



# Navigator

Fall 2020

## NAUIAP Denver 2021 – Well Worth the Wait!

By Amanda Hunter, Deputy General Counsel and Clerk  
Florida Reemployment Assistance Appeals Commission

Denver, Colorado, is a beautiful city. It has amazing outdoor attractions, great restaurants, and lots of activities for children. That sounds perfect for a conference in 2020, right? Well, as you know, the pandemic required NAUIAP and many other organizations to reevaluate the feasibility of an in-person conference this year and, after much deliberation, the decision was made to postpone the conference until September 2021. The good news, however, is that the conference will still be held in Denver!

In preparation for the 2020 annual conference, the NAUIAP Agenda Committee held several meetings to develop topics for plenary sessions and workshops that would be of interest to our members. Much of our work centered around topics related to Criteria 6, 21, and 23, which address pro-

viding the opportunity to question (one's) own witness(es), obtaining reasonably available evidence, and making findings supported by substantial evidence, respectively.

The Agenda Committee will be meeting soon to continue working on the existing agenda and to consider additional topics related to the pandemic. We welcome suggestions regarding any specific topics you'd like to see covered on the agenda, and it's not too late to join the committee if you'd like. Please feel free to send an email to Amanda.Hunter@raac.myflorida.com or Shawn.Yancy@ks.gov, and we look forward to providing additional updates in the coming months.



# PRESIDENT'S COLUMN

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By Paul Fitzgerald, Chairman, Board of Review  
Massachusetts Executive Office of Labor and Workforce Development

## CHALLENGES & OPPORTUNITIES

To paraphrase Thomas Paine, these are times which try all our souls. Each of us is confronting the COVID-19 pandemic not only as individuals and family members, but as unemployment appeal professionals. As adjudicators, administrative law judges, managers and higher authority panel members, we are dealing with an extraordinary increase in regular unemployment claims, the triggering of Extended Benefits and entirely new unemployment programs including Pandemic Unemployment Assistance. In so many ways, all of us are on the frontline in combating the economic consequences of this pandemic.

My fellow NAUIAP Board members and I have also had to address the pandemic from an organizational perspective. We had to make the difficult, unprecedented but necessary decision to cancel our 2020 Annual Training Conference. As we made this decision, we immediately took steps to reschedule the conference in Denver for September 2021. Our Agenda Committee, co-chaired by Amanda Hunter of Florida and Shawn Yancey of Kansas, are already working on conference planning. As a Board, we are also working to develop ways by which we can continue to provide training and resources to our members through our website, zoom calls, webinars, emails and our Newsletter.

As we continue to confront the personal and professional challenges arising from the pandemic, we should recall Indiana Supreme Court Justice Stephen David's inspirational keynote address at our 2019 Annual Conference. In his address, Justice David spoke about the importance of the work we do. Justice David's point about the importance of this work has never been more evident. Over the past eight months the professionalism and dedication of those of us who work in the field of unemployment insurance appeals has made a difference in the lives of countless individuals and families. We should be proud of the way we have performed in these unprecedented times.

In his speech, Justice David also asserted that challenges are opportunities. All of us should use the challenges posed by the pandemic as an opportunity to assess and reevaluate the efficacy of our existing processes and technology in rendering administrative justice during future recessions and other crises. As an organization, NAUIAP should also use the present challenges as an opportunity to re-envision the nature and scope of the training and resources we provide to our members. This will be my primary goal as your President.

In closing, I would like to thank my predecessor as President, Ed Steinmetz, for his service to NAUIAP. Ed truly represents the professionalism and integrity to which we should all inspire. His commitment to education, training and service has made NAUIAP a better organization. Thank you, Ed.





# Knowledge Transfer:

## TAPPING YOUR EXPERT RESOURCES BEFORE THEY ARE GONE

By Jayson Myers, Chief Administrative Law Judge  
New York State Unemployment Insurance Appeal Board

Organizations are organisms of a kind, with life spans and skills and strengths and weaknesses. The capabilities of organizations are largely determined by their collective knowledge and how effectively the knowledge is passed from decade to decade and person to person.

The New York Unemployment Insurance Appeal Board has existed from 1935. It is responsible for deciding appeals at both the Lower Authority and the Higher Authority. Earlier this year, before our agendas were kidnapped by Covid-19, our executive team checked the seniority records of the organization. That check confirmed our general suspicions and fears that we were an aging group that was staring at losing a considerable fraction of our personnel at almost any time. We found that 45 percent of our staff was already retirement eligible. We faced the harsh reality that much of our institutional knowledge is still either in individuals' heads or on paper in someone's file cabinet. We needed to do something significant and to do it quickly. Without quick action the loss of knowledge was likely to begin to occur any time. Organizations, in order to move forward confidently, must prevent that.

During March and April, we formed a Knowledge Transfer Committee composed of staff from both the management and union-represented job titles in the organization. The committee discussed how we might attack this serious predicament. The strategy we landed on was to enlist each team (supervisor plus the rest of a judicial or administrative team) to use their next team meeting by putting the topic of knowledge transfer on the top of their agendas.

The mission of each team at their meetings was to consider the following: what tasks that had to be performed regularly were the province of only one or two persons within the organization and were not yet documented or at least not documented thoroughly. In other words, what were the important areas of tacit knowledge that needed to be converted into explicit knowledge – tacit knowledge being defined as knowledge that rests in someone's head alone and explicit knowledge being defined as knowledge that is documented and available for everyone's consumption and utilization. Fortunately, we already had two major channels for capturing and preserving explicit knowledge: user guides generally relied upon by administrative staff and the proce-

dural volume of our Administrative Law Judge Bench Manual. During the summer, all teams met to address this serious issue. The result was a combined list of 45 items that were recommended for the knowledge transfer process. Obviously, we could not attack 45 topics at one time and still retain the capacity to perform our regular work. The Knowledge Transfer Committee determined to split into small groups, one judicial and one administrative, and have each half prioritize its portion of the 45 subjects. After evaluating all of the 45, the committee subgroups landed on a total of nine tasks that they rated as top priority matters.

The list itself is not what is significant to the membership, for New York's laws and regulations do not necessarily reflect those of the rest of the 50 states. Suffice it to say that a couple of examples were the processes for approving fees for representation of claimant in appeals and issuing Board orders conforming our decision to that of the Court after an appeal to Court was resolved. The main point is, we picked up the proverbial shovels and dug in so we would not face that attrition of institutional knowledge that sooner or later would cost the organization valuable time to recoup or replenish. All nine of the highest priority items are at this time owned by one or more staff within the organization, mostly those staff who are retirement eligible and the most knowledgeable about the task. Either a user guide or a Bench Manual section is targeted for completion by the end of the year.

New York realized that sooner rather than later, it must devote staff time and other resources to move into the future safely and smartly, preserving the knowledge and best practices of its staff and avoiding the anxiety of having to backtrack later when realizing too late, that "Uh-oh, that was something Jane knew" or "Sam was the expert on that".



# A Few Lessons Learned from the Pandemic of 2020

By Ana Maria Price

Staff Attorney, Mississippi Department of Employment Security

With the time change, hopefully, you can use that extra hour to review some lessons learned from your agency's response to the pandemic unemployment crisis. Given the restrictions on businesses around the country<sup>1</sup> and the rise in COVID-19 cases<sup>2</sup>, planning for the next wave of furloughs, separations, or additional federal assistance may prove helpful. Even if the next wave fails to materialize, the next ripple from the initial shock—a spike in appeals cases—likely is already starting in your state. This article reviews some of the general issues that our agencies have faced and the responses to those issues from select states. More importantly, this article presents some of the novel approaches employed by agencies around the country to inspire more innovation to tackle these common issues.

## *Immediate Changes to State Law*

Each state has a specific legal framework to address the immediate challenges presented by a public health emergency. Thus, each state has approached the suspension of certain laws and the implementation of temporary provisions necessary to address unemployment insurance issues using different tools. In response to the mandates outlined in the Coronavirus Aid, Relief and Economic Security Act of 2020 (CARES Act) (Pub. L. 116-136, 3/27/2020), the primary mechanisms employed were executive orders<sup>3</sup>, emergency orders or directives<sup>4</sup>, and statutory amendments. Now would be a good time to review the effectiveness of these mechanisms to determine whether different tools would enable your agency to respond to more quickly or offer greater flexibility to adapt to the unforeseen complications that accompany a sudden spike in unemployment claims.

Given the sheer volume of claims caused by the sudden closure of so many businesses and the relatively large increase in unemployment benefits under the CARES Act, several easily foreseeable issues involved an immediate need to increase staffing as well as the increased necessity for fraud detection with its resulting workload issues. While state agencies may have temporary authority to address statutory shortcomings for the duration of the crisis, state unemployment agencies should plan now to address any of those



deficiencies beyond the immediate emergency. Finally, as the volume of claims works its way through each agency, it will inevitably result in a dramatic increase in appeals cases. A novel approach is suggested as one part of a multi-faceted solution.

## (1) STAFFING

When the tsunami of claims hit each state after the nationwide stay at home order, the first issue after upgrading phone lines became hiring additional staff. States have taken multiple approaches. Some states have retrained existing staff as well as reallocated other state agency personnel with similar expertise to assist with claims processing and adjudications. For example, in Nevada, training occurred in early September to allow 200 employees from the Department of Health and Human Services' Division of Welfare and Supportive Services to assist with claims processing. A two-week training course held later in September enabled some of these employees to enhance that agency's adjudication capacity.<sup>5</sup>

Other states have elected to allow recently retired state workers to return to public employment to provide additional staffing by suspending the state statutory waiting period during the pandemic. To facilitate the return of retired personnel, these states have employed executive orders, proclamations, and emergency orders to temporarily suspend the specific waiting periods before returning to part-time public service.<sup>6</sup>

Mississippi hired and trained temporary workers to initially answer phones and process claims. As claims have moved through the system, this agency has continued to train a select group of these workers for various other tasks.

Yet some states did not have the luxury of enhancing staffing. These states faced furloughs during the early stages of the pandemic. The state of Michigan adeptly employed the Short-Time Compensation program augmented under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act, Pub. L. 116-136) to help offset some of the costs.

*continued on next page*

<sup>1</sup> For example the state of New York has implemented a mandatory 14-day quarantine for out-of-state travelers, limited reopening for theaters and ski resorts and the state of Colorado has implemented a new 5 level color-coded system for counties in the state which range from minimal restrictions to "stay at home" depending on specific scientific metrics which trigger public health orders. Executive Order D 2020 235, (October 30, 2020).

<sup>2</sup> LaMotte, Sandee, Cases of Covid-19 in children on rise, with highest 1-week spike yet, CNNHealth, 11/2/2020, <https://www.cnn.com/2020/11/02/health/children-covid-19-cases-spike-wellness/index.html> ; As the election approached, U.S. COVID-19 cases rise, Yahoo!News, 10/31/2020, <https://news.yahoo.com/election-approaches-u-covid-19-180301079.html>.

<sup>3</sup> At least 34 states used executive orders to address the threshold requirements of the Coronavirus Aid, Relief and Economic Security Act of 2020: These states are: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, American Samoa, Guam, and Puerto Rico. See <https://web.csg.org/covid19/executive-orders/>

<sup>4</sup> These states used the legal procedures as noted: Arkansas (3/17/2020); New Hampshire - NH Emergency Order #5 under 2020-04 (3/17/2020), and, NH Emergency Order #68 under 2020-04, -05, -08, -09, -10, -14, -15, -16, & -17 (LWA benefits) (9/9/2020).

## (2) FRAUD DETECTION

Another important issue facing our agencies involves fraudulent claims. State agencies tasked not only automated resources but also additional staff to verify claims with suspect information. A majority of these claims were not fraudulent. However, the small percentage detected at the claims stage resulted in staggering sums of unemployment benefits.

For example, Louisiana detected multiple, separate cases of individuals filing fraudulent claims both on a large and small scale.<sup>7</sup> One pair used 25 allegedly stolen identities, in addition to their own, to claim and collect at least \$300,000 in unemployment benefits from Louisiana as well as other states.<sup>8</sup> As of June 2020, the Oklahoma Employment Security Commission had blocked 3,800 fraudulent claims totaling \$15.9 million.<sup>9</sup> However, the Maryland Department of Labor has so far detected the largest concerted effort to file fraudulently in July when a surge of 47,500 claims over a single holiday weekend triggered further investigation. Ultimately, Maryland's DOL along with the United States Attorney's office uncovered the \$500 million scheme.<sup>10</sup>

## (3) OTHER ISSUES

Another issue affecting some states when processing claims involved voluntary payments from employers to employees for which the employee did not perform services. These voluntary payments include outright payments, proceeds from Paycheck Protection Program Loans, and payment from business interruption insurance. A survey of the states shows that nearly all states have the same definition for the terms "Unemployment" & "Wages."<sup>11</sup>

Mississippi laws and regulations do not address this type of voluntary payment to employees. This omission caused potential issues for claimants who were told by their employers to file for unemployment insurance benefits and then later received voluntary payments from their employers while furloughed. The Mississippi Department of Employment Security (MDES) had the authority under an executive order to address this omission. MDES intends to clarify this issue by seeking a statutory solution in the next legislative session.

## (4) APPEALS

For some states, an increase in appeals claims may be a trickle while in others it may be a flood. It appears clear that all states will notice an increase in these cases soon and the increase could

last for over a year. The Connecticut Department of Labor (CDL) reported in early August 2020 that 8,653 [claimants] were waiting for a hearing. The wait is 10 weeks, 7 weeks longer than before COVID-19 hit the state. An additional 7,300 appeals decisions were pending despite increasing staff handling appeals by 14 (8 new hires, 5 reassigned staff, and 1 returning retiree). CDL estimates that scheduling of hearings will move to 12 weeks from the filing of an appeal from the current 10 weeks, with decisions returned increasing to 18 weeks. Connecticut anticipates this upsurge to persist for 12-18 months.<sup>12</sup>

For the MDES, the end of the suspension of the work search requirement during the first week in August generated 16,000 appeals. MDES anticipates addressing this caseload in two months by re-tasking temporary workers (non-merit staff). MDES has received approval from the U.S. Department of Labor to implement an additional reconsideration of these cases by non-merit appeals staff. After a denial by the benefits department, claimants who appeal the denial will complete a one-page form detailing work search activities and have the opportunity to submit supporting documents as well. The appeals staff will then review the evidence submitted and issue a reconsideration decision. MDES will mail the reconsideration decision to each claimant explaining all appeal rights. All decisions appealed from this level will have a hearing before an administrative law judge. This system will permit MDES to offer a faster process by directing staff to tasks that more rapidly resolve claimant issues while dramatically lowering the number of claims requiring a full hearing. The process frees the administrative law judges to focus primarily upon separations, overpayments, tax issues, and other hearings.

Hopefully, you will have the opportunity to reflect, evaluate, and plan soon. Our state has discovered that while a solid foundation allowed us to continue to deliver services at an unprecedented level, we were not fully prepared for a statewide surge in unemployment claims and accompanying appeals. We now have the hard-earned knowledge to better anticipate what the future may present. Now is the time to adapt agency law, rules and regulations to incorporate that knowledge. We look forward to hearing the novel ways you have addressed and plan to address the challenges presented by COVID-19 pandemic.

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<sup>5</sup> Munson, Jeff, Nevada's unemployment department applies for federal jobless funds, provides staffing update, CarsonNow.org, 9/3/2020, <https://carsonnow.org/story/09/03/2020/nevadas-unemployment-department-applies-federal-jobless-funds-provides-staffing-upd>.

<sup>6</sup> Some examples of these orders are: Kentucky – [Executive Order 2020-265 \(3/31/2020\)](#) - Reemployment after Retirement - Louisiana - [Proclamation No. 37 JBE 2020 \(3/26/2020 at section 3\)](#) – Authority to rehire separated public employees; Mississippi – [Executive Order No. 1472 \(4/15/2020\)](#) – Reemployment After Retirement; New Hampshire – [Emergency Order #35 \(4/24/2020\)](#) - suspended the 28-day separation period before a retired public employee can return to work on a part-time basis; New Jersey – [Executive Order No. 115 \(4/6/2020\)](#) – Certain Retirees Return To Public Employment.

<sup>7</sup> On October 21, 2020, the Louisiana Attorney General along with the FBI arrested an individual who used the identity of a female acquaintance to file a COVID-19 unemployment claim for \$8,600; an arrest warrant issued for a Florida resident for money laundering, government benefits fraud, and computer fraud for allegedly hacked the Louisiana Workforce Commission's online account of a Louisiana resident to redirect approximately \$6,000 in benefits to an out-of-state bank that she controlled; another Louisiana resident was arrested and charged with government benefits fraud for \$5,200 for filing a fraudulent unemployment claim and weekly certifications under the COVID-19 programs. Bossier City man among first 6 arrests for COVID-19 unemployment fraud, Shreveport Times, October 21, 2020.

<sup>8</sup> *Id.*

<sup>9</sup> The Oklahoma Department of Employment Security worked with the Office of Inspector General of the U.S. Department of Labor to pursue criminal action against the individual claimants. [https://www.oig.dol.gov/public/Press%20Releases/NDOK\\_UI.pdf](https://www.oig.dol.gov/public/Press%20Releases/NDOK_UI.pdf)

<sup>10</sup> Franklin, Jonathan, Maryland officials discover 'massive' \$501M unemployment fraud scheme, Hogan says, WUSA9, 7/15/2020, <https://www.msn.com/en-us/news/us/maryland-officials-discover-massive-501m-unemployment-fraud-scheme-hogan-says/ar-BB16MJ2N>.

<sup>11</sup> A spreadsheet outlining a review of all 50 states' definitions of "unemployment" and "wages" is available from MDES upon request to [aprice@mdes.ms.gov](mailto:aprice@mdes.ms.gov).

<sup>12</sup> Thomas, Jacqueline Rabe, Thousands wait months for unemployment compensation during COVID, CTMirror.org, 9/20/2020, <https://www.wnpr.org/post/thousands-wait-months-unemployment-compensation-during-covid>.

# The Benefits of a State Membership

By Kathryn Todd, NAUIAP Membership Chair

A state membership provides a number of great benefits. First, any member gets \$50 off the annual training conference fee. The annual training conference is the signature piece for NAUIAP. It is a three and ½ day conference with topics all geared toward the UI appellate professional, at any agency, in any position. The training covers all the new hot topics in UI, the recent court actions dealing with unemployment and DOL priority topics, budget information and state status.

NAUIAP membership gives all members access to two webinars throughout the year (CLE eligible) on topics selected by the members on which they would like more information. Last year the topics were evidence and ethics. The feedback was phenomenal from both. Clearly this is an area we will be expanding in the future.

Members receive the NAUIAP newsletter three times a year. It contains training topics, DOL recent information and often articles regarding recent legal topics for example...the marijuana legalization and what it means to unemployment, domestic violence statutes relating to unemployment and lots of recent articles on the gig economy.

All members have access to the NAUIAP website. This has several benefits. One, an archive of all newsletters. This is extremely helpful to go back and find training topics or information you may have read but now need more access to, and contact information for the author of articles you can contact for more expertise or help in an area. The website also contains all previous conference agendas, and materials from the training sessions, again an invaluable resource for future training needs. I recently pulled up an article from a previous conference where a testing expert detailed the new aspects of saliva testing for determining marijuana intoxication for my commissioners who were trying to determine if the testing was sufficient in a case we were looking at. I would not have had this at my fingertips without access to the conference materials. The website also has a feature where you can post a question and persons from other states can give you information on your topic.

Perhaps one of the most valuable aspects to being a member is the networking potential. You have ready access to individuals who you can call or email who will give you a reply on nearly any topic you are seeking assistance with. Knowing a vast network of individuals dealing with the same subject area you are working in is invaluable. The Board will also send out an email question to the entire membership list, if asked, to get

information on a question or topic of interest to all states. We have gotten lots of up to date information that states will share if asked. Also, the Department of Labor individuals, both regionally and nationally are members and will share a great deal of information and insight on topics...most recently regarding disaster procedures for UI.

Last, but not least the states who are members are the backbone of the organization! Putting on an annual training conference is a huge endeavor and requires lots of volunteer time and effort. The state members provide a valuable resource to all other states by ensuring that the organization thrives and grows. We rely on state members to provide topic feedback, subjects on which they think training would help and providing a ready source of speakers for the conference. So, in this aspect, I would be remiss if I didn't mention the enormous benefit to the organization and the rest of the states provided by the state members. Thank you!! Any way I can help just let me or any member of the NAUIAP Board of Governors know and we will be happy to provide information or assist.

## NAUIAP STATE MEMBERSHIP

National Association of Unemployment  
Insurance Appeals Professionals

**\$300**

*to enroll 1 to 10 members*

**\$500**

*to enroll 11 to 25 members*

**\$1000**

*to enroll 26 to 75 members*

**\$1500**

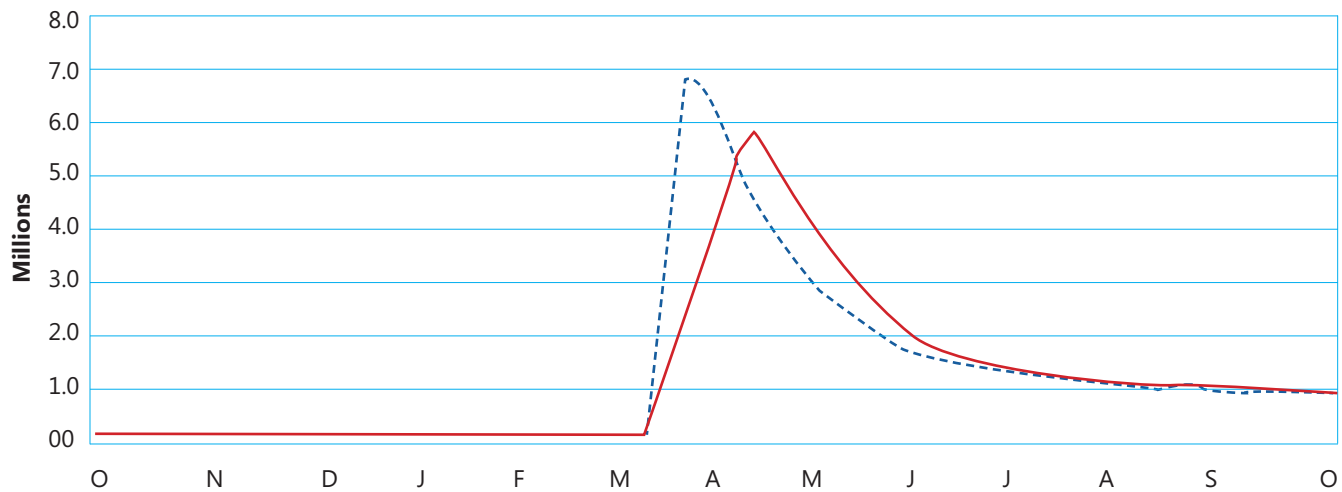
*to enroll 76 plus*

**Members enjoy access to training webinars,  
the Navigator, and more!**

# Unemployment Insurance *and* Appeals by the Numbers

## Seasonally Adjusted Initial Claims

October 12, 2019 - October 10, 2020



## SEASONALLY ADJUSTED US WEEKLY UI CLAIMS (IN THOUSANDS)

Week Ending	Initial Claims	Change from Prior Week	4-Week Average	Insured Unemployment	Change from Prior Week	4-Week Average	IUR
March 21, 2020	3,307	3,025	1,004.25	3,059	1,275	2,061.00	2.1
October 3, 2020	845	-4	858.25	10,018	-1,165	11,481.75	6.8

Source: US Department of Labor, October 15, 2020 News Release

## US LOWER APPEALS AUTHORITY TIME LAPSE

	1st Quarter 2020	2nd Quarter 2020
30 Days	70.9	65.6
45 Days	89.9	86.3
90 Days	98.5	98.1

Source: US Department of Labor, <https://oui.doleta.gov/unemploy/uiagency.asp>

## US LOWER AUTHORITY APPEALS CASE AGING

	1st Quarter 2020	2nd Quarter 2020
25 Days or Less	71.1	41.1
More Than 40 Days	10.6	40.8
Older Than 120 Days	.8	.5
Older Than 360 Days	0	0

Source: US Department of Labor, <https://oui.doleta.gov/unemploy/uiagency.asp>

## US HIGHER APPEALS AUTHORITY TIME LAPSE

	1st Quarter 2020	2nd Quarter 2020
45 Days	62.9	58.8
75 Days	84.3	83.8
150 Days	98.7	98.6

Source: US Department of Labor, <https://oui.doleta.gov/unemploy/uiagency.asp>

## US HIGHER AUTHORITY APPEALS CASE AGING

	1st Quarter 2020	2nd Quarter 2020
40 Days or Less	63.9	59.7
More Than 70 Days	13.8	19.6
Older Than 120 Days	4.1	8.8
Older Than 360 Days	.3	.5

Source: US Department of Labor, <https://oui.doleta.gov/unemploy/uiagency.asp>



# *Figuring Out Good Cause During a Pandemic*

By J. S. Cromwell, Chair  
Oregon Employment Appeals Board

Assessing late requests for hearing, late requests to reopen, requests to reopen, and late applications for review can require that appeals professionals apply a “good cause” standard. “Good cause” is defined in Oregon, in pertinent part, to include when “factors or circumstances beyond the applicant’s reasonable control prevented timely filing.” See e.g. Oregon Administrative Rule 471-041-0070.

In “normal” times, construing what might be considered within, or outside, an individual’s “reasonable” control can be pretty straightforward. For instance, it’s “reasonable” to expect an unemployment insurance claimant to regularly check their mail for correspondence about their claim or appeal. It’s also “reasonable” to expect a claimant who uses a post office box or has an address at a mailbox store, or a business owner who receives mail at the business location, to regularly leave their residences to check for mail.

But what about during a pandemic? What if an employer’s business is required to close under state, federal, or local government mandates? What if the employer’s owner is quarantined at home under order from a public health official and cannot monitor mail arriving at the business? What if the claimant is too ill to monitor their mail? Or the claimant’s family is sick and claimant is required to quarantine at home to prevent the spread of COVID-19? What if the employer or claimant is simply too afraid to leave their home and travel to their business or their local mailbox store to check the mail due to the spread of COVID-19 in their region?

On March 23, 2020, Oregon Governor Brown issued Executive Order 20-12, “Stay Home, Save Lives,” ordering Oregonians to stay in their homes to the maximum extent possible, and ordering the temporary closure of many Oregon businesses unable to effectively protect employees and customers from COVID-19 through social distancing. Other states adopted similar restrictions. The United States Congress and U.S. Department of Labor, recognizing the special circumstances of unemployment insurance claimants and employers, enacted laws and issued guidance reflecting the flexibility and adaptability of the laws and rules that apply to unemployment insurance benefits cases, and recommending that states flexibly and broadly apply applicable laws and rules in order to better assist individuals affected by the COVID-19 pandemic and unemployment.

In response, Oregon’s Employment Appeals Board (HAA) adopted a formal policy for interpreting “good cause” as that term applies to procedural issues. In consideration of the effect the global pandemic, business closures, and service interruptions have had on what an individual may and may not reasonably control, EAB’s interpretation of the term “good cause” as it applies to individuals’ failures to appear, respond, or file on time broadly takes into consideration the global pandemic and its effects. Those include, but are not limited to whether and how the individual or their family has been directly or indirectly affected by COVID-19 illness or exposure, affected by mandatory quarantine or self-quarantine, or affected by social disruptions including but not limited to social distancing, transportation interruptions (e.g. a lack of available personal or public transportation), business closures, school closures, etc.

Under OAR 471-041-0070(3), EAB is required to dismiss any application for review that does not include a written statement establishing “good cause” for filing a late application for review. However, EAB has continuous jurisdiction over our own decisions, and has the authority to reconsider our decisions at any time. During “normal” times, EAB does not customarily offer or advertise that option to parties except upon request. However, EAB has adopted a less restrictive policy with respect to reconsiderations, particularly in the area of late applications for review. Consistent with the text and context of the applicable laws and rules, and the significant flexibility and discretion EAB is accorded in interpreting and applying its own rules, EAB’s temporary policy and guidance for late applications for review is to dismiss late applications for review that suggest, but are insufficient to fully establish “good cause” without prejudice, and notify parties that they may request reconsideration by providing EAB with additional information about the reasons for their late filing. In so doing, EAB’s intent is to ensure that individuals and employers adversely affected by the pandemic, unemployment, and recession have every opportunity to make their case for review.

EAB created its policy effective April 1, 2020, and the policy is scheduled to expire December 31, 2020. Depending upon the state of the pandemic, recession, and unemployment, however, we have left open the possibility of extending the policy beyond the expiration date.

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# Erasing the Backlog

By Jayson Myers, Chief Administrative Law Judge, New York State Unemployment Insurance Appeal Board

The New York Unemployment Insurance Appeal Board (UIAB) is responsible for both Lower Authority and Higher Authority unemployment insurance appeals in the State of New York. On March 16, New York Governor Andrew Cuomo ordered non-essential New York State employees to remain at home due to the Covid-19 pandemic. That meant the suspension of most of the appeals work because we are still reliant on paper files. While some Higher Authority work could proceed — Lower Authority transcripts and recordings are available online — no further Lower Authority hearings could be scheduled while our staff remained out of their physical offices. Our appeals staff turned its attention to working the telephones long and hard to help the New York State Department of Labor's Unemployment Insurance Division to address the torrent of new and continued claims and inquiries spawned by the pandemic. By May 20, New York had paid over \$10 billion in benefits on two million claims.

As that was occurring, all appeals that were either on the calendar or on their way to being calendared on March 16 — New York has eight offices across the state with the New York City office the largest — were suspended. That situation had to be addressed as soon as it was safe to do so. In early May, the decision was made to declare our staff essential and prepare to return to our offices in a safe way. Staff met frequently to decide protocols in each office ranging from social distancing to distribution of protective equipment to scheduling personnel so that ALJs' writing days would occur weekly and were dispersed evenly among the workdays each week. On May 13, the first wave of staff returned to our offices to assess the inventories and prepare to schedule hearings that would resume beginning May 28. ALJs returned to the offices on May 18 to both review the pending appeal files and assist administrative staff in preparing notices.

Since the 1970s the UIAB has had one judicial title that overlaps tasks at both the Lower Authority and Higher Authority. The title of Unemployment Insurance Referee comprises both hearing officers at the Lower Authority who hear cases and render decisions as well as appeal reviewers at the Higher

Authority. The latter serve as legal staff for the Appeal Board Members, reviewing the hearing record and the arguments contained in appeal statements, producing summaries of appeal, and drafting the decisions of the Board. The versatility built into the Unemployment Insurance Referee job title enables the UIAB to move its judicial staff back and forth in order to speedily pivot and address the inventory wherever it is greatest. This versatility has never been more of moment than in 2020.

The first bulge that had to be addressed was Lower Authority hearings. Several thousand were either on hand and ready to be scheduled or on their way from the Unemployment Insurance Division to UIAB. Putting "all hands on deck", we scheduled the backlogged hearings at an accelerated pace enlarging daily calendars and using Senior UI Referees who usually supervise as well as the UI Referees and Senior UI Referees who generally are assigned to the Higher Authority. Between May 28 and July 10, we scheduled and heard 11,000 matters, eliminating the backlog and enabling us to catch up and start to schedule hearings in a current manner as soon as they reached us.

Having addressed the immediate Lower Authority bulge of hearings it was time to do a figurative "about-face" and pivot to address the Higher Authority inventory that remained from the pause and that additionally developed from the wave of hearings held after our return in May. We carefully assigned the review work to avoid any conflicts with work done at the Lower Authority hearing level. An unassigned Higher Authority appeals inventory of over 1300 was reduced to about 200 by early October.

Obviously, we are not done. We are looking at a very busy 2021 for sure. The Unemployment Insurance Division has had to prioritize the processing of claims for regular unemployment insurance in addition to all the aspects of the CARES Act. We will soon bring 11 new UI Referees into the fold and that, too, will help immensely. But we look to the very active future knowing that having a flexible judicial staff is a benefit that will serve us as we go forward.

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# Developing Oregon HAA'S Recession-Pandemic Action Plan

By J. S. Cromwell, Chair  
Oregon Employment Appeals Board

When I was asked last year to join Marilyn White (AZ), Judy Smylie (MD), and Corey Pitts (USDOL) to present on Recession Planning at the Indianapolis Convention, it sounded great. Around that time, Oregon's unemployment insurance rate was the lowest it had been in recorded history, and the U.S. Department of Labor's weekly press releases consistently reported record low national unemployment insurance rates. I thought the presentation could be an interesting retrospective on the Great Recession, and that the panel could maybe provide some information that would – eventually – be useful to our NAUIAP colleagues.

The possibility that less than a year after the convention we would be faced with a global pandemic and resulting unemployment insurance crisis of unprecedented magnitude never occurred to me.

The magnitude of the spike in March swamped many state workforce agencies, leaving them to put the bulk of their efforts into processing an unprecedented number of initial claims and standing up new benefit programs with little time or resources to spend on adjudicating claim issues. As of the Oregon Employment Department Director's October 14, 2020 press conference, Oregon has a backlog of approximately 47,000 adjudications.

Unsurprisingly, because of the backlog in adjudications many lower and higher authority appeals offices have been experiencing historically low case counts.

In an attempt to use the spare time resulting from our historically low appeals workload wisely, we turned our attention to special projects. For example, the staff fully audited and revised our legal staff law and citation resources, and every level of staff has developed knowledge-transfer manuals which will not only help make our office succession-ready, but will also serve as training tools when the projected workload increases that will eventually arrive necessitate hiring new legal and office staff.

Of utmost concern, though, has been identifying strategies that will help us continue providing high-quality, efficient customer service to claimants and employers who appeal to our office, particularly if appeals from the 47,000



adjudications backlog arrive in a way that overtaxes our normal workload capacity. To that end, we refined our existing recession planning tools and developed a Recession-Pandemic Plan specific to the situation we, and appeals offices across the country, are in right now.

Oregon EAB's Recession-Pandemic plan opens with a brief history of Oregon's EAB, outlines EAB's place within the Oregon Employ-

ment Department's three-tiered UI process, and provides a timeline of the COVID-19 Pandemic and Unemployment Insurance Crisis in Oregon. The plan also assesses EAB's current organization, equipment inventory, facilities footprint, and workload capacity, and then compares it to the projected workload figures.

The most extensive section of the plan is the Risk and Mitigation Analysis, which is broken into the areas of Workload, Staffing, Law Tools/Resources, Facilities/Meetings, and Budget. In each section, the document identifies all foreseeable risks – the barriers that we know might prevent us from handling the projected volume of work in a way that maintains a consistent and responsive standard of customer service and communication – followed by actions we can take now, or at measured intervals, to mitigate the negative effects of those risks. For example, one risk is that our current decision output capacity is 30-33 decisions per week; we project that EAB staff will need to draft at least 50 decisions per week to keep up with projected workloads. Mitigations of that risk include implementing specific techniques to reduce the time spent-per-decision, hiring additional legal staff when our workload reaches 30% above normal, and reducing the up-front training time for new staff by using a "phased" training technique when onboarding them. Hiring during a high workload period creates a new risk, because existing capacity will drop while staff are diverted from decision-drafting to training; we mitigate that risk by implementing phased training; and phased training creates a new risk that staff are not fully cross-trained to work in all areas. Wherever the mitigation of one risk creates a new risk, we have been careful to analyze the new risk and develop appropriate mitigation strategies.

Another risk we identified is that our office lacks sufficient work stations to accommodate all the staff we will need to hire to deal with the projected increases. Although we

don't anticipate hiring staff for many months, it takes a long time to procure furniture, computer equipment, procure phones, and work with the budget folks to make sure we can pay for it all. To minimize the effect of delays when it "counts," and to ensure we have the furniture and equipment necessary before our new employees' first day of work, we have already begun the process of installing additional workstation, opening new data and telephone lines, and working with budget to absorb and allocate the costs of those items.

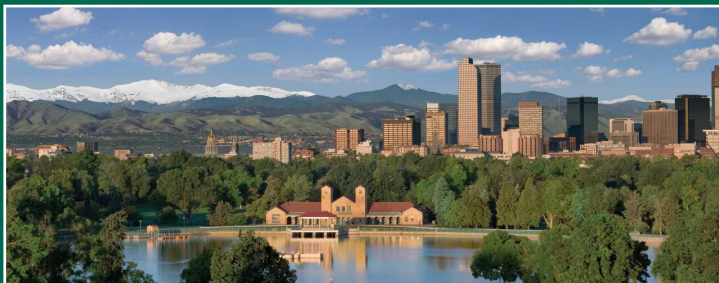
Although we are in the process of procuring more furniture for our existing work site, we are also cognizant that projected budget shortfalls during the next biennia might necessitate that we cut the size of our facility and transition from temporary (pandemic-related) full-time teleworking to permanent teleworking. While we would prefer to bring staff back to work in a centralized location once the pandemic threat abates, we're aware that might not be possible and have analyzed and documented in the Recession-Pandemic Plan our facility requirements should we be required to downsize.

The plan ends with a list summarizing the most critical risks, and the actions necessary to mitigate them, followed by a "quick guide to action triggers" table that actually schedules each action based on the condition that triggers the action. For example, the quick guide lists that when our caseload approaches 30% above normal it is time to recruit additional legal staff, and at 40% above normal it is time to recruit additional office staff. At 25% above normal workload we will loosen transcript ordering criteria to reduce the amount of legal staff time per case; at that time; our increased workload and increased volume of transcript orders also necessitates that we alert our transcript vendor to expect an increased volume of requests, allowing the vendor to adjust its practices or staffing levels and continue providing timely transcripts.

These are just a few examples of how EAB's Pandemic-Recession Plan has outlined a plan of action to mitigate the foreseeable risks that would corrode our efficiency and ability to provide our customers with timely decisions once we begin to see the appeals of some of the 47,000 adjudications heading our way. While I'm not sure it's possible to accurately predict and plan to mitigate every risk associated with this pandemic and recession, I'm sleeping just a little better knowing that we have done all we can to plan for providing ongoing timely and high-quality customer service and communication regardless of our workload.

# Don't Forget Denver!!!

## September 21-25, 2021



*Can't wait to see you there!*

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