

U.S. Department of Labor

Employment and Training Administration  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210



JAN 17 2012

Mr. Abraham J. Turner  
Executive Director  
Department of Employment and Workforce  
1550 Gadsden Street  
Columbia, South Carolina 29202

Dear Mr. Turner:

We have reviewed South Carolina Senate Bill (SB) 1049 for conformity with Federal unemployment compensation (UC) law. This bill would amend the failure to accept work provision of your UC law to require an individual to accept available community service work approved by the department of at least 16 hours a week. Because payment of UC would be based on the individual's performance of community service rather than on the "fact or cause" of the individual's current unemployment, an issue is raised under Federal law. A detailed discussion follows.

Section 3304(a)(4) of the Federal Unemployment Tax Act (FUTA) requires, as a condition for employers in a state to receive credit against the Federal tax, that state law provide that "all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund . . . ." Section 303(a)(5) of the Social Security Act provides a similar requirement as a condition for a state to receive administrative grants. Section 3306(h), FUTA, defines compensation as "cash benefits payable to individuals with respect to their unemployment."

The Secretary of Labor's decision in the 1964 conformity case involving South Dakota interpreted these sections to mean UC eligibility must be based on the "fact or cause" of unemployment:

[I]t was the intent of Congress to create a social insurance system under which entitlement to benefits was a matter of right on the part of those who became involuntarily unemployed because of lack of work, e.g., laid off from work or otherwise unemployed through no fault of their own, and who are able to work and available for work, but who are unable to find suitable work. In short, what Congress was prescribing was wage insurance for the relief of the unemployed, to compensate for wage loss resulting from unemployment due to lack of work, without regard to any . . . criteria of entitlement having no reasonable relationship to 'unemployment.'

The payment (or non-payment) of UC must be based on the reasons related to the individual's unemployment, not on some other factor unrelated to unemployment. Because SB 1049 provides that individuals' eligibility would be based on their performance of community service, payment of UC would not be based on the fact or cause of the current unemployment.

Therefore, it raises an issue. (The Secretary's decision, which explains the applicable Federal law, is attached to Unemployment Insurance Program Letter 787. You may access it at [http://ows.doleta.gov/unemploy/pdf/UIPL\\_787.pdf](http://ows.doleta.gov/unemploy/pdf/UIPL_787.pdf).)

Please contact Randy Fadler, your Regional Office UI Legislative Specialist, at (404) 302-5360 or [Fadler.randy@dol.gov](mailto:Fadler.randy@dol.gov) should you have questions regarding this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gay M. Gilbert". The signature is fluid and cursive, with the first name "Gay" and last name "Gilbert" clearly distinguishable.

Gay M. Gilbert  
Administrator  
Office of Unemployment Insurance

cc: Helen Parker  
Regional Administrator  
Atlanta