



Testimony for KS Senate Commerce Committee
Sub. SUB. HB 2105: Employment Security Law.

March 19, 2013 – Topeka, Kansas

Submitted on behalf of The Kansas State Council of the
Society for Human Resource Management (KS SHRM)

By Phillip M. Hayes, SPHR – Director, KS SHRM
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Dear Members of the Committee:

My name is Phillip M. Hayes and I am here today on behalf of The Kansas State Council of the Society for Human Resource Management (KS SHRM) to share information regarding the impact of the UI system on Kansas businesses over the past several years.

For those unfamiliar with KS SHRM, it is a professional organization comprised of 2,300+ HR professionals in Kansas. KS SHRM serves the needs of HR professionals and advances the interests of the HR profession throughout the state.

- Workforce Planning and Employment
Human Resource Development
Compensation and Benefits
Employee and Labor Relations
Workers' Compensation
Unemployment Insurance

Beginning in early 2010, I began chairing the KS SHRM – KS Unemployment Insurance Committee. KS SHRM has surveyed our membership and met with many organizations over the past four (4) years regarding concerns with the KS UI system.

- American Payroll Association, Wichita Chapter – Wichita, KS
Central SHRM Chapter – Hutchinson, KS
Construction Financial Managers Association – Wichita Chapter – Wichita, KS
Emporia Chamber of Commerce – Emporia, KS
KS Chamber of Commerce – Topeka, KS
KS SHRM Legislative & Employment Law State Conference – Topeka, KS
KS SHRM State Conference – Overland Park, KS
McPherson Chamber of Commerce & McPherson SHRM Chapter – McPherson, KS
Personnel Association of Greater Emporia – Emporia, KS
Western KS SHRM Chapter – Hays & Garden City, KS
Wichita Chamber of Commerce – Wichita, KS
Wichita Independent Business Association – Wichita, KS
Wichita SHRM Chapter – Wichita, KS

KS UI Trust Fund Balance Summary:

Table with 3 columns: Rate Year, Trust Fund Balance Date, Trust Fund Balance. Rows show data from 2001 to 2013.

2000	07/31/99	\$519,654,159 *
1999	07/31/98	\$574,987,475 *
1998	07/31/97	\$621,436,243 *
1997	07/31/96	\$675,364,102 *
1996	07/31/95	\$729,808,088 *
1995	07/31/94	\$724,639,490
1994	07/31/93	\$666,700,054
1993	07/31/92	\$623,380,400
1992	07/31/91	\$581,678,435
1991	07/31/90	\$534,998,085

Source: KDOL, Labor Market Information Services
 * State moratoriums adopted to help draw down fund

Following is a brief summary of a few of the concerns we heard:

- Inconsistencies from KS Adjudicators were at the top of the list regarding absenteeism, kicking patients, company property damage, theft, positive drug test (chain of custody), the paper company in Lawrence, Rainbows United, Well Service in Western KS, etc.
- Since 2010, positive balanced employers in 19 (was 29 in original rate table calculation) of the 51 rates groups are being penalized with the maximum tax rate of 5.40%, subsidizing much of the burden for negatively balanced employers who did not maintain employment. There's been no real relief for some of the positively balanced employers who were unduly bumped to the maximum rate, *there is no respectability regarding the experience rating of each employer.*
 - Positive Balanced Employers experienced rate increases ranging from 50% - 1,800%
 - The Arnold Group UI history:

Year	2009	2010	2011	2012	2013
Contribution Rate:	1.55%	5.40%	5.07%	0.68%	3.89%
Contributions:	\$48,592	\$164,706	\$366,369	\$188,258	\$318,980 (est.)
Balance:	\$1,013,651	\$848,061	\$818,709	\$1,034,063	\$1,092,651
Rate Change:		+ 248%	- 6%	- 865%	+ 472%
\$ Change:		+ 238%	+ 122%	- 48%	+ 69%

- Kansas employers understand that returning our fund to solvency is paramount, but also feel that some of the solution should be a reduction of benefits.
- If the solution alone is to tax employers only without looking at the other primary variable in the equation, claimant benefits, KS SHRM fears the long term outlook for Kansas employers will be more of the same: maximum SUTA rates with no regard to experience. The solution has to be balanced from both sides.

Select comments received from disenchanted KS Employers after SB 77 took shape and progressed through 2011 session:

- "Is this really the best we can hope for?"
- "This still doesn't resolve the parity issue between positive and negative eligible employers."
- "It feels like there's more concern about easing the burden on the negative eligible employers. What about employers that have maintained positive status for years and continue doing so... it seems there's no concern about the burden on us. We've been hammered and there's less ability for employers with a positive reserve ratio ranging from 0.01 to 14.15% to reduce rates because positive rate groups 33-51 (19 groups) are capped at 5.40%."

Many employers have become discouraged over the past 8-10 years by the initial UI determinations and the appeals process as the decisions haven't necessarily aligned with the statutes. Additionally, claims with similar facts and circumstances presented by the same employer(s) result in competing decisions.

Following are a few questions/concerns that have been brought up consistently by KS employers:

- How much back taxes have not been collected and what efforts are underway to collect?
- What changes have been made to the system since the 2007 Legislative Post Audit was completed citing KS ranked the highest in the US for 2005 at 44.7% in overpayment rates?
 - Arizona ranked 2nd at 34.2%.
 - Federal data showed KS had the highest rate from 2003 – 2005 with 87% of payments to be in error (claimant hadn't met statutory requirement to register for job services)
- How have the technological changes to the KS Unemployment Insurance System impacted the qualifying requirements of the unemployed recipients?
 - Initial KS UI claimants are now automatically registered on the KANSASWORKS.com website, which allows them to search job openings, post online resumes, save job searches and receive email updates.
 - Is this merely a loop hole for claimants to meet the minimum requirement now?

- What recourse do employers have when a KS Unemployment Claimant is offered a job and the conversation goes something like this:
 - Potential Employer: “You appear to be a good fit for our company and X position, can you start Monday?”
 - Potential Job Seeker: “How much does the job pay?”
 - Potential Employer: “It starts at \$X dollars per hour.”
 - Potential Job Seeker: “**That’s comparable to what I am receiving on unemployment, I think I’ll pass at this time, maybe next time.**”
- What can employers do to report job refusals and potential fraud to the system?

Today, KS SHRM stands in support of Sub. HB 2105 because it proposes to address the following issues that have been concerning to the KS HR community for a number of years:

Employer Taxes:

- Reduces the HCM in the statute from 1.2 to 1.0.
- Reduce new employer rate from 4.0% to 2.7% with the exception of construction.
- In 2015, increase taxable wage base from \$8,000 to \$16,000 which shifts a larger portion of employer contributions to the negative balanced employers who have withdrawn greater benefits than they paid.
 - KS wage base has been at \$8,000 since 1983 (30 years) and serves as the single most influential variable in creating the compressed, maxed rates for positive balanced employers.
 - At face value, the SUTA amount per EE may go up (or down depending in your claims management), but the real plus here is that **it creates a tax shift from the positive balanced ERs (good players) to the negative balanced ERs (bad players)**... this change allows **ALL** employers to move up the rate group table into a better “earned/merit” position each year. See Table 1 to review the overall economic impact.
 - Based on KDOL models, a \$16,000 taxable wage base cuts rates for **every positive balanced rated ER group** due to an increased contribution amount from negative balanced rated employers. Additionally, **every negative balanced rated ER group** will also see a decreased rate as the bill proposes to reduce the highest negative group from 9.4% to 7.4%.
 - By doing nothing (letting the HB 2676 sunset), the 19 positive balanced rated ER groups capped at 5.4% (groups 33-51) will grow to encompass all but rate groups 1-8, capping rates at 5.4% on an estimated 34k of 50k positive balanced rated ERs.
 - Extending the capped rates in HB 2676 doesn’t make much since either as it prolongs the recovery of the KS UI Trust Fund and continues to penalize thousands of employers in rate groups 33-51 (roughly 20k employers) at the capped 5.4% rate.

Benefits:

- Address that Holiday/Vacation pay should not be calculated as wages.
- Require severance pay be treated as wages and not allow benefits until it is exhausted. Severance pay does not impact eligibility.
- Treat vacation and holiday pay equally as deductible from the amount of benefits a claimant receives.
- Eliminate 26 weeks of additional approved training benefits.
- Clarify that all three conditions must be met for injured workers to be entitled to the alternative base period.
- Narrowly define “good cause” when dealing with disqualification for individuals who leave work voluntarily.
- Limit exceptions to disqualification for harassment and violations of the work agreement.
- Modernize the misconduct disqualification provisions.
- Rework the drug and alcohol provisions to include lower standards for testing; allow for disqualifications for violation of a zero-tolerance policy; add test tampering to misconduct; makes a discharge for a drug or alcohol offense gross misconduct.

- KS SHRM offers the following conceptual amendments:
 - Freeze and/or reduce the maximum weekly benefit amount
 - Remove indexing for the maximum weekly benefit amount
 - Require statutory change in the maximum weekly benefit amount
- KS SHRM offers the following two (2) benefit reduction amendments based on the following:

Average Duration of Benefits	
Year	Weeks
2002	15.80
2003	16.00
2004	16.10
2005	15.30
2006	14.40
2007	13.50
2008	14.40
2009	18.10
2010	17.90
2011	15.90
2012	15.30
Average	15.70

1. Kansas Unemployment Rate Signal

- Offers a **23.77% – 38.46% reduction** in benefits based on the 3 month average of the state’s unemployment rate.
- From an administration standpoint, this alternative will be more intensive to administer.

UI Rate (3 Mo. Avg.):	# Wks of Benefits	Reduction in Benefits
<=5.99%	16 weeks	38.46%
>5.99%	20 weeks	23.77%
>7.99%	26 weeks	0.00%

2. KS Re-Employment Incentive Signal

- Offers a **15.92% reduction** in benefits as benefit amounts begin reducing after week 16 to encourage claimants to encourage re-engagement and/or active participation in job search efforts.
- From an administration standpoint, this option will be easier to administer.

Avg Wkly Claimant Benefit Amt	\$318.00	
Wkly Benefit Reduction % after Wk 16	10%	10
Maximum # of KS UI Claimant Benefits Wks	26	

Current KS Employment Security Act Provisions:		KS SHRM & Business Community Proposal:				
Benefit Week	Total Avg Wkly Benefit Amt through 26 weeks	Wkly Benefit Amt w/ 10% reduction off Prior Wk Avg. Amt (beginning week 17)	Reduction % from <i>Prior Wkly Benefit Amt</i>	Reduction \$ from <i>Prior Wkly Benefit Amt</i>	Total Reduction % from Avg <i>Wkly Benefit Amt</i>	Total Reduction \$ from Avg <i>Wkly Benefit Amt</i>
1	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
2	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
3	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
4	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
5	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
6	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
7	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
8	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
9	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
10	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
11	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
12	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
13	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
14	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
15	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
16	\$318.00	\$318.00	0.00%	\$0.00	0.00%	\$0.00
17	\$318.00	\$286.20	10.00%	\$31.80	10.00%	\$31.80
18	\$318.00	\$257.58	10.00%	\$28.62	19.00%	\$60.42
19	\$318.00	\$231.82	10.00%	\$25.76	27.10%	\$86.18
20	\$318.00	\$208.64	10.00%	\$23.18	34.39%	\$109.36
21	\$318.00	\$187.78	10.00%	\$20.86	40.95%	\$130.22
22	\$318.00	\$169.00	10.00%	\$18.78	46.86%	\$149.00
23	\$318.00	\$152.10	10.00%	\$16.90	52.17%	\$165.90
24	\$318.00	\$136.89	10.00%	\$15.21	56.95%	\$181.11
25	\$318.00	\$123.20	10.00%	\$13.69	61.26%	\$194.80
26	\$318.00	\$110.88	10.00%	\$12.32	65.13%	\$207.12
Summary (Totals / Averages):	\$8,268.00	\$6,952.08	15.92%		15.92%	\$1,315.92

Administration:

- Expand notification timeframe requirements by KDOL to employers by November 30th.
- Clarify and enforce benefit disqualifications based on "misconduct" and "gross misconduct."

- Include a provision all persons and employers are entitled to neutral interpretation of the employment security law.
- Eliminate an alternative base period allowing individuals who don't have sufficient base period wages to still qualify for UI benefits.
- Fix "concurrent" part-time employment loophole that unfairly charges some employers' accounts for pro-rata share of benefits.

In closing, HB Sub. 2105 aims at bringing stability and fairness back to the fund while addressing many administrative concerns expressed over the years. KS SHRM strongly supports the changes outlined in Sub. HB 2105 to provide more integrity of the UI trust fund and respectfully requests your YES vote. Your support is very valuable and important to strengthening our competitiveness and making Kansas a great state to work, live and do business in.

Thank you for service to our great state and also for the opportunity to appear before you. I would be happy to stand for questions now or at the appropriate time. Additionally, I can be contacted at 316.619.7864 or by email at phayes@the-arnold-group.com for questions/concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "Phillip M. Hayes" with "SPHR" written to the right.

Phillip M. Hayes, SPHR
2013 Director, KS SHRM