



“The Voice of Business on Unemployment & Workers’ Compensation”

February 7, 2017

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth HOB
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
1139E Longworth HOB
Washington, DC 20515

Dear Chairman Brady and Ranking Member Neal:

I am writing on behalf of UWC – Strategic Services on Unemployment and Workers’ Compensation (UWC) in support of Resolution H.J. Res 42 that would disallow the final regulations posted by the United States Department of Labor on August 5, 2016.

UWC is a national association representing business, specifically in the areas of Unemployment Compensation and Workers’ Compensation. UWC members include many Fortune 500 companies as well as business associations and small businesses impacted by unemployment law and policy.

The regulations as posted in final form are inconsistent with the intent of Congress in enacting the Middle Class Tax Relief and Job Creation Act of 2012 and unduly restrict state agencies choosing to test applicants for the use of controlled substances.

Drug testing is a critical requirement of employment in many industries and generally in determining whether a prospective employee will be able to perform the responsibilities of work for which the individual has applied. The results of drug tests are also indications of whether an individual is able to work and available to work so as to be eligible to be paid unemployment compensation.

It is a federal statutory requirement of administrative grants to states that as a condition of being paid unemployment compensation for a week or weeks an individual must be able to work, available to work, and actively seeking work. The additional authority provided in Section 2105 of the Middle Class Tax Relief and Job Creation Act of 2012 permitted states to test for controlled substances consistent with the able to work and available to work requirements that were also included in the act.

The regulations adopted by the U.S. Department of Labor were so narrowly drawn as to severely limit states from electing to provide for drug testing of applicants. By limiting the time within which a test may be conducted to the period between the date of application and the date at which the applicant began to claim a week of unemployment compensation, such a test would be less likely to connect a positive drug test with a subsequent week of unemployment compensation that could be claimed up to 52 weeks after the date of initial application.

The effect of such an interpretation is to render a test useless for weeks claimed many weeks after the individual became unemployed and prohibit testing for the weeks of unemployment compensation as they are claimed.

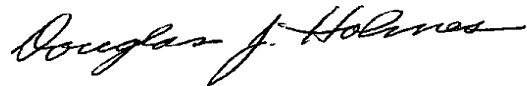
The regulations adopted in final form not only severely limited the circumstances under which a state may conduct a drug test, but also unduly limited the types of tests that a state would be permitted to conduct, the claimants that could be tested, and the occupations with respect to which tests could be conducted.

A number of states have indicated an interest in enacting legislation consistent with federal law to permit drug testing, but the severe limitations imposed by the regulations have frustrated administration of drug testing as part of the UI administrative process.

Employers pay the federal and state unemployment taxes required to fund administration and benefits paid through the Unemployment Insurance system. Drug testing of UI claimants should be permitted as part of proper administration by states to assure that only eligible claimants are paid and that unemployed workers are able and available to work to meet workforce needs of employers.

Thank you for the opportunity to express our support for H.J.Res 42.

Sincerely,

A handwritten signature in black ink that reads "Douglas J. Holmes". The signature is written in a cursive style with a prominent initial "D".

Douglas J. Holmes

President

UWC – Strategic Services on Unemployment & Workers' Compensation

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