

AMERICAN PAYROLL ASSOCIATION

October 29, 2021

The Honorable Ron Wyden
Chair, Finance Committee
U.S. Senate
221 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
Chair, Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: Recommendations regarding S. 2865 and H.R. 5507, Unemployment Insurance Improvement Act

Dear Senator Wyden and Representative Neal:

The American Payroll Association (APA)¹ supports the important goal of improving the unemployment insurance (UI) system in the United States but is concerned about the burden placed on employers in the Unemployment Insurance Improvement Act. Enhanced use of the State Information Data Exchange System (SIDES) may reduce this burden. The APA also is offering Congress information on reclassifying independent contractors as employees for UI purposes because of the widespread effect this will have on labor and tax laws.

APA members have extensive experience in reporting wage and other payroll information to every state UI agency across the United States. As such, we are deeply familiar with the existing UI infrastructure and its problems.

UNDUE EMPLOYER BURDEN

The APA brings to your attention Section 6 of the Unemployment Insurance Improvement Act on access to benefits. Section 6 focuses on data reporting and requires state unemployment insurance agencies to implement a system for employers to “provide information regarding claim-filing for unemployment compensation to employees upon separation from employment.” While the APA recognizes the need for employees to have accurate, timely information regarding the collection of unemployment compensation, the extent to which this reporting requirement would fall on employers is overly burdensome. For example, employers may not have direct contact with the worker or have a valid mailing address following termination. Short term or temporary employees that could be eligible for receiving UI information but fail to provide sufficient contact information may prevent employers from fully

¹The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA’s primary mission is to educate its members and the payroll industry regarding best practices associated with paying America’s workers while complying with applicable federal, state, and local laws. In addition, APA’s Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

complying with the reporting requirement due to no fault of their own. State UI agencies will have more accurate contact information when the individual files for UI benefits.

The legislation further requires that state UI agencies “have in place methods for employers to notify the State workforce agency of employees who may apply for unemployment compensation due to short-term layoffs, business shutdowns, partial unemployment, and short-time compensation.” The expansion of these requirements also greatly increases the burden on employers. Currently, employers respond to requests for information from state UI agencies on an as-needed basis. By putting the onus of reporting all exiting employees on employers, this bill could result in overwhelming payroll resources, which can be detrimental to timely and accurate wage payments to current employees along with paying taxes.

Recommended Solution

There is an existing framework through which UI information could be reported and without placing an extensive additional burden on employers. The APA urges the U.S. House of Representatives and Senate to consider the State Information Data Exchange System (SIDES).

SIDES is a web-based system that allows electronic transmission of information regarding UI claims between UI agencies and employers, both small and large. Developed by the National Association of State Workforce Agencies (NASWA) and the U.S. Department of Labor (DOL), SIDES is uniquely positioned to aid UI agencies and employers to reduce workload while increasing efficiency through the implementation of widely available technology.

UI FOR INDEPENDENT CONTRACTORS

While not proposed in S. 2865 and H.R. 5507, the APA supports restructuring of the UI system to address an issue highlighted by the COVID-19 pandemic, UI for independent contractors. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, which gave states the option of extending UI compensation to independent contractors, was temporary and, without set standards, still left some independent contractors without access. Classifying independent contractors as employees for UI purposes will not resolve these issues.

The term independent contractor captures individuals who are self-employed, work for an independent contractor company, or who are owners of independent contractor companies. Each of these scenarios creates a different situation for the employers that contract with them. For example, an individual working for an independent contractor company would be an employee of that company and contracting employers for the same work. This raises the potential for fraud with multiple UI benefit claims and a significant burden for states and employers to track.

While individuals apply for UI benefits with state agencies, they may be identified in employer systems by contractor company names and not individuals, making identification for UI purposes difficult. Added to this problem is that employees’ pay is managed through payroll systems, while payments to independent contractors are usually managed through accounts payable. In addition, independent contractor owners are not employees of any employer, which means a separate method of determining UI benefits must be identified should Congress include these owners in the UI infrastructure.

Further, requiring employers to pay UI taxes for their employees and independent contractors seems unfair when employers are not the cause of UI for these individuals. Separation of independent contractors occurs when a project is completed, by decision of the independent contractor company, or through contract dispute processes.

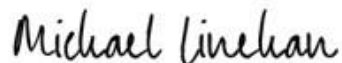
When individuals are identified as employees, employers are also required to withhold income, social security, and Medicare taxes, and to pay the employer share of those taxes, as well as to file information returns. An employee also may be entitled to employer-provided benefits, including healthcare insurance and retirement plans.

Recommended Solution

Rather than assigning the withholding and tax burdens to the employers who contract with independent contractors, a potential solution lies in the utilization of existing federal taxation structures for independent contractors. As independent contractors currently pay a self-employment tax at the federal level, a federal UI program for contractors could be established with a UI tax paid by the independent contractors directly to the federal government.

The APA appreciates your time and consideration regarding the Unemployment Insurance Improvement Act. Please contact Alice Jacobsohn, Director of Government Relations for the APA, at 202-669-4001 or ajacobsohn@americanpayroll.org to discuss the UI infrastructure.

Sincerely,



Michael Linehan
Assistant Manager, Government Relations

For APA UI Workgroup
Chairs: Rebecca Harshberger, CPP, and Brent Gow, CPP

Cc: The Honorable Donald S. Beyer, Jr.