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Chairperson Lynn and Members of the Committee:

Thank you for allowing the Kansas Department of Labor (KDOL) the opportunity to present to the 2020 Special Committee on Economic Recovery last month. We have provided responses to several of the questions raised during that committee meeting and in subsequent legislative inquiries following it. We have tried to be as transparent as possible, but some questions that were posed by the committee must be addressed in closed session due to security concerns. Having said that, we look forward to discussing all of the committee's questions on December 7, 2020.

COMMITTEE HEARING QUESTIONS

The following subjects represent areas of inquiry by committee members during the last hearing that needed additional follow-up from the agency.

Government Job Estimates. Government job estimates for October are showing a decline of 11,800 jobs, or 4.4% compared to last year. Which level of government is contributing to this loss?

Government job estimates include data from the federal, state and local level. Federal job estimates have increased by 800 jobs over the year. Note that this estimate includes U.S. Census workers, which account for 500 of this increase (<https://www.bls.gov/sae/additional-resources/ces-state-and-area-census-2020-workers.htm>). State government has seen a decline of 3,400 jobs over the year, particularly in educational services (state universities). Local government is down 9,200 jobs or 4.9%. The decrease can be seen in both educational services (local school districts) and local government, excluding education. These estimates are based on data referencing the pay period that includes the 12th of October.

October 2020 Not Seasonally Adjusted Nonfarm Jobs					
Place of Work Data					
	October	Month Change		Year Change	
	2020	Absolute	Percent	Absolute	Percent
GOVERNMENT	255,500	5,200	2.1%	-11,800	-4.4%
<u>Federal</u>	26,500	-800	-2.9%	800	3.1%
<u>State</u>	52,300	100	0.2%	-3,400	-6.1%
Educational Services	26,200	100	0.4%	-3,600	-12.1%
Excluding Education	26,100	0	0.0%	200	0.8%
<u>Local</u>	176,700	5,900	3.5%	-9,200	-4.9%
Educational Services	104,500	6,000	6.1%	-6,900	-6.2%
Excluding Education	72,200	-100	-0.1%	-2,300	-3.1%

Source: Kansas Department of Labor, Labor Market Information Services and the Bureau of Labor Statistics; Current Employment Statistics (CES)

Kansas Unemployment Rate vs Individuals Receiving UI Benefits. Kansas Unemployment Rate (slide 15) and Number of Individuals Receiving Unemployment Insurance Benefits (slide 24): The unemployment insurance data seems to indicate a larger increase in unemployment than the unemployment rate estimates. Can you explain the difference for these data sources?

The Kansas unemployment rate is based on data collected through the Current Population Survey (CPS) and estimates produced by the Local Area Unemployment Statistics (LAUS) program. Data for the number of individuals receiving unemployment insurance benefits is based on administrative data from claimants filing unemployment insurance claims with the Kansas Department of Labor (KDOL). The UI data only captures information about individuals who have lost their job and are eligible for unemployment benefits. The LAUS unemployment measure includes additional categories of unemployment that are not eligible for UI benefits such as people who have voluntarily left their job, new entrants to the labor market, and people who have decided to re-enter the labor market. Using this broader definition, LAUS estimates for unemployment are 80,037 individuals in October 2020, up from 46,780 individuals in October 2019.

It is also important to note that the definitions and methods for calculating the LAUS unemployment data have not changed because of the pandemic. The UI system however has seen changes with the introduction of new federal unemployment programs as well as an extension of eligibility for regular UI benefits from a maximum of 16 weeks in 2019 to 26 weeks in 2020.

Reporting Fraud. Members of the committee inquired about how constituents can report fraud if they do not have access to a computer to complete the fraud form. Kansans can call our dedicated Fraud Hotline at 785-291-6059 and our staff will assist them over the phone with stopping a fraudulent claim that has been filed in their name. The public can also call toll-free into one of the KDOL call centers at 800-292-6333.

Regular UI Backlog. The committee members asked about the current backlogs in the unemployment system. When Acting Secretary Wright previously testified before this committee in August we reported that the backlog of claims at KDOL was approximately 25,000 in the regular UI program.

Today that number stands at approximately 5,300. We have made significant progress on this front as new issues requiring adjudication have arisen and we have continued to make progress on backlogged issues.

PUA Backlog. KDOL has completed the buildout and deployment of new functionality in the PUA system that will allow our staff to make determinations and make payments to claimants in the PUA system that have yet to receive payment. This system requires claimants to submit information to the agency to determine their eligibility for benefits. Impacted claimants have been notified that additional information is required from them to complete and process their claims and that their information can be submitted through their PUA claim portal.

We estimate that the PUA backlog stands at approximately 25,000 claimants. Despite this number being larger than the Regular UI backlog, we expect to adjudicate these claims more quickly because we are not limited by the same statutory deadlines that exist in the Regular UI program. In order to speed the notification process up, Secretary Wright has completed a series of media interviews to alert the public to the new functionality of the program. As of December 3, approximately 4,600 claimants had either partially or fully submitted their missing claim information for the weeks in question.

Reimbursing Employers. A question was raised as to whether or not reimbursing employers would be charged for the claims that are found to be fraudulent.

The Benefit Charge Notices should not reflect any charges related to COVID-19 per K.S.A. 44-710(c) for Contributing and rated governmental employers. If a Reimbursing employer believes there is a fraudulent charge, they should protest and reach out to KDOL Benefits and KDOL will ensure the employer is not negatively impacted or charged for a fraudulent claim.

Employer Response Timeline. There were concerns raised related to the timeline employers have to respond to unemployment notices. The deadline for employers to protest their tax rate notice is 15 days. That deadline is established through statute (K.S.A. 44-710b(a)). Employers have 10 days to respond to the employer notice. This timeline is also defined in statute (K.S.A. 44-709b).

Claimants Refusing to Work. The current Employment Security Law states that an individual who refuses an offer of suitable employment without good cause shall be disqualified for unemployment insurance benefits per K.S.A. 44-706(c). However, there are some circumstances in which a claimant can refuse work and still receive unemployment benefits:

- **If the work offered was not suitable**, the claimant will not be disqualified for benefits due to a job refusal.
- **If the work offered was suitable**, KDOL must determine whether the claimant had good cause to refuse suitable work and whether the employer is taking appropriate safety measures to protect employees.
- **If the claimant had good cause for refusing an offer of suitable work**, the claimant will not be disqualified for benefits due to a job refusal.
- **If the claimant did not have good cause for refusing an offer of suitable work**, the claimant will be disqualified for unemployment insurance benefits.

After all relevant factors are considered, a Notice of Determination will be mailed to both parties.

Job Refusal Analysis. KDOL’s analysis of job refusals reported to the agency shows that on average, over the past 12 months, under 100 claimants have refused suitable work. Decisions about whether or not someone is disqualified for unemployment insurance benefits due to failing to return to work or refusing work will be decided on a case-by-case basis. KDOL only knows of refusals if the agency is notified by the employer.

KDOL’s Modernization Feasibility Study. The agency has completed the initial draft of the required Feasibility Study Report. Under established state information technology project approval guidelines, the report is now in the process of being reviewed for approval by the CITO.

KDOL’s Modernization History. Committee members asked about the agency’s previous modernization efforts that occurred between 2002 and 2011. Acting Secretary Wright will be addressing the history of modernization in his presentation to the committee.

UI Tax Withholding. KDOL was asked if we would be able to mandate that claimants withhold state and federal taxes from their unemployment insurance benefits.

No. Federal law, as outlined in IR-2020-185, clearly states that tax withholding is voluntary. It does, however, allow any recipient to choose to have a flat 10 percent rate to be withheld from their benefits to cover part or all of their tax liability. Therefore, KDOL does not have the legal authority to preemptively withhold taxes from claimant’s benefit payments. We are only able to offer withholding as an optional feature for claimants. KDOL has been proactively communicating with claimants about this issue in advance of the end of the year and will continue to do so as we head into the tax season.

ADDITIONAL COMMITTEE INQUIRIES

The following subjects represent areas of inquiry by committee members following the last hearing that we wanted to address prior to the next hearing.

UI Fraud & Security Measures. Several committee members had questions related to unemployment fraud and the security measures in place at the agency. We have addressed the questions and we can answer in a public document below. Any questions we cannot answer in this document will be addressed in our upcoming closed session hearing with the committee.

Q. Regarding the fraud testimony provided via email to committee, please outline specifically how staff handles each fraud claim?

As soon as we are notified of a fraudulent claim, staff puts a hold on that claim in the system to stop any payments. In addition to stopping the claims that the agency is made aware of, our team proactively stops claims that are identified by our staff as potentially fraudulent. The fraud process will be addressed in greater detail during our closed session testimony.

Q. How many claims have been reported on the ReportFraud.ks.gov link? How many of the fraudulent claims have been thwarted?

To date, we have stopped over 160,000 fraudulent claims through the website and our own internal processes. We are averaging approximately 2,300 new fraudulent claims a day within the PUA program.

Q. How many provided some payments? How much? Who made the fraudulent claims? Have they been identified and prosecuted?

KDOL is working with Legislative Post Audit, which is looking into this specific area. The question will also be addressed in our closed session testimony.

Q. How did we get here when we had ample warning this was coming? U.S. Department of Labor provided updates in May and June that provided best practices and support. Who among staff implemented these practices or were the practices and programs implemented?

Every state in the nation is facing the same spike in identity theft and fraudulent claims. In fact, nationally, the US Department of Labor's (USDOL) Office of Inspector General estimates that this UI fraud is costing taxpayers between \$8-26 billion. The USDOL's primary response to mitigating the growing threat from unemployment insurance fraud was to work with NASWA to launch the Integrity Data Hub. However, their own system wasn't launched until August with most states not being able to enroll in the program until September. Kansas enrolled in the system as soon as we were eligible.

We will discuss the specific steps that we have taken to mitigate and stop fraudulent activity in greater detail during our closed session testimony. However, we have tripled the size of our fraud staff and we continue to implement new tools and best practices to combat fraud as recommended by USDOL and NASWA.

Q. What money have you received from the federal government to address the antiquated system and to assist with processing the new federal benefits?

Each state received an allocation of funds from USDOL to combat the growing fraud problem in UI through UIPL 28-20. Kansas' allocation was \$1,785,000. The tools and resources KDOL has acquired to combat fraud since the start of the pandemic will be discussed in our closed session testimony.

Q. What are you doing to address and stop the widespread fraud? When were EACH of the following bold Fraud Prevention and Detection protocols implemented at KDOL?

KDOL is utilizing many fraud prevention and detection protocols, many of these tools were in place prior to the COVID-19 pandemic and we have added additional tools over the course of the past nine months. In the interest of keeping our processes and tools secure, we will be addressing our fraud mitigation and detection tools and processes in greater detail during our closed session testimony.

Q. What *NEW* identity confirmation procedures have been put into place to prevent claims from being initiated? What else can be done? If integrating newer identity theft options like [ID.me](#) due to the age and infrastructure of our system – what else can be done?

There are some challenges specific to ID.me being utilized on our current legacy system. However, we have been examining other options and look forward to updating the committee during our closed session testimony.

Q. What is your communication plan for employers regarding fraud? What is your follow-up after a fraudulent claim has been filed?

In October of this year the agency launched a fraud awareness campaign. This campaign included earned media via TV, radio, and print interviews with agency officials in over 25 publications. The KDOL fraud team has also hosted a webinar to inform the business community of the current fraud issues facing Kansas and the nation. We have also done direct outreach to nearly 100,000 businesses across the state and will continue to work with the business community over the coming months.

Q. To date how many fraudulent claims do you currently have? How many have you actively investigated and resolved? Once investigated or resolved, is this information communicated back to the employee AND employer?

To date KDOL has stopped over 160,000 fraudulent claims and we continue to stop all claims that are reported as fraudulent or are suspected to be fraudulent until they can be further reviewed. These claims are then investigated and relevant information is turned over to law enforcement authorities for further investigation and potential prosecution.

Q. What is your definition of “stopping” a fraudulent claim?

The definition of “stopping” a fraudulent claim refers to the manual hold or keying of a suspension on all fraudulent claims associated to the personal identifying information.

Q. Is it only when the employer tells KDOL it [a claim] is fraudulent?

No. KDOL utilizes a number of proactive tools to stop fraudulent or suspected identity theft claims. The largest driver of stopping fraudulent claims comes from proactive efforts of the KDOL fraud team, followed by individual reports and then employer reports.

We will go into greater detail about these efforts during our closed session testimony. Having said that, we strongly encourage employers to report fraud and follow up with any key information that may be pertinent to our investigation.

Q. Why are you requiring employers to respond individually to each fraudulent report when using SIDES is so much more efficient for the employer...especially those who have multiple fraud claims weekly? Is there a way that these can be reported in a bulk manner as some employers are experiencing 50-100 per week (or more)?

SIDES is a federal system that cannot be tailored to each individual state's needs. There is not a specific way to report fraud within SIDES. However, businesses can indicate if an employee is still employed and can then provide additional comments, which may include reporting suspected fraudulent claims. KDOL continues to pull this information from within SIDES and incorporates it into our mitigation and cessation efforts. However, until changes are made within the SIDES system for more explicit fraud reporting, the quickest way to address fraudulent claims remains reporting them via the www.ReportFraud.ks.gov website. Employers now can enter multiple fraud forms on the site.

Q. What is your short-term and long-term goal for reconciling employer accounts?

KDOL will ensure that all employers' accounts are reconciled and correct if any reported fraudulent claims that appear on their Notice of Benefit Charges (NBC). While we are aware of a limited number of cases in which a fraudulent claim has appeared on a Notice of Benefit Charge, we have not seen evidence of a significant amount of fraudulent claims appearing on employer notices. In fact, KDOL recently sent out NBCs and we did not see a spike in calls from the business community, which is an indication that we have not seen systemic problems with reconciliation of employer accounts.

While not perfect, the NBC process is designed for employer account reconciliation. Again, no employers will be charged for claims that are reported and found to be fraudulent.

Q. How will you reconcile employers' individual accounts for the 2020 and 2021 tax years?

KDOL is in the process of standing up an employer help desk to assist the employer community with any questions they have pertaining to their UI tax accounts, the shared work program or other issues employers may face. This enhanced support will assist employers with any issues related to their individual tax accounts. Otherwise, KDOL will continue to utilize the NBC process for account reconciliation.

Q. Are you communicating with KDOR and IRS on the fraud payments and looking how to reconcile wages for those who have had their identity stolen and may be charged for UI benefits they didn't seek or receive. The tax implications in the new year are going to be disastrous for any claimant caught up in the identity theft when benefits were paid under their SSN.

Yes. In fact, Kansas has been a leader in this area and has been working with both KDOR, the IRS and our national partners at USDOL and NASWA to find a global solution to this issue. The IRS has indicated the official guidance on this matter will be available shortly. KDOL has a working group specifically focused on issues pertaining to 1099-G issuance to ensure all tax notices are issued accurately and on time.

Q. With another possible future shutdown looming what is KDOL's plan for handling future stimulus payments and additional fraud concerns? Do you have the capacity and bandwidth to avoid the issues from earlier in the year?

KDOL has tripled the size of the fraud unit since the start of the pandemic. We have also implemented new tools that significantly increase the bandwidth of our staff to better address a future increase in attempted fraudulent claims. These tools can be discussed during the closed session portion of our testimony.

Q. What is your plan to update the current UI infrastructure? Are you engaging the employer community?

The agency has completed the initial draft of the required Feasibility Study Report. Under established state information technology project approval guidelines, the report is now in the process of being reviewed for approval by the CITO. KDOL will engage the employer community along with other stakeholders at the appropriate time in the project planning process.

Q. What specific actions are being considered to address fraud? Have these suggestions been considered? Why or why not?

a. Send quarterly payment history to contributing employers like they do for reimbursing employers so they can verify the claims

This enhancement was being considered prior to the pandemic. However, KDOL has not yet had the capacity to add this system enhancement.

b. Integrate [ID.me](#) or another identity verification component with the current system/process we have in place

We have recently integrated additional identity verification tools and continue to look at other digital tools that can be implemented. We plan to discuss this in greater detail during our closed session testimony. Please see previous question pertaining to ID.me.

c. Or... Shut down automated filings and move back to a paper system until fraud can be addressed

Unfortunately, due to the volume of claims KDOL is handling and the adverse impact that it would have to non-fraudulent claims, this is not a viable option for us to consider at this time. It would cause significant delays in the processing of payments and would require a significant amount of additional staffing to handle the additional manual workload.

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