

DUA ADVISORY COUNCIL MEETING September 20, 2018

MINUTES

The meeting started at 9:30 am.

Council Attendees: Richard Marlin, Peter Russell, Brenda Wornum Moore, Kirstin Seimering, Katie Holahan and Ellen Wallace

EOLWD/DWD/DUA/Public Attendees: Rick Jeffers, Martha Wishart, Rena Kottcamp, John Saulnier, Marie-Lise Sobande, Jennifer Lavin, Paul Fitzgerald, Jeannie Pena, Marie Orlando (DUA) Brian Flynn (GBLS)

I. EXECUTIVE UPDATE:

Director, Rick Jeffers

- A quorum was established, **Rich Marlin** motioned to approve and **Katie Holahan** seconded to approve minutes from the August 16, 2018 meeting, all voted in favor.
 - **DUA update:**
 - A Resource center has been established to help in the Lawrence, Andover & North Andover gas explosion situation. DUA is assisting with people who were put out of work. Distributing info and talking with employees and employers about which benefits they should be applying for and distributing information about unemployment insurance. **Rich Marlin** asked if we (DUA and the Advisory Council) could waive the waiting period for those affected. **Director Jeffers** answered the Governor could but DUA does not have the authority. We ran a couple of queries to get an idea of how many claims may have been filed and how many business are located in that area as a result of the gas explosions it is less than 50. There may be more activity in the coming days.
 - **Marie-Lise Sobande** is no longer the Chief of Staff. She is now the Director of Revenue. She is in charge of the work in accounts receivable, which we got approval in the last meeting to write-off a substantial amount money. **Marie-Lise Sobande** added it was \$35.6 million and we continue making good progress with Enforcement projects and initiatives. One big win to share is we had two employers that were in the enforcement process and we were able to execute a judgement against them and collected \$932,000.
 - Seasonal staff that supports us through peak periods will separate at the end of the month and be brought back on by Thanksgiving and the holidays. Right now our average speed of answer is around 2 minutes and we should be ok during that block of time without our season staff.
 - **EMAC Supplement Update** – EMAC Hardship Waiver - Two listening session were held one in Boston and one in Springfield. Got lots of feedback. **Rich Marlin** asked if this is something that needs the Advisory Council's approval. **Director Jeffers** answered No. **Rich Marlin** asked if this can be shared. Director said he would send a link as it is on the internet.
 - **Section 30 draft Regs** were sent out prior to meeting – Internally a team made up of Martha Wishart, Paul Fitzgerald, Jen Lavin, Mike Doheny, Wendy Hamlett, Susan Miller, Jeannie Pena, Paula Lyons, a broad coverage of legal, programs, hearings and Board of Review. This is the result of countless meetings over the last year. We looked at the regulations we have on the books as of this moment and at the beginning of 2017 former Director Cunningham brought some draft regulations before the council and there was feedback provided at that time which was considered as part of this process. We are asking the Advisory Council for your thoughts. **Martha Wishart** explained when the regulations are approved by the Council they then go to A&F for approval after that happens, they get published in the Mass Register, there is a comment period and the public hearing then it gets published in final version. The whole process takes about four months. We are probably looking at a public hearing in January and the regulations would be effective in February. Director Jeffers added we are not asking the council to vote on anything today, this is to get feedback and thoughts.
 - **Ellen Wallace** stated there are improvements from the last time, but feels the need to study them more before making comments. **Rich Marlin** asked 2 questions 1) if you are already approved for a Section 30 training provider, would you have to reapply. Director Jeffers answered No - 2) Apprentice Training programs which are allowable under this,

would they have to apply or would they automatically get approved because they are registered with DAT. If so can we start that process going forward because it would take several months before things are up and running? Rick said his understanding is if Apprenticeship programs approved by Division of Apprenticeship Standards and the Director, they are good to go. Rich Marlin asked can they start the application process now so when February comes they can start the training program. Director Jeffers said yes. **Katie Holahan** asked if the draft regulations are shareable. **Director Jeffers** said it is a public meeting and they can be shared. **Rich Marlin** remarked that he thought the council would approve a draft set of regulations and then they would go forward and then come back for a final set. **Martha Wishart** said we have done what you describe where the Advisory Council voted to approve the regulations when first presented and then when they have gone through process they would come back for a review and they do not require a vote the second time around. **Rich Marlin's** recollection was to vote on the final draft with the amendments. **Ellen Wallace** said that was her recollection as well. **Rich Marlin** said that was done in the past and when Rob Cunningham put the last regulations forward, one issue was there was never a quorum of the board and the board never vote. We have a quorum. **Ellen** said she is not ready to vote today. **Rich Marlin** said we are not voting on the regulations just the process. **Director Jeffers** said he is here to work with the council and be comfortable with what we are doing. **Ellen Wallace** said she is in favor of a vote to put them forward preliminary in October's meeting. **Rich Marlin** said that would delay another month. **Director Jeffers** asked Martha to go over the process that we had coming into today's meeting. **Martha Wishart** said coming out of the council they would go over to A&F, but you can make comments up to the day of the public hearing so there can be months to make comments after the public hearing, and after we review of all the comments that come in as of the day of the public hearing and look at them again. As Mr. Marlin said if there is a delay here there is a delay at the other end. There is plenty of time to give input on them as the process moves forward. **Peter Russell** asked if we have to take a vote. **Martha Wishart** said the statute doesn't say you have to vote on regulations, although it has been the procedure that we had, at least as the initial step. I think the last time we did regulations, we did when there wasn't a quorum. We brought them back after the changes for review but we did not take a vote because the statute doesn't require it. The initial vote has been the procedure to approve going forward in the process. **Rich Marlin** asked if we don't have a vote today does it delay in sending to A&F to get the hearing process started. **Martha** said yes. **Katie** asked if this would only be to proceed. **Martha** said you are approving them to go forward with the process. That is what we need from you to take the next step.

Ellen is not comfortable voting today and would like to look at them more and send out to others to see what their thoughts are.

Rich Marlin said historically this was the tentative approval and then the comments would come in and all the changes were made and voted and approved as amended and then send them to get published by the Sec of States office. **Director Jeffers** asked other board members for their input.

Peter Russell would like to send forward.

Kirstin Seimering asked what is in place now and would like to be clearer on the differences and not in favor.

Katie Holahan would be fine to go forward because there is substantial time for comment.

Brenda Wornum Moore would like additional time to review the draft and not in favor on going forward today.

Director Jeffers said it will be put off until next month's meeting and will provide high level bullet points. **Brian Flynn** agrees they have improved but has concerns. 1) It says to be eligible you have to show there is no available jobs in your prior occupation. That would be problematic for low wage workers. As drafted it would prohibit that. 2) A problem with Section 30 is not necessarily with DUA but with DCS and the 20 week requirement to access training. Which there are a lot of denials. Our experience in a number of cases is the reason people don't access this is that DCS does not seem to care or know about the requirements. Many people have to go through orientation with DCS sometimes 2 or 3 and cannot comply with 20 weeks. You get good cause if you are misinformed but it's up to claimant to provide what date they were misinformed. The majority is not misinformation but failure to act. DCS has a big role to play but then not doing their job. **Director Jeffers** thanked Brian

and said the relationship between DUA and DCS is important. It is a separate agency with its own Director and he will provide feedback to DCS. **Brian** had another major concern with Section 9.05(6) now the burden is on the worker to show when they were misinformed and why they are asking the deadline be tolled. The misinformation is generally with DCS and not DUA. You are both under EOLWD. **Martha Wishart** stated the burden is always on the claimant to show eligibility when they say they are eligible for something. The claimant has to show they are eligible for the tolling and it is not much of a change from the current position. **Brian Flynn** added the regulations are requiring the claimant to prove what date this occurred. It is an impossible burden. **Brian** would like to talk later about it. **Rich Marlin** said it is DUA who gives the claimant notice of 20 weeks, where is the breakdown with Career Services? **Brian** said every claimant has to go to a RESEA appointment and breaks down from there. Whether or not people are told about training benefits Section 30 or even when they are told and ask the Career Center about accessing it makes the 20 week deadline almost impossible. The denials are very heavy on the people who file after 20 weeks. It looks like people are waiting until the last minute. But what is happening is they can't get to the Career Centers in time. The Career Centers sometimes require up to three meetings for RESEA and not told when they will be scheduled. One person asked for training her first day and did not get sent to an orientation for Section 30 until 26 weeks after asking. She asked every week. The problem is not completely in your control but DUA's regulations should not be making it harder. **Director Jeffers** appreciates Brian sharing, but does not think it is addressed as a regulatory issue, but a training issue and a concern that should be brought to leadership in DCS. **Rich Marlin** asked if the problem is getting into a program or applying. The answer was applying. **Director Jeffers** said claimants have five months to apply and the application is available online on the claimant homepage. Rich Marlin asked if the claimant completes his section of the application within 20 weeks would that be acceptable to toll while they are waiting to find something. **Jen Lavin** stated No, the claimant has to complete their part and also the training program has to complete their part. A lot of people don't ever go through the Career Center at all, they find a training program approvable online and they go through the whole application process without conversing with DCS. **Rich Marlin** said technically the Career Center is supposed to be the Government Agency that is acting like an employment agency, and when they fail, the worker shouldn't be punished for that. **Director Jeffers** stated you have identified something that is important, but not necessarily a regulatory issue.

II. UI TRUST FUND UPDATE:

Rena Kottcamp

- Preliminary August 2018 Massachusetts UI Trust Fund balance was \$1.346 billion. The preliminary private contributory account balance was \$1.227 billion and the governmental contributory account balance was \$119 million.
- Average weekly benefit amount in August 2018 was \$500.72, \$28.43 or 6.0% more than the August 2017 average amount of \$472.29
- The 17.4 week average duration of a claim through August 2018 was 0.2 weeks longer than the average duration for the same time span last year. Average duration is computed on a twelve month moving average.
- Through August 2018, total preliminary benefit payments of \$953.8 million were \$41.2 million lower than total payments made in the first time period in 2017 and \$4.2 million or 0.4 percent less than the latest projection. Year to date initial claims and weeks compensated were 6.2 percent and 3.5 percent less, as compared to the same time last year.
- Through August 2018, total preliminary employer contributions of \$1.310 billion were \$146 million more than last year's first eight months collections on a lower tax rate schedule. Year-to-date preliminary contributions were \$22 million or 1.7 percent lower as taxable payrolls in the second quarter were less than expected.
- As a result of the differences between actual and projected contributions and payments, the August 2018 preliminary private contributory balance of \$1.227 billion was \$17 million less than the latest projection of \$1.244 billion at the end of August. The 2018 year-end private contributory account balance is now projected at \$1.072 billion.
- The average check amount is just over \$500, 6% above the same time as last year.

- **Katie Holahan** stated as she talks with employers she is hearing frustration with appeals issues, lower authority appeals decisions are fairly equal in terms of the overturned. The stories she hears are not matching up with the numbers. **Jeannie Pena** said every case varies depending on the evidence that is presented at the hearing. There are a lot of different variables. **Rich Marlin** asked Katie are you trying to find how many of the 48% of overturned cases were ruled in favor of the claimant then overturned by employer and how many ruled in favor of employer then overturned by the claimant. **Director Jeffers** said what is needed is a count of how often does the appellant win. **Marie-Lise Sobande** said this comes up year after year and it is an appearance that the employers are losing all the time. It is not the case. I have the numbers going back to 2010 that I will share with you.
 - Next meeting is scheduled for October 18, 2018. Section 30 regulations will be discussed.
 - Thank you to Brian and Ellen for your comments and feedback. The group worked very hard.
 - Meeting adjourned at 10:15am