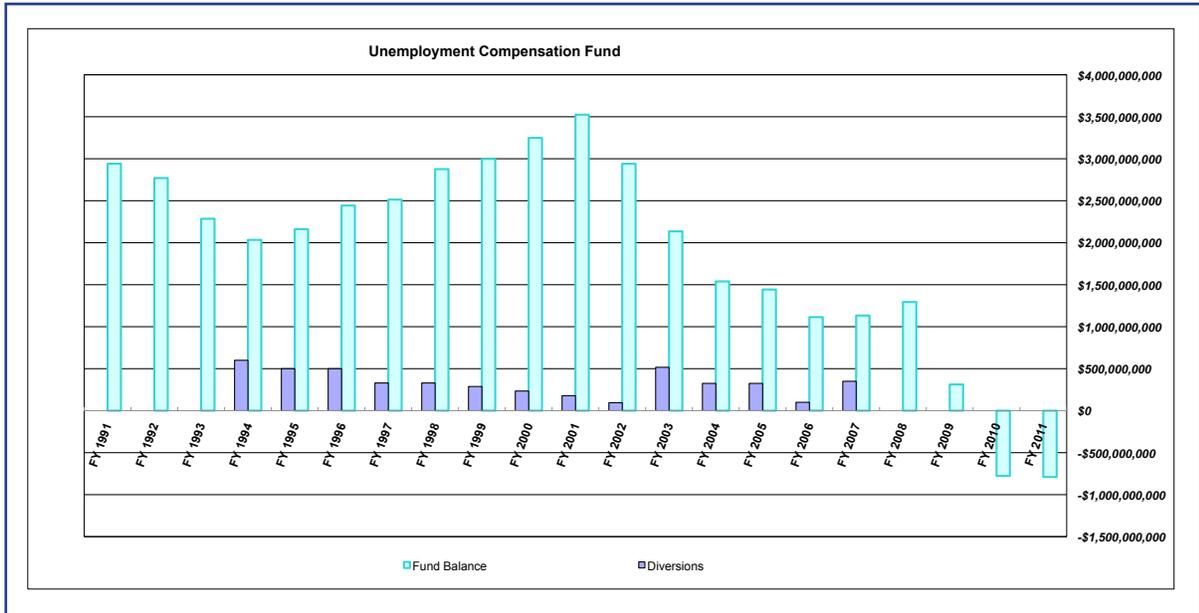


Fig.1. 2011 Unemployment Insurance Trust Fund Balance and Diversion

THE UI TASK FORCE MEMBERSHIP AND ORGANIZATION

Task Force Members

Appointed by Governor Chris Christie, the Task Force membership includes representatives from business, labor and elected officials; there are six voting members and six non-voting members.

Voting Members

Co-Chair Ed Fedorko, Mechanical & Allied Crafts Council of New Jersey

Co-Chair Melanie Willoughby, New Jersey Business and Industry Association (NJBIA)

Michael Capelli, New Jersey Regional Council of Carpenters

Laurie Ehlbeck, National Federation of Independent Business (NFIB)

Geri Kelly, Columbia Bank, on behalf of Commerce and Industry Association of New Jersey

Ray Pocino, Vice-President, Eastern Regional Manager, Laborers' International Union of North America

Non-Voting Members

Joseph Egan, Assemblyman, District 17, Chairman, Assembly Labor Committee

Peter Isberg, Automatic Data Processing, Inc.

Fred H. Madden, Jr, Senator, District 4, Chairman, Senate Labor Committee

Steven V. Oroho, Senator, District 24

Robert Schroeder, Assemblyman, District 39

Harold J. Wirths, Commissioner, New Jersey Department of Labor and Workforce Development

NEW JERSEY UNEMPLOYMENT INSURANCE TASK FORCE OVERVIEW

The New Jersey Unemployment Insurance Task Force, when established, was charged with meeting over a three-year period.

Following the release of its first report in February 2011, the Task Force met again as a committee of the whole on July 27, 2011, to begin its second annual session. The Department of Labor and Workforce Development again provided the expert, programmatic and professional resources needed to support the Task Force in its deliberations.

A schedule for the year was agreed upon, with a series of meetings established over a five-month period. The Task Force determined an agenda of issues to consider, including outstanding matters from its first year and additional factors that have a significant impact on the Unemployment Insurance Trust Fund. In addition, the Task Force decided to defer until its third session any consideration of changes to the maximum weekly benefit rate and the formula for determining the wage base rate. The decision was based on a consensus that such changes would jeopardize the continuation of federal extended UI benefits in New Jersey.

The established agenda for 2011 included the following issues:

- Benefits Charging
- Employer Experience Rating
- School-Related Claims
- Seasonal Employment
- Adequacy of Work-Search Requirements
- Adequacy of Suitable-Work Requirements
- Payments Excluded from Benefits
- Benefits for Striking Workers and
- Federal Funding for Extended Benefits

A summary of the findings, recommendations and alternatives considered by the Task Force is included in the pages that follow.

TASK FORCE RECOMMENDATIONS

Recommendation 1

Change Employer Experience Rating in Tax Rate Table

Two factors determine an employer's unemployment tax rate: the Unemployment Trust Fund Reserve Ratio and the employer's reserve ratio. The unemployment experience rating for companies in business for up to three years is calculated to determine the ratio between contributions made and benefits paid out. The result is that employer's reserve ratio.

The Unemployment Trust Fund Reserve Ratio is calculated by dividing the balance of the Unemployment Trust Fund as of March 31 of the current calendar year by the total taxable wages reported by all employers for the prior calendar year. The resulting ratio is applied to the Tax Rate Table to set each employer's tax rate. Generally, the more benefits charged to an employer, the higher the employer's tax rate. The current Tax Table has 18 reserve ratio categories, 10 deficit reserve categories and two specially assigned rate categories for new businesses. (The unemployment experience rate for companies in business up to three years is calculated to determine the ratio between contributions made and benefits paid out.)

AT ISSUE

The last deficit reserve ratio category is capped at “-35% and under.” An employer in this category (there are 13,671) is charged the same tax rate as those with reserve deficits that are substantially greater than -35% (of which there are 9,814; — or 71%). This means that employers with negative reserve balances, particularly those in this latter group, are heavily subsidized by employers who have positive reserve ratios.

In FY 2011-2012 the cumulative dollar value in all past years of the reserve ratio for employers with -50% or higher reserve ratios was:

Contributions Paid	\$ 2,602,331,101
Less: Benefits Charged	\$(5,421,824,866)
Reserve Balance	\$(2,819,493,765)

An additional negative reserve balance of -\$123,369,432 was incurred by employers (2,336) in the specially assigned rate categories. This apparent inequity prompted the Task Force to study the revenue effects of breaking the last deficit reserve category (i) into six more with (ii) graduated increases of an additional .4% to the planned FY 2012–2013 tax rate of 7% (currently 6.4%) for each new group.

(i)	(ii)	
-50% to -74%	7.4%	\$86.7 million
-75% to -99%	7.8%	\$42.6 million
-100% to -199%	8.2%	\$53.1 million
-200% to -299%	8.6%	\$10.9 million
-300% and more	9.0%	\$7.2 million
Specials	9.0%	\$19.4 million

Expansion of the “-35% and under” category in this way would generate anticipated revenue of approximately \$220 million, with 61% derived from employers with deficit reserves greater than -75%, including the specially assigned rate categories for new businesses.

RECOMMENDATION

The Task Force recognizes that experience rating is a matter of equity to employers with positive reserve ratios and that it has a financial impact on the solvency of the Trust Fund. The Task Force recommends that the “-35% and under” category be expanded and that the tax rate anticipated in Table E for FY 2012–2013 be increased in .4% increments as shown on the previous page, to a maximum of 9%.

Recommendation 2

Identify Seasonal Industries and End UI Eligibility for Seasonal Employees at the End of Their Work Season

New Jersey law allows benefit payment to employees from seasonal employment, whether separation occurs in-season or after. While the nature of their businesses ultimately dictates their operating season, seasonal employers customarily operate during regular, recurring time periods defined by climate or other periodic opportunity (e.g., lifeguards).

AT ISSUE

At least 12 states, including Massachusetts and Pennsylvania, deny benefits to seasonal workers who lose their jobs during end-of-season layoffs, particularly if there is a reasonable assurance of recurring employment.

In states with benefits restrictions, the designation of seasonal industries, occupations or employers is formally proscribed in laws or regulations. These laws or regulations stipulate the beginnings and ends of respective seasons (26 weeks or less in most states) and the processes, if any, for determining eligibility for benefits.

The Department does not track benefits paid to seasonal workers and is not able to estimate the financial effect that seasonal beneficiaries have on the Trust Fund.

RECOMMENDATION

The Task Force recommends that New Jersey law be amended to identify seasonal industries, determine industry seasons, and eliminate all end-of-season separation eligibility, reasonable assurance tests notwithstanding. The Task Force also recommends that construction not be defined as a seasonal industry.

Recommendation 3

Implement Stricter Work Search Requirements for UI Claimants

Individuals receiving UI benefits must be actively seeking work during the period of their claim. N.J.S.A. 43:21-4(c) allows for some exceptions to this requirement, including: approved Department-funded or entrepreneurial training, jury duty, personal disability, temporary disability of a family member, or attendance at a funeral, and the need for other employment services that may forestall exhausting available benefits.

AT ISSUE

Currently, the Department of Labor and Workforce Development requires that UI claimants indicate that they are actively searching for work when they certify benefits, either through the Internet or the telephone system. As a result, it is difficult for the Department to verify that UI recipients are fulfilling this requirement.

RECOMMENDATION

The Task Force recommends that law or regulations and the architecture of the certification system be changed as necessary to (i) require claimants seeking periodic certification to list the employers they contacted to satisfy the work search requirement, and (ii) require that recipients attest to the accuracy of this information. A similar requirement should be made of claimants who phone the Department or appear in person with the intention of renewing benefits.

Recommendation 4

Change State Law and Regulations to Include Workers' Compensation and Severance Pay in the Determination of Unemployment Benefits

Certain types of work-related payments, made at the end of an individual's employment or after the individual loses their job, can affect a separated employee's claim for unemployment benefits.

In New Jersey, the payment of "wages in lieu of notice" of separation is considered continuing employment, which delays the claim filing date until the end of the in-lieu payment period. Twenty states reduce benefits by the weekly prorated amount of wages in lieu of notice. Similarly, pay for vacation time earned while employed does not affect UI receipt of benefits. Twenty-two states reduce benefits on a pro rata weekly basis. In New Jersey, receipt of severance payments does not preclude the payment of benefits because they do not extend employment. Thirteen states reduce benefits on a pro rata weekly basis. There is no disqualification for claimants receiving Social Security or workers' compensation. Five states reduce benefits by up to 50% for Social Security recipients and two U.S. territories deny benefits. Nine states deny UI benefits to workers' compensation recipients while they are receiving workers' compensation benefits, and 17 others reduce benefits on a pro rata weekly basis.

AT ISSUE

The Task Force recognizes that excluding certain payments from benefits may have measurable effects on Trust Fund solvency.

RECOMMENDATION

The Task Force recommends that Workers' Compensation and severance payments be included in the determination of Unemployment Insurance benefits.

Recommendation 5

Retain the Current "Suitable Work" Requirements and Upgrade Information Technology

A claimant may be deemed ineligible to receive benefits if the claimant refuses an offer of suitable work without good cause.

N.J.S.A. 43:21-5 (c) *If it is found that the individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the director or to accept suitable work when it is offered, or to return to the individual's customary self-employment (if any) when so directed by the director. The disqualification shall continue for the week in which the failure occurred and for the three weeks which immediately follow that week (in addition to the waiting week), as determined*

AT ISSUE

Any job offer that pays at least 80% of the claimant's prior earnings is considered suitable work. Existing law and regulations allow for certain mitigating circumstances to qualify for "good cause": a high degree of personal risk posed by the opportunity, unusual physical demands or distance to work, non-transferable skills, tenure in prior employment and a lack of similarity to prior work.

The Task Force recognizes that changes to the requirements may marginally affect the solvency of the Trust Fund.

RECOMMENDATION

The Task Force did not agree on possible changes to the definition of suitable work. However, the discussion prompted the Task Force to recommend that the State regularly and continuously appropriate funds to upgrade and improve the information technology that supports the claims system.

Recommendation 6

Change State Law to Eliminate Base-Year Criteria for "Benefits Charging"

One in three unemployment claims involve multiple employers. Benefits Charging refers to the method of determining which employers should be charged to pay unemployment claimants.

Each employer has an account that is credited for contributions the employer made on or before January 31, for employment in the prior year. An employer's account is charged for unemployment benefits paid to claimants who establish "base weeks" with that employer. If multiple employers engage a claimant in a base year, each employer's account is charged pro-rata, based on the claimants' earnings with each.

If a claimant is not able to meet base-year requirements, but is otherwise eligible for benefits, monetary determination can be established by other means. A claimant may be deemed ineligible for benefits in the usual ways.

EXAMPLE:

A claimant made \$10K per quarter, for three calendar quarters, working for Employer "A." The claimant separates due to lack of work and is hired by Employer "B" the next month. For the next two quarters, the claimant earns the same rate working for Employer "B." Based on the claimant's earning with each employer during the base year, Employer A is charged 75% and Employer B is charged 25% of the benefits paid to this claimant. This is because in this example the base year (the first four quarters out of the last completed five quarters) includes three quarters of wages earned from Employer A and one quarter of wages earned from Employer B; thus the 75%-25% split. Employer B is responsible for only 25% of the benefit charges despite the fact they were the separating employer.

AT ISSUE

Benefits charging is a matter of equity for employers; it does not have a financial impact on the solvency of the Trust Fund. Which employers should be charged, and on what basis?

RECOMMENDATION

The Task Force recommends that the law be changed to eliminate the base-year criteria for benefits charging in favor of pro rata shares from each affected employer based on the claimant's earnings from them. This will require working with the New Jersey State Legislature and staff of the Department of Labor and Workforce Development to develop a method for satisfying the recommended proportional contributions that does not add significant administrative costs to the Department, reporting burdens on New Jersey's employers, or negative impacts on UI performance measures.

ADDITIONAL TASK FORCE CONSIDERATIONS

In addition to the aforementioned recommendations, the Task Force reviewed a number of other options. The findings are included below. The Task Force did consider each option through a prismatic sensitivity to the state of the State's economy, federal repercussions for benefit formula modifications, and potential dislocation of workers.

Benefits Paid to Private Employees Working in Public Schools

Certain privately employed school employees are eligible to receive unemployment benefits between school years, while their publicly employed contemporaries are not.

Under New Jersey law, workers directly employed by public education are ineligible for unemployment benefits during holiday periods, term breaks and summer recesses, if they are under contract and have reasonable expectations of returning to work in the next academic year. However, certain school employees — including bus drivers, food service workers, and janitorial staffs — are not directly employed by public school districts, but by private contractors who are providing fee services to public school systems. These private employees are eligible for benefits during times when public schools are closed.

AT ISSUE

School-related benefits represent a problem of internal consistency. This dissonance has a small, yet measurable impact on charges to the Trust Fund, which may total up to \$50 million per year.

After some discussion on whether New Jersey law should be amended, specifically to incorporate a “between and within term” denial of unemployment benefits eligibility to privately employed public school employees, the Task Force determined that further study of the issue and more information is needed.

Benefits Paid to Striking Workers

Under New Jersey law there are circumstances when striking workers are eligible to receive unemployment benefits for the period of the work stoppage.

The New Jersey Administrative Code defines a labor dispute as a controversy concerning wages, hours, working conditions or terms of employment between an employer and a bargaining unit or other group of employees. Labor disputes often precipitate job actions, defined as a “work stoppage” when 20% or more of the normal production of goods and services of the impacted employer is adversely affected. In these

circumstances, striking workers are disqualified from receiving unemployment benefits if they belong to a participating grade or class of workers employed at the target employer, participate in the work stoppage, helped to finance such an action, or had another direct interest in the curtailment.

AT ISSUE

For impacted companies in heavily regulated and licensed industries required to operate 24/7 year-round, any job action may represent a substantial curtailment of normal operations. The action may prompt management to exercise contingencies, like hiring replacement workers to maintain mandated services levels. Currently, intervention like this would likely constitute a “lock-out,” making striking workers eligible for benefits and costing the employer twice: once for the costs of mitigating a labor shortage and then for benefit contributions to workers who have a reasonable expectation of returning to work after settlement.

The Task Force makes no recommendation on whether to modify “stoppages of work” to disqualify strikers from unemployment benefits in cases of highly regulated businesses that are required to operate 24/7 as a condition of licensure.