



COMMONWEALTH of VIRGINIA

Virginia Employment Commission

Ellen Marie Hess
Commissioner

6606 West Broad Street
Richmond, VA 23230

Post Office Box 26441
Richmond, VA 23261-6441

December 10, 2020

Mr. Pat Levy-Lavelle
Legal Aid Justice Center
626 East Broad Street
Suite 200
Richmond, VA 23219

Dear Mr. Levy-Lavelle:

On behalf of the Virginia Employment Commission (VEC), I am responding to the letter dated November 6, 2020 and subsequent discussion held on November 16, 2020. The agency also acknowledges your communication dated November 20, 2020 that summarized that teleconference. We appreciate the concerns raised and the spirit of collaboration to address those concerns in a fair and equitable way.

Continued Claims: There are approximately 74,000 claims pending adjudication within the state Unemployment Insurance (UI) program. There is a subset of these claims where the individual had been receiving benefits but an issue was identified related to the individual's separation from employment or issues have been established concerning an individual's on going weekly eligibility for benefits (internally referred to as non-separation issues). There are approximately 58,000 individuals who were in a continued claim status with a separation issue to be addressed. There are approximately 22,000 claims with non-separation issues to be addressed.

- **Separation issues:** The agency will not restrict claims that cannot be adjudicated within 21 days of the issue detection date. This action will allow individuals to claim and receive weekly benefits while separation issues are pending. Removing the issue is an administrative action to allow payment of benefits consistent with 42 U.S.C. 303(a)(1), SSA. The VEC will render determinations on these same issues and notify both the claimant and employer consistent with our business practices. All parties will have appeal rights. There will be individuals who will ultimately be overpaid. We will be communicating with those affected individuals by way of a notice sent through the U.S. postal service as well as through a text messaging campaign. Both

Legal Aid Justice Center
Attn: Mr. Pat Levy-Lavelle
December 10, 2020
Page Two

messaging campaigns have been crafted to explain the action we are taking and what can be expected going forward. We began this effort on December 7, 2020. As of today, we have addressed 38,821 issues using this approach. We are working with the oldest claims first and will continue to process batches of issues until all identified continued claims have been addressed similarly. We expect to complete this for all affected individuals by December 15, 2020.

- **Non-Separation Issues:** This population will be addressed following the effort on the claims with separation issues. There will be similar communication sent to the affected individuals as detailed for the separation issues. There are a certain number of these issues related to fraudulent activity. These issues will not be included in this initiative.

In our meeting, we discussed changes to our workflow. We have utilized staff from multiple divisions within the agency to assist the UI division. We have supplemented our call center operations with contract staff. Our efforts were focused on reacting to the historic claim volume that was amplified by multiple new benefit programs established by the CARES Act. We have processed over 1,380,000 claims and only have a backlog of 168,000 remaining. We will eliminate this backlog later this month. Please understand that having the claim “processed” after it is submitted allows the agency to establish employer liability and is critical to being able to render a formal decision. The progress in claims processing has allowed us to deploy other strategies in the area of adjudication. We recently started a project where our most experienced staff who process claims, have been trained to write determinations on outstanding issues. We have also placed Hearing Officer/deputy positions in a state of continuous recruitment.

We believe the Commonwealth of Virginia and other states throughout the nation have experienced many of the same challenges. The agency leadership has participated in discussion groups hosted by the National Association of State Workforce Agencies where UI leaders have discussed struggles with workload, staffing and technical infrastructure. These forums bring the states together to discuss the many challenges we are faced with because of the pandemic. States have utilized different approaches in response to the current situation. You specifically mentioned a program operated by the state of Oregon referred to as “Benefits while you wait”. I reached out to the UI Director in Oregon. He acknowledged that they were operating this program but that it had been significantly scaled back. Guidance from the U.S. Department of Labor referenced UIPL No. 04-01 clarified the claim characteristics that must exist to follow “payment when due” guidance. We have used this information in our approach to individuals in a continued claim status.

Legal Aid Justice Center
Attn: Mr. Pat Levy-Lavelle
December 10, 2020
Page Three

In addition to the program in Oregon, you suggested the VEC could provide greater transparency and information to the public by utilizing a "data dashboard" as other states have done. Your communication from November 20, 2020 provide bulleted data elements that could be useful. We agree that such a tool would be beneficial but we cannot commit to a timeline as to when we would be able to establish such a platform.

In an effort to help individuals facing eviction for non-payment of rent, it was suggested that the VEC coordinate with the Department of Housing and Community Development (DHCD) to help individuals avail themselves of the Rent and Mortgage Relief Program. It was further suggested that the VEC dedicate space on our web site to provide information concerning types of financial benefits unemployed persons could apply to receive. We would certainly be in favor of highlighting these programs and feel it is consistent with the overall mission of the agency.

In the postscript to the November 20, 2020 communication, Mr. Wegbreit asked that the VEC consider the timing of when overpayment determinations are issued. He asks that the VEC return to its longstanding past practice of not issuing overpayment determinations unless and until underlying decisions on eligibility or qualification have become final. In the past, we know that many claimants did not file appeals of underlying determinations, but did file appeals against the overpayment determinations. An appeal of an overpayment only allows for a review of the actual dollars deemed overpaid. It does not address the underlying issue which caused the overpayment. By issuing the overpayment decision soon after the decision on the underlying issue, we found more people filed appeals against both. This resulted in a review of the underlying issue, which directly affects the overpayment determination. The VEC would be willing to engage in further dialogue concerning this or other issues that may arise.

Sincerely,



William O. Walton, Jr.
Deputy Commissioner

cc: Ellen Marie Hess, Commissioner
Jeffrey Ryan, Deputy Commissioner
Elizabeth Peay, Senior Assistant Attorney General