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Subject: Proviso 83.5 Summary

The SC Department of Employment and Workforce (DEW) is requesting consideration of a veto of the Conference Committee's version of Proviso 83.5 contained in the 2016-2017 budget. As outlined below, DEW is concerned that Proviso 83.5 will create bad public policy for South Carolina.

S.C. Code Ann. §41-35-110 establishes the conditions for eligibility to receive unemployment insurance benefits and subsection (3) requires that an unemployed insured worker be "actively seeking work," with certain limited exceptions. To effectuate this statutory requirement, the 120th Session (2013-2014) of the South Carolina General Assembly mandated through Proviso 83.6 that one of the four weekly work searches required by unemployment insurance claimants be conducted through the SC Works Online System (SCWOS), so that the requirement to "actively seek[] work" could be electronically verified by the SC Department of Employment and Workforce. The 2013-2014 Proviso provided as follows:

83.6. (DEW: SUTA Contingency Assessment Funds) Thirty percent of the funds appropriated through the contingency assessment funds collected on taxable wages paid by employers shall be spent on enforcement of Section §41-35-110(3) and Section §41-35-120(5) of the 1976 Code, via Eligibility Reviews, Random Verification of Job Contacts and Wage Cross Matches during those weeks covered by the South Carolina State Unemployment Tax Authority (SUTA), and to ensure seated meetings with Unemployment Insurance claimants and requiring that one of the four job search contacts required per week be conducted through SC Works Online System (SCWOS), so that it can be electronically verified. The agency must also inform claimants in advance that Eligibility Reviews and Random Verification of Job Contacts will be used by the Department to verify compliance with laws administered by the agency.

Since that time, DEW has been operating under the requirements of the 2013-2014 Proviso and utilizing SCWOS to help verify claimants' eligibility for benefits. Because only one of the four work searches could be verified in an objective manner (*e.g.* through the SCWOS system), DEW proposed an update to the Proviso in the 2016-2017 budget that would have required all four job search contacts to be conducted through SCWOS. The update was intended to assist DEW in verifying all of a claimant's work searches and to provide claimants with a vehicle to help establish eligibility. The text of the 2016-2017 Proviso is below:

83.5. (DEW: SUTA Contingency Assessment Funds) Thirty percent of the funds appropriated through the contingency assessment funds collected on taxable wages paid by employers shall be spent on enforcement of Section §41-35-110(3) and Section §41-35-120(5) of the 1976 Code, via Eligibility Reviews, Random Verification of Job Contacts and Wage Cross Matches during those weeks covered by the South Carolina State Unemployment Tax Authority (SUTA), and to ensure seated meetings with Unemployment Insurance claimants and requiring that one of the all four job search contacts required per week be conducted through SC Works Online System (SCWOS), so that it searches can be electronically verified. The agency must also inform claimants in advance that Eligibility Reviews and Random Verification of Job Contacts will be used by the department to verify compliance with laws administered by the agency.

At the close of Conference Committee, however, Proviso 83.5 was significantly changed as reflected below:

83.5. (DEW: SUTA Contingency Assessment Funds) Thirty percent of the funds appropriated through the contingency

assessment funds collected on taxable wages paid by employers shall be spent on enforcement of Section §41-35-110(3) and Section §41-35-120(5) of the 1976 Code, via Eligibility Reviews, Random Verification of Job Contacts and Wage Cross Matches during those weeks covered by the South Carolina State Unemployment Tax Authority (SUTA), and to ensure seated meetings with Unemployment Insurance claimants. and requiring that one of the four job search contacts required per week be conducted Job searches may be conducted and will be accepted if done by the applicant in person or through SC Works Online System (SCWOS), so that it can be electronically verified. Searches completed through SCWOS will be electronically verified; all others will be verified through methods currently used by SCDEW. The agency must also inform claimants in advance that Eligibility Reviews and Random Verification of Job Contacts will be used by the department to verify compliance with laws administered by the agency

The revisions in the Conference Committee version of Proviso 83.5 remove any *requirement* that claimants perform job search contacts. In its place, it provides that job searches “*may* be conducted... in person or through SC Works Online System (SCWOS).” (emphasis supplied). Although the revisions state that “[s]earches completed through SCWOS will be electronically verified,” without a requirement to perform job search contacts, DEW will be effectively prevented from verifying eligibility for benefits on that basis.

With respect to the contingency fund portion of the Proviso, S.C. Code Ann. §41-33-710 created the agency’s administrative contingency fund and requires that money deposited in that fund to be expended to assist in various employment and reemployment efforts as well as programs and activities that further the goals of Chapter 42 of Title 41 (relating to the establishment, operation and maintenance of free public employment offices). The 30% threshold in the Proviso was left untouched in all versions of 83.5 and it appears to reflect the consistent intent of the General Assembly since the introduction of the Proviso in 2013. DEW views that as an appropriate benchmark to use even in the absence of a Proviso. Thus, despite a veto of the Proviso, DEW will continue to transfer 30% of the contingency fund for eligibility reviews, random verification of job contacts, wage cross matches and seated meetings with unemployment insurance claimants.

In addition to the above, DEW is concerned that Conference Committee’s version of Proviso 83.5 violates the one subject rule as outlined in the SC Supreme Court’s recent decision. Last week, we provided information on that issue to Holly Pisarik, Esq. via email.

Ultimately, with a veto of Proviso 83.5, DEW anticipates seeking to re-establish the job search requirement and further clarify existing statutory requirements through the regulatory process later this year.

We appreciate your consideration. If you need any other information, please do not hesitate to contact us.

Thank you,
Susan M. Boone

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