

Kansas  
Unemployment  
Insurance  
Reform  
Webinar Series  
Session 2 of 2

## Kansas Unemployment Insurance 2021 Legislative Reforms

June 15, 2021

**Presented By:**

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Vice President  
The Arnold Group (TAG)  
*Chairman, KS Employment Security Board of Review*  
Kansas Department of Labor




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KS UI Fraud Aftermath & Legislative Response



- Modernization: Building a Better System
- Unemployment Insurance IT System Requirements
- Holding Employers Harmless
- My Re-Employment Plan
- Work Refusal Provisions
- Kansas UI Tax Rate Structure Changes
- Shared Work Program Changes
- Other Provisions
- Questions / Comments

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## Kansas UI Reform Advocacy Alliance





**August 26, 2020 – Formal Letter**

- Letter to KS Office of Recovery for Spark Committee
  - KS Business Community Requested \$300M in CARES Act Dollars for the Kansas UI Trust Fund

**September 17, 2020 – Off Session Testimony**

- KS Special Committee on Economic Recovery

**November 17, 2020 – Off Session Testimony**

- KS Special Committee on Economic Recovery

**January 26, 2021 – 2021 Legislative Session Testimony**

- Senate Commerce Committee
- House Commerce, Labor and Economic Development Committee

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## Unemployment Compensation Modernization and Improvement Council Members

**Scheduled Meetings:**  
June 14, 2021 – 1:00 PM | June 24, 2021 – 9:00 AM | June 25, 2021 – 9:00 AM

**Live Stream – Video**  
KS Legislature - YouTube

**Live Stream – Audio & Records**

<https://www.kslegislature.org/legislative/committees/modernization-and-improvement/>

<https://www.kslegislature.org/legislative/committees/modernization-and-improvement/recordings/>

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## 2. Modernization of Kansas UI System

**New Technology & Platform**

- System Components, Features & Benefits; specified by the Council
  - Efficient Benefit Claims & Payment Management
  - Integrated Tax Management Functionality
  - Comprehensive Appeals Filing and Tracking
- UI System Program Integrity Elements/Guidance**

**Bottom Line**

- Modern, reliable, responsive and modifiable
- 12/31/22 Implementation deadline
- Continual development, customization, enhancements, and upgrades

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## UI System: Program Integrity Elements/Guidance

- Social security administration cross-matching for purpose of validating social security numbers supplied by a claimant
- Checking of new hire records against the national directorate of new hires to verify eligibility
- Verification of immigration status or citizenship and confirmation of benefit applicant information through the systematic alien verification for entitlement program
- Comparison of applicant information to local, state and federal prison databases through incarceration cross-matches
- Detection of duplicate claims by applicants filed in other states or other unemployment insurance programs through utilization of the interstate connection network, interstate benefits cross-match, the state identification inquiry state claims and overpayment file and the interstate benefits 8606 application for overpayment recoveries for Kansas claims filed from a state other than Kansas
- Identification of internet protocol addresses linked to multiple claims or to claims filed outside of the United States
- Use of data mining and data analytics to detect and prevent fraud when a claim is filed, and on an ongoing basis throughout the lifecycle of a claim, by using current and future functionalities to include suspicious actor repository, suspicious email domains, foreign internet protocol addresses, multi-state cross-match, identity verification, fraud alert systems and other assets provided by the unemployment insurance integrity center

- If/when the unemployment compensation modernization and improvement council is inactive or dissolved:
  - Secretary of Labor shall implement and utilize all new program integrity elements and guidance issued by the United States department of labor and the national association of state workforce agencies, including the integrity data hub, within 60 days of the issuance of such guidance

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### 3. Employment Security Review Board / *Temporary Expansion*

- Temporarily doubles the Employment Security Review Board through June 30, 2024
- Currently composed of three members, will consist of six members
  - No more than four of the members belonging to the same political party rather than two as in current law
  - Board may sit in panels of three members with no more than two members belonging to the same political party, for the purpose of hearing and deciding cases before the Board
- Provide that a member's appointment specifically for the term of the effective date of the bill through June 30, 2024
  - will not count as a term for purposes of the prohibition currently preventing a Board member from serving more than two consecutive terms

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### 4. Employment Security Rate Table Changes

- Provides updated fund control table for the purpose of making solvency or credit adjustments to maintain the Employment Security Fund balance beginning in rate year 2022
- Replaces the current uniform solvency rate adjustments to the standard rate schedule with **six new solvency rate schedules** and six new credit rate schedules providing for solvency and credit rating adjustments to be made according to the experience rating of employers
  - Trust fund replenishment is more evenly spread out and avoids disproportionately penalizing employers who use the fund the least
- Provides fair and proportional trust fund solvency/credit adjustments for each and every rated employer

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### 5. Notify Recipients of UI Benefits of Tax Liability

- Requires Secretary of Labor to inform a claimant of the federal and state tax consequences related to UI benefits on the initial determination of benefits notice
- Explanations of the following would be required:
  - KDOL income tax withholding agreement form K-BEN 233
  - Tax withholding elections
  - Tax withholding process and estimated weekly and maximum withholding amounts



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## 6. UI Trust Fund Data Reporting

- Requires certain data related to the UI Trust Fund be published on website maintained by the Secretary
  - Most recent 20 fiscal years:
    - Distributions of taxable wages by experience factor for each fiscal year, to include:
      - Rate group
      - Reserve ratio lower limit
      - Number of accounts
      - Taxable wages
    - Summaries of active positive eligible, active ineligible, and active negative accounts
  - Average high-cost benefit (AHCB) rate summary data:
    - Average high-cost benefit rate in effect, and
    - Benefit cost rate for fiscal years used for AHCB

Fiscal Year	Rate Group	Reserve Ratio Lower Limit	Number of Accounts	Taxable Wages
2019				
2018				
2017				
2016				
2015				
2014				
2013				
2012				
2011				
2010				
2009				
2008				
2007				
2006				
2005				
2004				
2003				
2002				
2001				
2000				

Fiscal Year	Average High-Cost Benefit Rate in Effect	Benefit Cost Rate for Fiscal Years Used for AHCB
2019		
2018		
2017		
2016		
2015		
2014		
2013		
2012		
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## 7. "My Re-Employment Plan" & Work Skills Training Services

- Require secretaries of Labor and Commerce to jointly establish and implement programs providing **reemployment and work skills training** services to UI benefit recipients
- Claimants receiving benefits for three continuous weeks, will be required to provide:
  - Resume
  - Work history
  - Skills list
  - Job Search Plan
- Requires secretaries of Labor & Commerce to jointly implement a work skills training or retraining program in collaboration w/ KANSASWORKS system
- Secretary of Labor report annually on status and progress of the reemployment services and work skills training programs to the House & Senate Commerce Committees during first month of each Legislative Session

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## 8. Work Refusal Provisions

- Requires Secretary of Labor to develop procedures enabling employers to notify KDOL when a UI claimant **refuses to return to work OR refuses an offer of employment**
  - Upon receipt of notification, requires Secretary to determine if the offered employment is suitable, considering wages offered are comparable to claimant's recent employment, work duties correspond to claimant's education level and work experience, and wages offered are at least amount of claimant's max weekly UI benefits
- Requires Secretary, within **10 business days** of receiving work refusal notification from an employer, to notify claimant who refused work information:
  - A summary of the claimant's duties to accept suitable work;
  - A statement that claimant has been or may be disqualified from receiving benefits;
  - An explanation of what constitutes suitable work; and
  - Instructions for contesting a denial of claim based upon a report by an employer that the claimant has refused an offer of suitable work

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## Employers Can Report Job Seekers Who Refuse Job Offer

- Employers are in a very competitive market looking for employees with a 3.5% unemployment rate
- Requirement to maintain eligibility for UI benefits:
  - Perform three work search activities each week
    - At least two weekly work search activities (application OR resume submissions)
    - At least one other activity:
      - Additional job application(s)
      - Attendance at job fairs
      - Resume review courses
      - Workforce Center services
      - Browsing job posting websites, etc.
- Refusing work can disqualify individuals** from unemployment insurance
  - Employers should report ALL job refusals

Source: Employer forms - <https://www.kdheks.com/>

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## When/Who to Report? **ALL** Job Refusals Can be Reported

### GETTING KANSANS BACK TO WORK: EMPLOYER GUIDANCE FOR HANDLING JOB REFUSALS

The U.S. Department of Labor (DOL) has released updated resources for employers, workers and those administering UI to improve access to the system.

The DOL emphasizes it will use the cooperation of employers, employees and state agencies to ensure unemployment funds. Kansas should be able to ensure that requirements for failure to accept suitable work offers may lead to denial of unemployment benefits.

The Kansas Department of Labor (KDOL) notes an individual not eligible for unemployment benefits if they fail to accept suitable work without good cause. **Valid Cause** includes:

- **Substantial:**
  - Change
  - Training
  - Education
  - Geographic transfer for job
- **Labor Market Conditions:**
  - Prospects for work
  - Number of jobs available in their occupation or skills area, the
  - Prevailing industry

**KDOL will investigate all reported job refusals**

- If the job is determined to be suitable, KDOL will also investigate if they had good cause for refusing work.
- If the job is determined to be suitable and the individual failed to accept the work without good cause, they may be disqualified for benefits.

No action can be taken and the claimant may be eligible to receive benefits if a refusal is not reported.

Kansas employers can report ALL job refusals with the form:

<https://www.kdheks.com/>

Source: <https://www.kdheks.com/>

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## 9. Unemployment Rate Thresholds for Maximum Benefits

- Raises minimum threshold for receiving a maximum of 20 weeks of UI benefits from a 3-month seasonally adjusted average unemployment rate of 4.5% to 5.0% for weeks beginning September 5, 2021
- Federal Reserve Defines Full Employment at 5.0% - 5.2%
- Recent Kansas UI Rates:
 

Nov. 2020:	5.6%; Revised to 5.1%
Dec. 2020:	3.8%; Revised to 4.7%
Jan. 2021:	3.5%; Revised to 3.4%
Feb. 2021:	3.2%; Revised to 3.8%
Mar. 2021:	3.7%; No Revision
Apr. 2021:	3.5%; Revision TBD
May 2021:	TBA on 06/18/21

<b>Previous Statute:</b>	
• <4.5%:	16 weeks
• 4.5% to <6.0%:	20 weeks
• =>6.0%:	26 weeks
<b>New Statute:</b>	
• <5.0%:	16 weeks
• 5.0% to <6.0%:	20 weeks
• =>6.0%:	26 weeks

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## 10. Disqualification for Fraudulent/Misleading Statements

- Benefit Disqualifications:
  - First occurrence is shortened from five years to a one year disqualification.
  - Second and future occurrences lead to a five year disqualification.
    - Disqualification periods do not start until collection of overpayment, 25% penalty and interest
- Establishes a crime classified as a severity level 5 nonperson felony for any individual who makes fraudulent or misleading statements to obtain UI benefits if they meet the following criteria:
  - Failed to engage in employment as defined in statute;
  - Failed to perform any services for wages within the state not within the meaning of employment;
  - Made such fraudulent or misleading statements while purporting to be another individual without their consent; and
  - Communicated or caused to be communicated false statements or representations on 3 or more occasions during a 30-day period while purporting to be another individual without that individual's consent.



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## 11. Employer Account Protections & Payment Certification

- Requires employers to be held harmless and not owe any amount to the State for:
  - Any paid claim reported as fraudulent to Sec. of Labor, unless claim determined to be legitimate
  - Any claim that has been improperly paid, as would be defined by the bill
- Requires Secretary of Labor to make immediate restitution to employers, without requiring a hearing or a request from the employer, as follows:
  - Credit account of any contributing, governmental rated, or reimbursing employer for any paid benefits determined to be due to fraud or improper payment between 3/15/20 – 12/31/22;
  - Forward Facing Provision: Refund "reimbursing employers," who repay State for claims paid on their behalf, for any claim paid after 3/15/20, that is or is reported to be fraudulent by employer, unless determined to be otherwise by the Secretary
  - Look Back Provision: After reviewing all reimbursing employer accounts, apply credits for any unrecovered charges for fraudulent or erroneously paid claims
- For purposes of both restitution and indemnification:
  - Any determination w/ respect to legitimacy of a claim is subject to appeal; and
  - No time limit to dispute a fraudulent claim or related appeals for benefits paid between 3/15/20 and 12/31/22
  - "Improper payments" defined as any payment that, according to legally applicable requirements, should not have been made or was in the incorrect amount.



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## 12. Federal Relief Aid Transfers

- Provides for lesser of an aggregate of **\$500M** or max amount available, as determined by the Director of the Budget, to be transferred from special revenue funds to the Employment Security Fund during **FY 2021 (\$250M)** and **FY 2022 (\$250M)**
  - Total amount to include:
    - Fraud/Improper payments identified by the new Kansas Unemployment Insurance Modernization and Improvement Council Audit (3/15/20-3/31/22)
    - Fraud/Improper payments between 4/1/22 and 12/31/22
  - Transfers made up of moneys identified by Director of the Budget to be unencumbered coronavirus relief funds that may be spent at discretion of the State & provided by federal legislation enacted in response to COVID-19
    - In the event the transfers of federal coronavirus relief funds to the Employment Security Fund are not made, the bill would stipulate contributing employers would pay contributions as set forth in the standard rate schedule for rate year 2022 and 2023, and no solvency credit or adjustment would apply



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### 13. Annual KS UI Trust Fund Projections Report



- Three Years of Reporting
  - Calendar Years 2022 – 2024
  - To House & Senate Commerce Committees
- Reporting Requirements:
  - Actual & Projected Amount of UI Claims
  - Actual & Projected Employer Contributions
  - Actual & Projected UI Trust Fund Balance

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### 14. Federal UI Program Restrictions



- Specifies that any federal UI program established in response to a pandemic is not to be continued using state contributions after the federal program ends

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### 15. Shared Work Program Modifications



- Requires Secretary of Labor to create and manage a promotional campaign for the Shared Work Program
  - Includes educational communications with other state agencies and stakeholders, including Governor's office, legislators, workforce investment boards, labor unions, and local, regional, or state chambers of commerce
- Eligibility of employees to participate in the program would be expanded from those whose hours of work are reduced by 20 to 40 percent of normal weekly hours to those whose hours of work are reduced by **10 to 50 percent of normal weekly hours**
- Permits **negative account employers (N1-N11)** to be approved for the Program if their most recent calculated reserve ratio has improved from the previous reporting year's reserve ratio
- Clarifies eligibility for UI benefits pursuant to a Program agreement would not be conditioned upon work search or work availability limitations otherwise generally required of UI benefit recipients

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### Additional Provisions in HB 2196

16. Clarifies that individuals of identity theft are not liable for fraudulent UI claims made using their stolen identity
17. Amends a provision of the Employment Security Law pertaining to the quarterly reporting of tax and wage data
  - Under current law, professional employer organizations, or independent businesses that provide leased employees to a client, are prohibited from including a client company's owners and officers in the same UI quarterly report as that company's employees
  - The bill removes the prohibition
18. Revises the Employment Security Law by excluding from the definition of "employment" contractual services performed by a petroleum landman
  - Such services are defined to include mineral rights management and negotiations, development of minerals, research of public and private property records, and title work. For purposes of the bill, "minerals" includes oil, natural gas, or petroleum
  - Such services are not to include services performed for 501(c)(3) organizations exempt from federal income taxation
19. Requires KDOL and the Department for Children and Families (DCF) to enter into a memorandum of understanding to provide for the transfer of information between agencies providing that, upon notification that a UI claimant has become employed, the Secretary of Labor shall notify DCF to determine the UI claimant's eligibility for state or federal benefits provided or facilitated by DCF

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### Additional Provisions in HB 2196

20. Provides if the contributions collected from negative account balance employers and paid into the Employment Security Interest Assessment Fund for the purpose of paying interest on unemployment advances provided by the federal government exceed the amount of interest owed, any excess amount shall be transferred to the Employment Security Trust Fund.
  - The bill prohibits any expenditures from the Employment Security Interest Assessment Fund other than the payment of principal and interest on such advances from the federal government.
21. The bill requires the Department of Labor to develop a form for claimants to establish their identity before a Kansas law enforcement officer.
  - The form is limited to one page in length and the Secretary of Labor shall use those forms of identification identified by the I-9 list.
  - The completion of the form and submission by the law enforcement agency require the Secretary to presume the claimant's identity has been confirmed for purposes of UI law.
  - Law enforcement officers, agencies, and the state or any political subdivision of the state receive immunity from civil or criminal liability related to the use of the form if the officer acts in good faith and exercises due care.

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### In Summary

- Senate Substitute for Substitute for HOUSE BILL 2196 fixes a broken system with common sense and evidence-based unemployment insurance reforms:
  - Builds a better UI system and tightens up processes to serve all Kansans and all Kansas employers
  - Helps small businesses get back on their feet; and
  - Gets to the heart of hiring employees back into the workforce

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Questions / Comments?

THANK YOU

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