November 7, 2012

Lisa Mallory, Director
Department of Employment Services
4058 Minnesota Avenue, NE
Washington, DC 20019

Re: Proposed Guidance for Implementing the Unemployment Compensation Reform Amendment Act

Dear Ms. Mallory:

We are writing to ask that DOES issue a guidance document to clarify some of the ambiguous language in the Unemployment Compensation Reform Amendment Act of 2010 (B18-0455, hereafter "UCRAA"). We strongly support the commitment that the District government demonstrated to unemployed workers when it enacted UCRAA. As UCRAA has been implemented, however, we have identified certain components of the Act that may be inconsistently interpreted without further clarification. We encourage you to train all unemployment compensation claims examiners on the details of this new law and its implications for the claims examination process. To ensure a consistent application of the law and avoid litigating ambiguities on a case-by-case basis, we urge DOES to clarify several key areas of the law through an informal guidance document. This guidance will streamline the claims examination process and assist both the claims examiners and the claimants themselves.

Our suggestions draw from successful implementation practices in other jurisdictions as well as the Department of Labor's "Unemployment Insurance Program Letter." The purpose of the Program Letter is "to advise states of amendments to Federal law providing for unemployment compensation (UC) modernization incentive payments to states."[1] The letter highlights DOL's goal of providing unemployment compensation in all situations where an individual is separated from employment due to "good cause" factors beyond the individual's control. We urge DOES to construe ambiguities in UCRAA in a manner consistent with DOL's guidance, ensuring broad coverage. By providing consistent expectations for the implementation of this Act, DOES will guarantee that UCRAA contributes to an effective and efficient system of unemployment compensation for the individuals that the law was intended to serve.

We are writing on behalf of the D.C. Employment Justice Center (EJC)[2] and the Legal Aid Society of the District of Columbia. [3] We outline our proposals for clarifying key statutory language

[1] DOL Unemployment Insurance Program Letter No. 14-09, Douglas F. Small, Deputy Assistant Secretary, Employment and Training Administration Advisory System (Feb. 26, 2009). p1.
[2] The EJC protects and enforces the rights of low-wage workers in the Washington metro area. We work with experienced employment law attorneys and policy advocates to provide high-quality, free legal advice and assistance to more than 1,200 low-wage workers annually and to push for changes in workplace fairness laws. One of our main areas of practice is with the unemployment insurance system.
[3] The Legal Aid Society of the District of Columbia was formed in 1932 to provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs. Over the last 80 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of consumer law, housing, family law, and public benefits. It also has an appellate practice.

below. We address the three types of "Compelling Family Reasons" included in UCRAA: 1) Trailing Spouse, 2) Illness or Disability, and 3) Domestic Violence. Attached, please find a model "Q&A" on these issues that we created based on the DOL's guidance and successful implementation in other jurisdictions. We encourage DOES to use this "Q&A" to train claims examiners on the new elements of the law.

1. **Trailing Spouse**

"Compensation shall not be denied to any otherwise eligible individual who leaves his or her most recent work to accompany his or her spouse or domestic partner to a place from which it is impractical to commute to the place of employment." *D.C. CODE § 51-110(d)(4) (2012).*

a) The term "impractical" should be defined expansively.

The DOL's Program Letter explains that the definition of "impractical" should be informed by local commuting patterns. *Program Letter 14-09, Attach. III, p6.* Because the Council enacted UCRAA specifically to qualify the District for federal funding, DOES should adhere to DOL guidance in its implementation of the Act, as other states have done. For example, Connecticut passed a law analogous to UCRAA, and the regulations implementing that law advise administrators to consider several factors when determining whether a claimant's commute is "impractical," namely:

- Availability of public transportation,
- Personal means of transportation available to the individual,
- Common commuting patterns for individuals similarly situated,
- The individual's physical condition, and
- Actual distance in miles between the individual's new residence and the place of employment.

CONN. AGENCIES REGS. § 31-236-23b(c)(1)-(5) (2012)

DOES should train unemployment compensation claims examiners to construe "impractical" in a manner consistent with these factors. The claims examiners should also be encouraged to consider:

- The financial cost of the commute, and
- The commuter's personal safety.

b) DOES should clarify that there are no exceptions to the "trailing spouse" provision.

DOES should provide clear guidance for unemployment compensation claims examiners regarding what kind of information is relevant to the "trailing spouse" provision. The Act broadly requires that the District not deny unemployment compensation to an individual who separates from employment to move with his or her spouse or domestic partner. Therefore, as long as a claimant moves with his or her spouse and separates from his or her employment because of an impractical commute, the claims examiner should not consider facts apart from the impractical commute. For example, if a claimant leaves her job to follow her spouse, and then her spouse loses the job which necessitated the move, the claimant should still be eligible for unemployment compensation.

2. <u>Family Member's Illness or Disability</u>

"Compensation shall not be denied to any otherwise eligible individual who leaves his or her most recent work to care for an ill or disabled family member." *D.C. CODE § 51-110(d)(5) (2012).*

a) The term "disabled" should be defined according to the DOL's recommendations.

The DOL's Program Letter advising the implementation of this Act explains that the term disability "encompasses all types of disability, including (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities." *Program Letter 14-09, Attach. III, p6.* Therefore, DOES should train unemployment compensation claims examiners to use this definition of "disability."

b) DOES should clarify that it will not require claimants to pursue other alternatives for obtaining care for a family member.

The DOL's Program Letter explains that "the new Federal provisions broadly require, as a condition of certification, that the state law not disqualify an individual separating because of the 'illness or disability of a family member . . . .' The Act does not permit a state to limit eligibility to particular circumstances surrounding a separation for this reason. Thus, a provision would not be certified if it applies only when no reasonable, alternative care is available." *Program Letter 14-09, Attach. III, p6.* In accordance with the DOL's Program Letter, the statutory language of UCRAA does not place any qualifications on the employee's choice to provide care for his or her family member. DOES should ensure that unemployment compensation claims examiners uphold the intent of the DOL's guidance and the local statute by not requiring claimants to pursue alternative health care options.

3. <u>Domestic Violence</u>

"No otherwise eligible individual shall be denied benefits for any week because the individual was separated from employment by discharge or voluntary or involuntary resignation due to domestic violence against the individual or any member of the individual's immediate family, unless the individual was the perpetrator of the domestic violence." *D.C. CODE §51-131(a) (2012).*

a) "Immediate family member" should be defined in accordance with existing definitions in relevant DC laws.

The DOL's Program Letter explains that "at a minimum, a state must include spouses, parents and minor children under the age of 18 in its definition of 'immediate family member' for its provision to qualify for certification. States may provide for a more inclusive definition." *Program Letter 14-09, Attach. III, p5.*

Because the DOL permits an expansive definition of the term, DOES should educate its claims examiners to apply the broad definition of "family member" that already exists in District laws. The most relevant example can be drawn from the "Accrued Sick and Safe Leave Act of 2008," which established that individuals may use paid leave to stay home from work to support a family member experiencing domestic violence. This Act defines "family member" as:

- A spouse, including the person identified by an employee as his or her domestic partner, as defined in section 2(3) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3));
    - The parents of a spouse;
    - Children (including foster children and grandchildren);
    - The spouses of children;
    - Parents;
    - Brothers and sisters; and
    - The spouses of brothers and sisters.
- A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or
- A person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship, as defined in section 2(1) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(1)). *Accrued Sick & Safe Leave Act of 2008, DC CODE §32-131.01(4)(A)-(C) (2012).*

In its implementation of the domestic violence provision of UCRAA, DOES should construe "immediate family member" in a manner consistent with the Accrued Sick and Safe Leave Act of 2008.

We appreciate the opportunity to share our concerns and suggestions regarding the new law. Please feel free to contact us if you have any questions or would like further information. Thank you.

Sincerely,

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Questions and Answers:
Unemployment Compensation Reform Amendment Act of 2010
"Compelling Family Reasons"

Trailing Spouse

"Compensation shall not be denied to any otherwise eligible individual who leaves his or her most recent work to accompany his or her spouse or domestic partner to a place from which it is impractical to commute to the place of employment." *D.C. CODE § 51-110(d)(4) (2012).*

Question: What is the definition of "impractical"?

Answer: The U.S. Department of Labor explains that the definition of "impractical" should be informed by local commuting patterns. DOES will determine whether your commute is "impractical" based on the following factors:

- The availability of public transportation,
- Personal means of transportation available to you,
- Common commuting patterns for individuals similarly situated,
- Your physical condition,
- The actual distance in miles between your new residence and the place of employment,
- The financial cost of the commute, and
- Your personal safety during the commute.

Question: If I leave my job to follow my spouse/domestic partner, and then my spouse/domestic partner loses the job which necessitated our move, do I still qualify for unemployment compensation?

Answer: Yes. The law broadly requires that the DOES not deny unemployment compensation to an individual who separates from employment to accompany his or her spouse or domestic partner. There is no exemption for conditions that may occur after the move. Therefore, you are still eligible for unemployment compensation even if your spouse or domestic partner loses his or her job soon after you leave your own job to relocate.

Family Member's Illness or Disability

"Compensation shall not be denied to any otherwise eligible individual who leaves his or her most recent work to care for an ill or disabled family member." *D.C. CODE § 51-110(d)(5) (2012).*

Question: What is the definition of "disabled"?
Answer: "Disability" encompasses all types of disability, including (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities.

Question: Do I have to pursue alternative care options for my family member before I leave my job to care for him or her?

Answer: No. The law broadly requires that DOES not deny unemployment compensation to an individual who separates from employment to care for an ill or disabled family member. There is no requirement that you seek alternatives.

Domestic Violence

"No otherwise eligible individual shall be denied benefits for any week because the individual was separated from employment by discharge or voluntary or involuntary resignation due to domestic violence against the individual or any member of the individual's immediate family, unless the individual was the perpetrator of the domestic violence." *D.C. CODE §51-131(a) (2012).*

Question: Who counts as an "immediate family member"?
Answer: Immediate family members include:

- A spouse, including the person identified by an employee as his or her domestic partner;
  - The parents of a spouse;
  - Children (including foster children and grandchildren);
  - The spouses of children;
  - Parents;
  - Brothers and sisters; and
  - The spouses of brothers and sisters.
- A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; and
- A person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship.