



## A LABOR DAY REVIEW OF OUR UNEMPLOYMENT INSURANCE SYSTEM

Texans are losing jobs and taking longer to find work in today's tough economic environment, reminding us this Labor Day of the importance of Unemployment Insurance (UI). Unemployment checks enable Texans to buy groceries, pay rent, and meet basic needs, helping both Texas families and the Texas economy. Unfortunately, Texas state policies prevent four of every five jobless Texans from collecting UI. This paper recommends common-sense, affordable changes to shore up this vital public structure that protects Texans in tough economic times. Our recommendations include new definitions for eligibility, modern infrastructure to process claims, and a smarter, sustainable funding plan.

- **Fewer than 1 in 5 unemployed Texans collect Unemployment Insurance (UI) payments.**
- **The decline in the number of people receiving UI benefits is largely due to outdated state UI policies that have failed to keep pace with major changes in the workforce.**
- **Unsound policies forced the UI Trust Fund to borrow nearly \$1.4 billion during the last economic downturn.**
- **Texas needs 1) new definitions for eligibility, 2) modern infrastructure to process claims, and 3) a smarter, sustainable funding plan.**

### How Does Texas' Unemployment Insurance System Work?

Unemployment Insurance (UI)—also known as Unemployment Compensation—is a vital safety net, not just for unemployed workers and their families, but also for our communities. It keeps money moving through the market and prevents the unraveling of the fabric of our economy. UI is an employer-paid insurance program for workers who lose jobs through no fault of their own. It provides temporary financial help to qualified individuals, based on previous earnings, while they look for other work. Employer payroll taxes and reimbursements support the UI Trust Fund, from which benefits are paid. UI fund solvency mainly depends upon the state collecting enough payroll taxes to cover UI benefits. The Texas Workforce Commission (TWC) oversees the fund, processes UI taxes, and administers the state's UI program within federal guidelines and state law.

Studies indicate that temporary UI assistance not only helps families obtain basic necessities, but that more effective UI policies can allow workers the time to find subsequent employment at higher wages, with better health insurance benefits, and with longer job duration.<sup>1</sup>

Texas' UI policy, however, is not fulfilling its potential. Unnecessary barriers to eligibility hurt jobless workers, and the system is not fiscally sound. To secure the well-being of our workers and our economy, Texas must change its UI policies to expand benefit access and guarantee trust fund solvency.

### Texas Policies Undermine UI Protection

For purposes of UI, unemployed Texans can be split into two categories: the one-in-five unemployed Texans that make it through the UI system's hurdles and receive benefits, and the many more excluded from benefits.

## Strict Eligibility Requirements for UI Benefits

To receive unemployment benefits, a jobless Texan must go through a stringent initial eligibility screening and fulfill additional requirements to maintain ongoing eligibility. The [Texas Unemployment Compensation Act](#) of the Texas Labor Code establishes Texas UI eligibility requirements.<sup>2</sup> TWC determines individuals' UI eligibility based on two criteria: recent wages and the circumstances surrounding their most recent job separation.

### *Recent Wages*

Initially, to qualify for UI benefits, an individual must:

- Have wages in at least two of the four eligible “base period” quarters (more on the base period below);
- Have total base period wages at least 37 times an individual’s weekly UI benefit amount.<sup>3</sup>

Texas law caps weekly UI payments at \$378, while the minimum UI benefit amount is \$57 per week. The average weekly benefit in Texas is \$282, slightly below the U.S. average.<sup>4</sup>

### *Separation from Most Recent Job*

The circumstances under which individuals left their previous workplace remain a major factor in determining UI eligibility. Overall, UI eligibility is restricted to applicants who left their previous work through “no fault of their own.” This “no fault” requirement is satisfied by cases in which the applicant:

- Was laid off due to lack of available work activities, or was otherwise fired without work-related misconduct;
- Remains employed but at reduced hours, as decided by the employer and not due to disciplinary action;
- Quit the job due to a well-documented medical or work-related reason;<sup>5</sup> or
- Quit the job to protect oneself from family violence or stalking, or to move with one’s spouse.

### *Maintaining Eligibility*

The typical maximum duration for continuous UI eligibility is 26 weeks. The average duration in Texas stands at just above 20 weeks. However, even after qualifying for an initial UI payment, unemployed Texans do not automatically remain in the system. Rather, to remain eligible for ongoing UI payments, unemployed Texans must demonstrate commitment to an active employment search. On a weekly basis, UI recipients must:

- Make an active search for full-time work and be available for full-time work;
- Be physically able to work;
- Apply for and accept “suitable work” (as determined by TWC);
- Be registered for work search online at [www.texasworkforce.org](http://www.texasworkforce.org)

But even meeting all the above criteria may not be enough to receive UI benefits. Many jobless workers cannot qualify for UI benefits simply because of the timing of their most recent separation from work or because of other barriers.

### **Barriers to UI Access**

In a recent report, the U.S. Government Accountability Office (GAO) found decreasing UI reciprocity is largely due to outdated state UI policies that have failed to keep pace with major changes in the workforce, including more women working, more part-time work, fewer manufacturing jobs, and more low-wage work.<sup>6</sup> As a result, GAO found, an increasing number of jobless workers find themselves ineligible for UI benefits. The growing importance of the retail and service sectors has lowered the average UI reciprocity rates.

Indeed, jobless Texas workers face a variety of barriers when trying to qualify for and receive UI benefits, and far more are excluded from the system than is good for either families or the state’s economy. Three of the most troubling barriers are the Standard Base Period (SBP), the restriction against part-time work, and the understaffing of telecenters that field calls from UI applicants.

*What is the Base Period?*

The base period is a recent 12-month (or 4 calendar quarters) period used to determine UI eligibility and weekly benefit amounts. In nearly all cases, Texas uses the Standard Base Period (SBP) as the sole method for determining UI eligibility. The SBP method disregards the most recent completed quarter of earnings, and only considers the first four of the last five completed quarters. Take, for example, a worker laid off in mid-March 2008. As illustrated below, the worker’s eligibility would be based only on earnings from October 2006 through September 2007; wages earned in the quarter preceding the layoff (October-December 2007) would be disregarded. Even working full-time from July 2007 to mid-March 2008 (nearly three quarters) would leave the worker ineligible for UI benefits because the two completed quarters of earnings did not fall within the standard base period.

The SBP method remains a relic from the non-automated UI filing system, which relied on a “lag quarter” to allow sufficient time for state agencies to process UI claim paperwork. Equipped with modern, automated systems, 21 states now use the Alternate Base Period (ABP) to determine eligibility. The ABP adopts a more flexible approach, by considering either the four quarters used by the SBP method *or* the most recent four completed quarters of earnings.

With the ABP, our same worker laid off in March 2008 could now claim earnings for the period from January 2007 through December 2007. Now the two completed quarters of work would be counted and qualify the worker for UI benefits.

One group of jobless workers is exempt from the SBP application: TWC allows certain unemployed individuals to claim ABP earnings if they were out of work for a prolonged time because of a medically verifiable illness, injury, disability, or pregnancy. This exception demonstrates TWC’s capability to adopt an ABP standard within its current UI reporting and data management system—the required technology is already in place.

*Standard Base Period Excludes Jobless Texans Most in Need*

The nearly exclusive use of the Standard Base Period has a disproportionate impact on the most vulnerable unemployed Texans, including women, lower-wage workers. These laid-off workers are excluded from UI benefits, as many low-wage workers do not meet monetary eligibility requirements when three to six months of their recent earnings are excluded from consideration for UI eligibility.<sup>7</sup>

The following table illustrates the share of denied UI claims that would have become eligible under an ABP standard, the estimated number of additional unemployed workers eligible under an ABP policy, and related UI costs.

*Standard Base Period: Excludes Working Texans from UI Protection*

| <u>First Quarter</u><br>(Oct 06 – Dec 06) | <u>Second Quarter</u><br>(Jan 07 – Mar 07) | <u>Third Quarter</u><br>(Apr 07 – Jun 07) | <u>Fourth Quarter</u><br>(Jul 07 – Sept 07) | <u>“Lag” Quarter</u><br>(Oct 07 – Dec 07) | <u>Filing Quarter</u><br>(Jan 08 – Mar 08) |
|---|--|---|---|---|--|
| No Earnings                               | No Earnings                                | No Earnings                               | Counted Earnings                            | Disregarded Earnings                      | Time of Layoff;<br><b>NO BENEFITS</b>      |

*Alternate Base Period: Harnesses Modern Technology to Protect More Working Texans*

| <u>Now-Moot Quarter</u><br>(Oct 06 – Dec 06) | <u>First Quarter</u><br>(Jan 07 – Mar 07) | <u>Second Quarter</u><br>(Apr 07 – Jun 07) | <u>Third Quarter</u><br>(Jul 07 – Sept 07) | <u>Ex-“Lag” Quarter</u><br>(Oct 07 – Dec 07) | <u>Filing Quarter</u><br>(Jan 08 – Mar 08) |
|--|---|--|--|--|--|
|  | No Earnings                               | No Earnings                                | Counted Earnings                           | Counted Earnings                             | Time of Layoff;<br><b>BENEFITS</b>         |

*Texas Jobless Workers Newly Eligible under an Alternate Base Period*

|      | Newly Eligible Under ABP | Increase in Eligible UI Claims (%) | Additional UI Payments (estimate) |
|------|--------------------------|------------------------------------|-----------------------------------|
| 2005 | 55,043                   | 8.7%                               | \$72.8 million                    |
| 2006 | 31,943                   | 7.0%                               | \$42.3 million                    |
| 2007 | 28,736                   | 6.3%                               | \$38.0 million                    |

National Employment Law Project; Texas Workforce Commission, 2008.

As shown above, more than 115,000 Texas claimants would have qualified for short-term UI payments under the ABP standard over the past three years. The average ABP claimant would have received UI benefits for less than 10 weeks, at an average of \$136 per week. These lower-wage workers benefit the most from income maintenance during a jobless spell. UI payments can be crucial to preventing eviction or other crises that can severely hinder an effective job search. In addition to maintaining family income, UI benefits keep low-income families connected to the workforce.

*Part-time Workers Are Not Eligible for UI Benefits*

Another major barrier to UI eligibility is the part-time restriction. Under federal law, states can restrict eligibility to only those individuals seeking a full-time position, even if their previous job was part-time. Texas chose to adopt this restriction. This hurts our state in two ways. First, because of the changing nature of the Texas workforce and economy, a large and growing proportion of the Texas workforce works part-time work. By demanding that the unemployed seek work only from the shrinking pool of full-time jobs, our UI policies may keep workers unemployed for longer. Second, child and other family care responsibilities often limit workers to part-time. As a result of the shrinking full-time job pool and the growing number of people who need part-time work, an increasing share of unemployed or laid-off Texans cannot qualify for UI benefits. Currently, 23 states offer part-time eligibility for unemployed workers. In Texas, legislation to remove the part-time restriction passed the House in the 2007 session, but did not move in the Senate.

*TWC Unable to Handle Volume of UI calls*

Unemployed Texans have a few options when applying for UI benefits. They can apply online at the [TWC website](#).<sup>8</sup> However, many individuals rely on applying over the phone using one of TWC's seven regional telecenters. [TWC's site](#) also provides a complete listing of telecenters.<sup>9</sup>

Despite relatively modest numbers of UI claims, the telecenters have been ill-equipped to handle even this volume of calls. In fact, hundreds of thousands of calls have been aborted because of TWC understaffing and mishandling. Callers receive a recorded message—"we're too busy, call back later"—when the telecenters cannot accept more incoming calls. From July to December 2007, more than 1.5 million callers heard this busy announcement, averaging more than 250,000 dropped calls per month.

Telecenter difficulties may be due in part to understaffing and inadequate funding by the U.S. Department of Labor (DOL). A recent DOL funding authorization may help TWC to provide better service to jobless workers.

**Can the UI Trust Fund Survive Another Economic Slowdown?**

UI Trust Fund solvency is a continuing problem in Texas. Unsound policies caused the fund to become insolvent in past years, requiring federal rescue. The fund is trending towards insolvency once again.

**2002-03 Structural Collapse & Bail-out**

During the most recent recession of 2002-03, the UI Trust Fund became insolvent, as unemployment rose to 6.8%. While employer contributions remained flat, unemployment claims and benefits skyrocketed, increasing by 35% from 2000 to 2002. In 2003, unemployment benefits exceeded employer contributions by more than \$600 million; in 2004, employer contributions fell short by nearly \$160 million. As a result of rising unemployment and the inadequacy of the UI Trust Fund, TWC borrowed \$1.38 billion to cover the shortfall and continue making UI benefit payments. The following table illustrates TWC's debt payments over the past five years:

**UI Trust Fund Debt Service, 2004-2008**  
(dollar amounts in millions)

| Fiscal Year  | Principal        | Interest       | Total            |
|--------------|------------------|----------------|------------------|
| 2004         | \$ 65.0          | \$ 24.3        | \$ 89.3          |
| 2005         | 292.9            | 28.3           | 321.1            |
| 2006         | 305.9            | 27.1           | 333.0            |
| 2007         | 316.9            | 21.7           | 338.6            |
| 2008         | 396.1            | 7.3            | 403.4            |
| <b>Total</b> | <b>\$1,376.7</b> | <b>\$108.6</b> | <b>\$1,486.3</b> |

Source: Texas Workforce Commission, 2008.

Texas spent \$1.5 billion from 2004-08 to pay off this debt, including \$108.6 million in interest. Note that the amount TWC paid in interest would have paid for about two years of ABP benefits. The unsound economic fundamentals of the UI Trust Fund—as prescribed by state policy—help to explain its structural collapse during the last recession.

Texas employers are entitled to a surplus credit if the UI Trust Fund balance exceeds the “ceiling” amount 2% of taxable wages. More than 360,000 employers received a total of over \$300 million in these employer rebates in 2007. Despite projections of rising unemployment, TWC issued another \$148 million in rebates in June 2008.

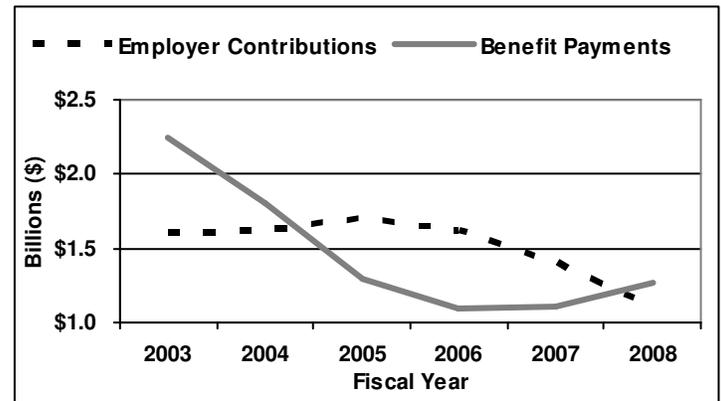
Adding to the impact of surplus credits, employers’ average UI tax rates have declined sharply—from 1.74% in 2004 to 0.98% in 2008—further draining the Trust Fund. In 2008, nearly two-thirds of Texas employers are expected to pay the minimum tax rate (0.22%), representing a sharp drop from the 2004 rate (0.67%). The components of the tax rate include:

- **General Tax Rate:** based on unemployment claims against an employer’s account
- **Replenishment Tax Rate:** charged to all employers to cover unemployment claims not charged to a specific employer;
- **Employment Training Assessment:** charged to all employers with a computed tax rate to finance the Texas Enterprise Fund (75%) and the Skills Development Fund (25%).

These rebates and low tax rates sharply reduced employer contributions. More importantly, TWC’s immediate projections point to disturbing trends in employer

contributions compared to benefit payments. For the first three quarters of 2008, TWC projects that UI employer remittances will sink to their lowest level in more than six years. In fact, employer contributions are expected to fall 30% from last year. At the same time, UI benefit payments are expected to climb to their highest levels since 2004.

**Unemployment Insurance in Texas: Employer Contributions and Benefit Payments, 2003-2008**



Source: Texas Workforce Commission, 2008.

**Will History Repeat Itself?**

As shown above, the pattern is similar to the last slowdown, with UI benefit payments starting to outpace employer contributions. As a result, Texas is one of 14 states classified as “near insolvent” by the National Employment Law Project (NELP).<sup>10</sup> One common solvency indicator is the Reserve Ratio, which measures a state’s trust fund as a share (%) of the state’s taxable wage base for the past 12 month period. At the end of 2007, Texas’ reserve ratio stood at 0.46, well below the national average (0.80). Going into a recession, many experts recommend a reserve ratio of at least 2.0 to cushion the blow of increased UI payments and declining employer contributions.<sup>11</sup>

Our UI Trust Fund operate illogically: when unemployment is low and the economy grows, our UI statute compels tax rate cuts and rebates. The puny size of the surplus credits—usually less than \$1,000 per employer—is inadequate to spur any real investments in recruiting, training, or infrastructure.

State UI trust funds work best when they build up during periods of economic growth and then rely on those reserves

during economic recessions to moderate or avoid UI payroll tax increases, UI benefit restrictions, or borrowing. When the Texas economy deteriorates and unemployment goes up, though, the replenishment tax rate typically rises while businesses are laying off workers. Additionally, a recent TWC decision to “zero-out” the replenishment tax will cost the UI Trust Fund another \$90 million in 2008. When unemployment rises again, TWC will likely be obliged to reinstate the replenishment tax, just as employers scale back.

With these underlying trends and statutory requirements, the Trust Fund is ill-equipped to face another rise in unemployment, endangering the fiscal soundness of the Trust Fund. The slowing economy should serve as a warning signal for Texas to change its UI policies before circumstances warrant another borrowing scheme that would burden employers and jobless workers.

## What Texas Should Do to Fix the UI System

1. Adopt the Alternate Base Period through rulemaking or legislation;
2. Protect part-time workers by including them in the UI system;
3. Shore up the UI Trust Fund and revisit surplus tax credits and rebates;
4. Reverse the recent decision to “zero-out” or eliminate the employer replenishment tax rate;
5. Ensure adequate telecenter staffing and improve administrative reporting to the U.S. Department of Labor;
6. Reduce the Enterprise Fund allotment and increase the Employment Training Assessment share, reinvesting resources into Texas’ postsecondary financial aid and training for middle-skill and in-demand jobs.

<sup>1</sup> Heather Boushey and Jeff Wenger, *Finding the Better Fit: Unemployment Insurance Increases Likelihood of Reemployment with Health Insurance*, EPI/CEPR Issue Brief, No. 205 (Washington, DC: Economic Policy Institute, April 14, 2005).

<sup>2</sup> Texas Labor Code, Title 4, Subtitle A.

<sup>3</sup> An individual’s weekly benefit amount is calculated based on the highest quarter of earnings in the applicable base period. The earnings from this quarter are divided by 25 to arrive at the weekly benefit amount.

<sup>4</sup> National Employment Law Project Analysis for 3rd Quarter, 2007.

<sup>5</sup> TWC may rule good cause if the work situation would cause a person who truly wants to keep the job to leave it. Examples of possible good cause are unsafe working conditions or a significant change in hiring agreement, or not receiving payment for your work.

<sup>6</sup> See [www.gao.gov/new.items/d071243t.pdf](http://www.gao.gov/new.items/d071243t.pdf).

<sup>7</sup> See [www.nelp.org/docUploads/ABPReport2005%2Epdf](http://www.nelp.org/docUploads/ABPReport2005%2Epdf).

<sup>8</sup> See [www.twc.state.tx.us/ui/uiclaim.html](http://www.twc.state.tx.us/ui/uiclaim.html).

<sup>9</sup> See [www.twc.state.tx.us/ui/bnfts/offices.html](http://www.twc.state.tx.us/ui/bnfts/offices.html).

<sup>10</sup> National Employment Law Project, *Unemployment Insurance Financing*, May 2008. See [www.nelp.org/docUploads/State%20Unemployment%20Insurance%20Trust%20Fund%20Solvency%202008%20%283%29%2Epdf](http://www.nelp.org/docUploads/State%20Unemployment%20Insurance%20Trust%20Fund%20Solvency%202008%20%283%29%2Epdf).

<sup>11</sup> For more information on state UI solvency indicators, including the reserve ratio and the Average High Cost Multiple (AHCN), see National Employment Law Center, *Unemployment Insurance Financing: Examining State Trust Funds Facing Recession*, [www.nelp.org/docUploads/State%20Unemployment%20Insurance%20Trust%20Fund%20Solvency%202008%20%283%29%2Epdf](http://www.nelp.org/docUploads/State%20Unemployment%20Insurance%20Trust%20Fund%20Solvency%202008%20%283%29%2Epdf).

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