

Reforms to Help Make South Dakota's Unemployment System into America's Best

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Introduction & Key Takeaways

South Dakota has traditionally been a strong state for unemployment policy and enforcement. However, no state is perfect, and all states can learn best practices from others. There are a few actions the legislature can take, in partnership with the Department of Labor and Regulation (DLR) and employers, to begin making South Dakota's unemployment system the best-administered in America.

1. Index UI benefits to South Dakota's unemployment rate.
2. Enhance work search verification.
3. Ensure activities that satisfy work search are properly tailored.
4. Foster even more partnership between DLR and employers, plus forced referrals.
5. Increase the use of the job offer refusal tool.
6. Perform weekly database cross-checks.
7. Have DLR report changes in employment status to welfare agencies.

Reform #1: Index unemployment benefits to South Dakota's unemployment rate.

Recommendation: Implement an unemployment benefit indexing system like Florida, North Carolina, Georgia, and Tennessee.

Throughout the last 18 months, the pandemic placed additional stress on many states' unemployment systems. While South Dakota's trust fund weathered the pandemic better than most states', its continued solvency is critical to both the employers and workers who depend on it. South Dakota's reemployment system must be able to weather future downturns and help get people back to work. However, South Dakota is also in a strong position to both keep its trust fund protected, but also become even more economically competitive.

South Dakota should index unemployment benefit duration to the state's unemployment rate. This would reduce unemployment spending, increase trust fund solvency, and reduce employer taxes. It would also help speed up the state's post-pandemic recovery. Following the Great Recession, states that indexed benefit durations got claimants back into the workforce twice as quickly as non-reform states.¹

The reform works by setting the base of unemployment benefits to 12 weeks if the state's unemployment rate is 5.5 percent or lower, with a week of benefits added for every 0.5 percent increase in unemployment (up to a maximum of 20 weeks). The result is that recipients cycle off the system twice as quickly, increasing trust fund solvency.

Since unemployment benefits are funded directly through taxes tied to the trust fund's solvency, South Dakota businesses will ultimately be able to pay less in unemployment taxes. Indexing states all enjoy extremely competitive unemployment tax burdens, with Florida's being the most competitive in America, nearly half that of South Dakota.² Leveraging the tax competitiveness that flows from indexing means employers can invest more in their businesses, create more jobs, and keep building South Dakota's economy.

Reform #2: Make sure DLR is actively verifying all work search proof in reemployment benefit claims and consider increasing the rate of eligibility assessments and audits.

Reemployment assistance claimants are required to be actively seeking work and accept suitable work.³ In typical years outside of the COVID-19 pandemic, failure to perform proper work searches is a common driver of unemployment fraud.⁴ The current standard enforced by DLR is that claimants perform two employer contacts each week and provide that information to DLR.^{5 6 7} DLR tells claimants that they "will verify [claimants'] reported work search with the employer," and that claimants "may be selected at any time for an audit or eligibility review in which [case] [claimants] will be asked to provide [their] job contact information."⁸

Assuming DLR does actively verify every claimant's work search logs every week, then the agency is already doing something many others do not. Even so, there are opportunities to strengthen the work search verification process even further. One simple option is conducting more audits. DLR could also systematize its current eligibility assessment process. This resource is currently used on a periodic basis.⁹ DLR could continue performing assessments on a case-by-case basis, but also for every claimant who reaches eight weeks on the system. This would help screen both individuals who engage in unproductive work search, but also help identify individuals who truly need assistance finding new work.

This will ensure compliance with federal law, reduce waste and fraud, and reinforce the main purpose of South Dakota's system: reemployment.

Reform #3: Ensure activities that satisfy work search are properly tailored.

Recommendation: Work with DLR to produce a report reviewing every potential method of satisfying the work search requirement. Have the report include participation rates, effects on claim duration, and effectiveness in securing work. Eliminate less productive alternatives to actual work search.

In addition to traditional work search activity satisfying the job search requirement for reemployment benefits, South Dakota has a short but efficient list: submitting a job application online or in-person, submitting a resume online or in-person, attending a job interview, or participating in a department-approved reemployment services program.¹⁰ Claimants qualify for, or are required to participate in, reemployment service depending on their likelihood to exhaust benefits, for example.^{11 12} There are also guidelines making sure reemployment services are at least somewhat tailored to a claimant's specific employability circumstances.^{13 14}

However, it is crucial to take an evidence-based approach to work search requirements for the sake of both the system and claimants' job prospects. DLR takes a proactive approach to reemployment, and the legislature could serve as a good partner to perfect the reemployment process.

Reform #4: Create an even stronger partnership between the Department of Labor and Regulation and employers, including the forced referrals process.

Since the onset of the pandemic, FGA has worked closely with South Carolina's Department of Employment and Workforce (DEW), learning and sharing best practices for good unemployment policy. Like DEW, the South Dakota Department of Labor and Regulation (DLR) prioritizes facilitating claimants' reemployment. In fact, DLR is a leading agency in many ways. Unlike in many states, policy changes for DLR would be in pursuit of having the strongest, best-protected system in America. To that end, DLR should create something similar to what DEW established this past spring: a "recall task force," which focused on facilitating South Carolina's post-COVID-19 economic reopening.^{15 16}

One result of that emphasis on reemployment and partnership with employers is the forced referral process, which was employed at the request of State Representative William Bailey, who described the process as the following:

"[DEW] will pick out five jobs that are very similar to the one [the worker] had before...They will send any of those five referrals and... [if the worker refuses] to take advantage...then they have the right to rescind your benefits."¹⁷

Part of this process includes continuing to convince employers that DLR and southdakotaworks.org are as valuable as Indeed, ZipRecruiter, staffing agencies, etc. Additionally, if a claimant's work search has been unproductive or unfruitful, then they might need a helping hand finding suitable, related work. DLR already has an excellent working relationship with state employers, including a strong reemployment process.¹⁸ This is just a natural extension of that base.

Reform #5: Ensure DLR's job offer refusal form is used.

Recommendation: (1) Have DLR apply job offer refusal reporting not only to confirmed unemployment claimants, but to situations involving an employer and any individual the employer knows or suspects to be unemployed. (2) Require employers to file these reports.

During the pandemic, South Dakota was among the first and best states to answer the question of job offer refusals. It was among the group of states to provide a specific, simple, easy-to-use form for employers to report when reemployment claimants refuse suitable work.¹⁹

This is a highly valuable tool for DLR staff to determine eligibility, protect the trust fund, and provide employers a method to correct bad faith applications from certain claimants. It remains an open question how many South Dakota employers even know this is a tool they can use to help one another suffer fewer insincere job applications and interviews.

Reform #6: Codify a requirement to have DLR weekly cross-checks of claims.

Recommendation: Codify language requiring DLR perform to perform weekly cross-checks of unemployment claims against pre-existing, free databases and resources, per federal recommendation under both Presidents Trump and Biden.

Waste and fraud can be reduced by incorporating automatic and regular data cross-checks with available government data on new-hire records and incarceration records. States with data cross-checks have been able to save hundreds of millions for the truly needy.²⁰ All of these cross-checks are recommended by the United States Department of Labor.²¹ It is also almost certain that DLR itself would support codifying various measures, given the current administration's commitment to program integrity:

Integrity Data Hub

DLR should perform weekly (if they are not currently weekly) cross-checks of reemployment claims against the Integrity Data Hub (IDH), which contains data sets that will help DLR better detect fraud.

National Directory of New Hires

DLR should check new hire records against unemployment insurance enrollees at least weekly. The National Directory of New Hires exists to provide state agencies with information regarding employment status, including across state lines.

Incarceration Records

In 2016, Ohio found it had been providing unemployment benefits for 1,500 incarcerated individuals.²² This year, Virginia found an estimated \$40 million in potential fraudulent payments going to prisoners.²³ Pennsylvania, similarly, found \$200 million in payments to prisoners.²⁴ California reached the billion-dollar mark.²⁵

Cross-check legislation passed in Louisiana with unanimous support in the GOP-led legislature and was signed into law by a Democrat governor—their workforce agency supported the bill and there was a zero-cost fiscal note.²⁶ Since November, cross-check legislation has passed in seven states, unanimously in three of them, often with zero-dollar fiscal notes.^{27 28}

Reform #7: Have DLR report changes in employment status to welfare agencies.

As part of a comprehensive unemployment reform package passed this year, Kansas began requiring its state department of labor to make this report to the state human services agency.²⁹ Kansas's language reads:

Upon the secretary of labor's receipt of notification that the claimant has become employed, the secretary shall notify the secretary of the department for children and families in order that the secretary for children and families may determine the claimant's eligibility for state or federal benefits provided or facilitated by the department for children and families. The department of labor and the department for children and families shall enter into a memorandum of understanding that shall provide for the transfer of information.

The purpose is to proactively determine individuals' eligibility for other welfare programs once they become gainfully employed. This will make sure that instead of several more months, or even a year, going by before the welfare agency knows about the change, they get the information in real time.

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- ⁴ Author’s calculations based on U.S. Department of Labor annual state improper payment reports.
- ⁵ S.D. Admin. R. 47:06:04:21 (Lexis Advance through the South Dakota Register, Vol. 48 Pg. 7, dated July 19, 2021)
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- ⁷ South Dakota Department of Labor and Regulation, Employer contacts tracking sheet: https://dlr.sd.gov/workforce_services/wioa/wioa_manual/workforce_form66_jobsearch.pdf.
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