

**Response to UCMIC Questions  
Amber Shultz, Secretary, KDOL  
September 19, 2022**

Mr. Chairman & Committee Members,

**1. What is the status of the Pondera project, and what will Pondera do to prevent future fraud?**

Pondera is a product of Thompson Reuters that is approved for use by USDOL and NASWA and used by experts across industries in addressing fraud. KDOL's implementation of the product will provide integrated case management, fraud assessment and scoring, and identity proofing application that will enable better visibility of case status and as well as better accuracy and faster processing time for the integrity unit via the merging of data sources from the third-party vendor and multiple internal disparate data sources across KDOL's existing systems.

This system is currently in the design phase as of Mid-September following data validation and there is a 120-day timeline during which all data transformation and ingestion, training, and fielding will occur. KDOL estimates the system to be operational by mid-December 2022 for the first functionality release.

Release 2 of the system will occur in early CY2023 and include additional automation of form production related to integrity actions, Special Investigations Unit interface upgrades, and incorporation of additional data sources.

All data used in the Pondera analysis will remain on KDOL servers. The process does not involve providing KDOL data to any outside entity for analysis. Only KDOL employees will have access to the data.

**2. What is the status of HB 2001 vaccine mandate complaints?**

An employer is in violation of Sec. 1 of 2021 Special Session H.B. 2001 if:

- The employer implemented a COVID-19 vaccine requirement;
- The employee submitted a written waiver request for a religious or medical exemption to the employer's COVID-19 vaccine requirement (as defined in the law); and
- The employer: (1) failed to offer an exemption, (2) improperly denied an exemption request, (3) took punitive action against the employee for requesting an exemption, or (4) committed any other violations of Sec. 1 of H.B. 2001, such as inquiring into the sincerity of the employee's exemption request based on sincerely held religious beliefs.

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Because the law requires KDOL to make a final order on each complaint, each employee and employer must have the opportunity for due process. Investigating a complaint includes gathering evidence and responses from both parties, providing an opportunity for a live hearing, and making a final determination. In many cases, one or both parties engage legal counsel.

**Metrics as of September 16, 2022:**

- **350** total complaints submitted
- **30** complaints withdrawn
  - Examples: The complaint was filed fraudulently in someone's name; the complainant changed their mind; the complainant realized they don't have a case under the law.
- **14** cases are currently active
- **10** cases have been found adverse to the employer, meaning the employer violated the provisions of HB 2001.
  - Of those, **6** have been referred to the Attorney General
  - **2** are in the 30-day appeal period to request judicial review
  - **2** cases have resulted in a request for judicial review and will be argued in the courts
- **296** cases have been found adverse to the complainant (employee). This could be for a number of reasons:
  - The employer did not implement a vaccine mandate;
  - The employee did not request an exemption in writing;
  - The employer did not take adverse action against the employee;
  - The complainant was not an employee as defined by HB 2001;
  - The complainant was filing on behalf of someone else.

**3. What is the current status of the BKD recommendations?**

BKD provided two reports: a Cybersecurity Risk Assessment Report and a Penetration Testing Report.

**Cybersecurity Risk Assessment Report**

- This report used the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF) and assessed KDOL's alignment with that framework.
- They found KDOL to be substantially aligned with the NIST standards:
  - In every category, **78-100% of items are fully or partially implemented** by the agency.
- BKD made 31 recommendations:
  - 6 high priority
    - Because of the small number of high priority items, any update on these must be provided in closed session.
  - 11 medium priority
    - 5 are completed

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- 4 are in progress and/or partially implemented
- 2 will require additional funding
- 14 low priority
  - 6 are completed
  - 6 are in progress and/or partially implemented
  - 1 will require additional funding
  - 1 is a policy determined by OITS

#### **Penetration Testing Report**

- We have received technical details and are currently evaluating requirements and/or implementing recommendations. As part of the testing, a penetration testing device was physically attached to our network. The external vulnerability test had 8 recommendations, but no findings based on probability and impact. The internal testing showed vulnerabilities on the development server could not be reproduced on the production server. Social engineering tests did not reach the intended target.

#### **4. How was LWA processed in KDOL's system?**

Lost Wages Assistance (LWA) was an emergency management program funded by FEMA, not an unemployment insurance program administered by USDOL. LWA payments were processed in the mainframe as a separate program, similar to PEUC, FPUC, and EB. No LWA payments were made from the state's Unemployment Trust Fund.

#### **5. Does KDOL notify victims of identity theft?**

This question could be referring to a few different situations.

- **An inadvertent disclosure of personal data from KDOL.**  
Yes. These cases are rare and generally involve someone making an error in mailing paper documents to individuals. KDOL responds as required by Kansas law, which includes notification of individuals. The agency also, at the discretion of the Secretary, offers one year of credit monitoring to impacted Kansans.
- **An identity stolen through a prior private/corporate breach that is subsequently used to attempt to file for unemployment benefits in Kansas.**  
Yes. Victims of identity theft who had claims filed using the victim's PII would have received a notice of benefits (Notice of Determination Letter) when the claim was filed. In some cases, they may have also received a 1099-G tax form.

The only times that victims would have received no notice of fraudulent UI benefits activity using their identity is if the fraud was immediately detected and/or the filing attempt was blocked.

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In addition, if the fraudster did not file the fraudulent claim with a valid address, the victim of the identify theft would not receive a subset of the notices mentioned. If those notices are returned to KDOL as undeliverable, then the claimant's account is suspended and payment is stopped.

As has been noted previously, the implementation of the multi-factor authentication and identity verification solution in February 2021 has almost completely eliminated this kind of fraudulent filing.

**6. How many staff does KDOL have? What is the org chart? What is the turnover rate?**

As of September 16, 2022, KDOL has 405 employees.

See the attached org chart last updated August 12, 2022.

The overall turnover rate for KDOL is 31%. This turnover rate is from January 1, 2022-September 16, 2022.

**7. What is the status of overpayments and offsets, and how are fraudulent claims handled in that process?**

Overpayments are generally established when a claimant has received benefits but is later determined to be ineligible. One example is an overpayment that occurs during the adjudications and appeals process. A case may have been determined in the claimant's favor in adjudications but in the employer's favor on appeal. In that case, the claimant received payment while the appeal is pending, and those funds are now considered an overpayment and must be paid back to the state.

Importantly, identity theft fraud cases are not considered overpayments because the agency cannot establish an overpayment on the stolen identity. Therefore, any account with an identity theft flag should not have an overpayment established on it or referred for further action, such as setoff of tax rebates. We have had some cases raised where an overpayment was established in error on a case with an identity theft flag and are identifying any such cases for resolution. If any individual believes that they have been subject to setoff in error, they should contact the agency through our Government Affairs team.

Amber Shultz  
Secretary of Labor  
Kansas Department of Labor

Kansas Department of Labor  
August 12, 2022

