

Employee Summary

OFFICE OF PUBLIC COUNCIL/OMBUDSMAN'S REVIEW DEPARTMENT OF LABOR UNEMPLOYMENT PROGRAM

This document represents a summary of issues reported to the State Ombudsman by current and former staff of the Nebraska Department of Labor's Unemployment Benefits Division. This document is an edited version of a document that was shared with Department of Labor Administration.

BACKGROUND

In Mid-August of 2020 the Office of Public Counsel/Ombudsman was contacted by employees of the Nebraska Department of Labor's Unemployment Benefits Division concerning their work-related issues. The Ombudsman's Office communicated with approximately 25 current and former employees of the division. In the earliest stages of the interviews Legal Counsel Katie Thurber communicated with both Ombudsman Julie Rogers and Deputy Ombudsman Carl Eskridge, who was assigned to address this complaint. Ms. Thurber voiced the Department's concern about the activities of the Ombudsman's Office in talking directly with NDOL staff. Mr. Eskridge indicated to Ms. Thurber that, in addition to citizen complainants, the Ombudsman also has jurisdiction over complaints by state employees, and that, based upon his 25 years of service, it was not unusual for the Ombudsman to receive complaints from a group of employees who work in a particular facility or program. However, to his knowledge there have not been any group employee cases brought to the Ombudsman by Department of Labor staff in the past, suggesting that there is a unique urgency to give immediate attention to these complaints. Ms. Thurber agreed that staff would be available to the Ombudsman, while also expressing administration's concerns about making contacts during work hours. The Ombudsman agreed that staff needed to focus on their important work in providing unemployment benefits, while also being afforded the opportunity to voice their concerns. Mr. Eskridge indicated that a number of workers had requested to be contacted during non-work hours, which the Ombudsman has done. The Ombudsman was flexible in arranging to talk with staff at mutually convenient times. We hasten to add that the State Ombudsman has enjoyed a long history of working with Nebraska Department of Labor administrators in addressing complaints from individuals related to unemployment and other areas within the Department's purview, and that we looked forward to working with the Department in addressing the important staff concerns raised herein, as well as resolving all future complaints from claimants.

INTRODUCTION

One cannot underestimate the impact of the COVID-19 pandemic on the Nebraska Labor Department's Unemployment Program. The sudden arrival of this historic worldwide pandemic that during the first quarter of 2020 spread like a tsunami across the United States, shutting down businesses, schools, organizations, and nearly every non-essential activity; instantaneously resulting in thousands of workers without work, while sending those workers who were fortunate enough to have retained their jobs to

work remotely. In a matter of days our world changed. By Mid-March of 2020 there were dramatic increases in people filing for unemployment benefits, many for the first time, whose jobs were either temporarily or permanently taken. Early in the pandemic Commissioner Albin recognized the scope of the crisis when he observed that “in the last 2 weeks of March there were 30,193 new unemployment claims filed; whereas, for the entire year of 2019 there were 41,727 claims filed.” In addition to the large numbers of new claims, the timing of the pandemic’s arrival in Nebraska, taking place at the end of the annual seasonal unemployment claims, in the early stages of the Department’s implementation of GUS, its new processing system, coinciding with changes in leadership and new management styles, and paralleling human capacity issues with increasing numbers of staff turnover. In many respects 2020 has been the “perfect storm” that hit Nebraska’s and every states’ unemployment systems fiercely and is poised to continue well into 2021.

This document reflects our reporting to NDOL administration the issues brought to the Ombudsman for the Department’s attention. As of December 1, 2020, the Ombudsman had received 576 complaints on the Nebraska Department of Labor in 2020, which is nearly 20% of our total of 3000 complaints received by December 1, 2020. Ordinarily the Ombudsman receives approximately 20 complaints annually on the Department of Labor, with the vast majority being unemployment issues. The 2020 complaints received by the Ombudsman continue to increase and are **nearly 30 times** the average number of annual DNOL cases received by the Ombudsman, with one month remaining in the year. As a result of these unusual circumstances, the State’s Unemployment Program has received a great deal more time and attention from the Ombudsman in 2020 than it has in other years. Therefore, when current and former NDOL staff came to the Ombudsman in August of 2020, the Ombudsman was in a unique position to hear and understand many of the current issues in the state’s unemployment system.

In presenting the issues that have been raised with the Ombudsman to administration, this office did not presume to determine the merits of each concern, but reported the concerns voiced by current and former employees, providing a selective narrative of the concerns from anonymous current and former employees, as we understood them to be. Our intent, as we also believe was the intent of the employees, has been to open communication and to find solutions to these concerns. The Ombudsman’s Office communicated the seriousness of the employees’ concerns directly with administration in a 90-minute meeting held on Tuesday, November 10, 2020. While administration shared some initial responses to the issues, they agreed to review each of the concerns, and to address the issues as needed.

A. STAFFING ISSUES

The focus of this investigation was on adjudicators, though staff in other areas also contacted the State Ombudsman. While many of the issues discussed below are unique to adjudicators, **reports of low morale** have been a consistent complaint in other areas as well. We listed Turnover, Overtime, Contracted Workers, and Supervision as factors contributing to employees’ reports of low morale.

1. ADJUDICATOR TURNOVER

Staff indicated that historically adjudicators tended to serve in their positions long term; however, there has been a notable change. For approximately 5 years staff reported a significant increase in turnover

among UI Benefits adjudicators. According to data provided by NDOL, in 4 or the last 6 years there has been an annual turnover rate for UI Benefits adjudicators of 30% or more. A turnover rate of 33%, over a 3-year period, statistically would result in the replacement of all adjudicators after 3 years.

YEAR	TOTAL ADJUDICATORS	TOTAL TERMINATIONS	% TURNOVER
2015	26	7	33%
2016	27	4	15%
2017	32	7	22%
2018	36	14	39%
2019	33	11	33%
2020	40	12	30% (Data as of 10/22/20)

Staff indicated that mandatory overtime and deteriorating work conditions are crucial factors contributing to the high turnover rates of adjudicators. Administration acknowledged that the high turnover rate in recent years, while also expressing concern that turnover for adjudicators has been an on-going issue within the Department needing attention. Administration also indicated that it is taking positive steps that it believes will help to reduce turnover.

2. OVERTIME

The Ombudsman has become keenly aware of the adjudicators' challenging workload over the 15 months due to multiple challenges. Even before the new Unemployment Benefits system, GUS, went on-line in October of 2019, staff were required to work overtime in order to make the new system fully operational. We also understand that there was a group working with GUS for about one year prior to that time, trouble-shooting potential issues. Additionally, annually adjudicators process a spike of seasonal claims for those whose jobs cease during the winter months. As a result, during these seasonal spikes, adjudicators have been compelled to work a schedule of 51 hours per week; including, 9 hours days M-F, and 6 hours on Saturdays. This schedule of mandatory overtime has been in place since the fall of 2019 and for some staff, even longer. We also note that the mandatory overtime schedule applies to salaried staff who are also working 51 hour each week, but without any additional compensation.

The Ombudsman reported receiving numerous reports of adjudicators suffering from high levels of stress, PTSD, and job-related medical and mental health issues, not to mention facing challenges at home as a result of their persistent overtime hours during a pandemic. One former adjudicator indicated that they resigned, taking a \$1,000/month pay cut, to go to a new job that required fewer hours, less stress, and would allow them to leave work and be home for their family. The consistent message that we heard and shared with administration was that the continued use of mandatory overtime for the long term was not sustainable. The administration indicated that it was taking steps to address the need for overtime.

3. CONTRACTED WORKERS

During the sudden rush of claims resulting from the pandemic, the Department reassigned NDOL staff from other areas and also contracted with private entities to provide staff to answer phone calls and to offer other assistance to claimants. While the idea of bringing in reinforcements in the early stages of the pandemic appeared to be worthwhile in theory; in reality, importing inexperienced and untrained staff exacerbated the problems, particularly in the beginning months. As the contracted workers were unfamiliar with the world of UI Benefits, the contracted workers required immediate and on-going training in order to provide any significant benefit to the overwhelmed system. Initially, most of the contracted workers were assigned to simply answer the phones, but without any knowledge of the program or access to information, they were unable to provide informed answers to callers' questions, and they typically forwarded the issues to already overloaded adjudicators. Adjudicators were also required to train the new workers, taking precious time away from their rapidly growing backlog of cases. As contracted workers began doing more of the work of the adjudicators, adjudicators discovered that errors were being made, either by failing to provide benefits where benefits should have been paid, or in paying benefits to claimants who were not qualified, or in paying benefits in excess of the amounts claimants should have received. Some errors resulted in subsequent overpayment issues, issues that needed to be resolved by adjudicators. In many cases the adjudicators then had to correct the errors, or, if that did not occur, claimants had to get in-line a one of the tremendous number of appeals awaiting review. Administrators indicated that it has heard the concerns of staff with regard to the use and training of contracted workers.

4. SUPERVISION

According to staff, a fourth factor contributing to increased turnover has been the change in the function of supervisors to exclusively engaging in data analysis. Previously supervisors worked cases beside their staff, focusing on building efficient and cohesive teams, while providing both group and individual support of the adjudicators as persons. Staff reported that if you had a problem with an issue, you could go to your supervisor and receive help and support to work through the issues. Adjudicators indicated that their supervisors no longer work cases but focus on production metrics. Supervisors are described as the Department's "enforcers," pushing adjudicators to complete unrealistic quotas of resolving 75 issues per day. Where adjudicators fail to complete their established quotas, they report receiving emails from their supervisors imploring them to hit the assigned target levels. Adjudicators also indicated that the sole measure of good work has shifted to hitting arbitrarily created numerical quotas and away from providing good consumer service by taking the time to fully resolve issues.

As the Office of Public Counsel/Ombudsman is an agency that receives complaints from unemployed persons about their unemployment claims, we are keenly aware of the Department's immediate need to address claimants' issues in a timely manner and we are deeply appreciative of the assistance of staff and administration in resolving the citizen complaints that we have brought to you. We also understand the need to balance speed with customer service. However, as we have addressed complaints, we observe that there seems to be a certain amount of duplication by claimants in terms of their complaints; that is, there seem to be problematic issues that continue to repeat themselves. As we understand it, each claim may have multiple issues that need attention; however, issues are addressed separately. Both in terms of efficiency and for the sake of customer service, we suggested that the program consider how it approaches its work, addressing cases more systemically, and not only handling

issues individually. Administration acknowledged that it is taking a more systemic approach to claims' management. For that reason supervisors are no longer working cases, but are focused on metrics-based oversight of the work of their teams. Administration also reported that they have added more supervisors to focus on improving quality.

B. PROGRAM LEADERSHIP

Current and former employees acknowledged the importance of program leadership and spoke of their positive personal experiences working under Ron Joyce, Evan Littrell, and Nellie Spangler. Staff expressed a great deal of loyalty to these leaders, each of whom was identified and promoted from within the program, and were viewed positively as effective leaders who were knowledgeable about the program, available to assist staff in addressing issues, and motivational in encouraging staff to perform at a high level.

Staff indicated that, by contrast, under the current program administrators the program's culture has rapidly and seriously deteriorated. They report that, rather than working in a supportive and nurturing environment, the program has become a hostile workplace. Supervisors have been instructed to focus on production and to drive their staff to meet their daily quotas. (See above.) Rather than being driven to provide quality service, staff indicated that they are instructed to take short cuts, fast-tracking claims before quickly moving on to the next issue, while there were still unresolved issues needing to be addressed with the prior case. Staff also expressed concerns about the "Vacation Lottery" where newer employees had the opportunity to win earlier vacation choices. Staff pointed out that one of the few benefits of seniority is the right to choose their vacation times before less seasoned staff select theirs. While it may seem like a small thing, but when staff have worked in the department for years, they perceived this sudden change as being unethical, unfair, and demoralizing.

Some staff described administrators as being "uninformed, rude, unethical, mean-spirited, and fear-mongering." Multiple staff reported having been yelled at by administration for talking to the press about problems within the unemployment system in the spring of 2020. The Ombudsman was also contacted by the press and we recall that Journal-Star reporters were not only doing a story about the swamped unemployment system, but they had the added interest of being furloughed employees who had filed and were waiting for benefits themselves. In other words, these reporters had "skin in the game." Former staff stated that it was their treatment by an administrator that was the reason why they left the Department. Additionally, staff raised ethical concerns indicating that administrators may not be following Federal Performance Measures, potentially putting the program at-risk of federal sanctions.

While the division's leadership is beyond the scope of the Office of Public Counsel, a legislative agency, we raised these concerns because this issue was strongly voiced concern. Additionally, the complicated and ever-changing rules of unemployment demands that effective leadership must be informed in order to respond to the important and challenging work of providing benefits to people who are out-of-work, not just in these challenging times, because whenever anyone has lost their job, it is a crisis.

The administration has implemented changes, seeking to improve the functions of the program. While changes are seldom easy, thanks to the hard work of staff, it has come close to the program's goal of processing 87% of all claims within 4 weeks. For the challenging year of 2020 they 76% of all claims have been processed within 4 weeks. In a related concern, leadership's decision to "fast-track" claims, which

resulted in increasing numbers of errors, under the challenging circumstances of 2020, in our opinion, that was not an unreasonable strategy.

C. GUS

Current and former employees have repeatedly described their frustration with the new unemployment operating system provided by Geographic Solution, Inc., not so affectionately known as GUS. Key complaints have been that the system is frequently “down,” including on Saturdays when staff are mandatorily required to work. Even when the system is operational, it was described as being “mistake prone,” necessitating that staff to go back and fix GUS’s errors. Staff report that GUS has lost information provided by the claimant or their employer. Additionally, GUS provides claimants and businesses with inaccurate and sometimes conflicting information. One of GUS’s most troubling glitches was sending out letters to claimants informing them that they were ineligible for weekly benefits because they had been “incarcerated” during that week. Needless to say, those who received such letters were not amused.

While GUS has been called, “a square peg in a round hole,” and “something that will never work,” we also heard from staff that GUS was unexpectedly nimble in handling various federal programs related to the pandemic. That timely performance was a bright spot, though overall staff were highly frustrated with GUS for making their difficult job of addressing large numbers of claims and providing the assistance claimants reasonably expected much more difficult rather than it should have been

Adjudicators who worked under GUS and the prior system consistently indicated that they would go back to BPS, the prior user-friendly system that was created in-house, without hesitation. At this point, returning to the old system is not possible or even prudent; however, it is critical to address the issues that GUS continues to present. Though the Department spent two years preparing GUS to be operational, staff report that there continue to be significant issues related to GUS. Regularly soliciting input from adjudicators and claimants to improve the system’s functioning has occurred and continues to be time well spent. Claimants, staff, and taxpayers alike should demand that consumer service be provided by GSI, who must be held accountable for any and all performance issues of their system. The Department was advised to continue to closely monitor the performance of GUS in Nebraska, as well as in other states that are using the system, seeking to find ways to improve its operations.

D. PANDEMIC-SPECIFIC ISSUES

In addition to dramatically increasing workloads, COVID-19 has also profoundly impacted staff in multiple ways. They reported serious mental health issues, much like PTSD reactions to traumatic events. Staff have also expressed concerns about the pandemic safety measures, reporting that within the workplace social distancing is not practiced, face masks are not required, and the timing of the construction project on the 550 Building, whereby staff have been relocated into the 500 Building, came at the worst of times. Some staff have indicated that they prefer to work remotely for their own health and for that of their families, particular as COVID-19 numbers continue to spike at record levels. The Dept. of Administrative Services recently issued guidelines indicating that to help with social distancing, office occupancy can be reduced to 50%. The Department of Labor indicated that 50% of its adjudicators were working remotely. The guidelines also suggest that all teammates would be in the office at least 2 days per week. One large state agency decided to operate their call centers at 50% with half of the staff working in the office for 2 weeks and then home for 2 weeks, with the other half of their

employees do the opposite. Indeed, the current spike in COVID-19 cases in the Lincoln and across the state has resulted in the Governor's issuance of new protections. As the Department works with staff in these most difficult days of the pandemic, the Ombudsman encouraged the administration to be more flexible, in reviewing requests from employees who seek to work remotely during spikes in COVID-19, as well as at other "normal" times when working remotely is a personal necessity. One of the few positives of working in COVID times is that working remotely is a reasonable option in many instances and may assist with staff retention.

When meeting with administration on November 10, 2020, upon our arrival at the 500 Building, Ombudsman Julie Rogers and Deputy Ombudsman Carl Eskridge were met by Legal Counsel Katie Thurber who escorted us through the building. Ms. Thurber's temporary office was moved to the vending room on the 1st floor. We observed that her staff were working in separated cubicles with low walls and that very few staff were wearing masks, even those we observed walking around the office. In questioning agency leadership about masks, administration stated that they "strongly encourage" mask wearing. The Ombudsman has consistently urged all state agencies to follow the advice of public health officials and to require staff and all others entering their facilities to require masks.

We also raised the issue of staff well-being from the hours, the stress of the job, and working during COVID. We want to emphasize that in our judgment administration genuinely acknowledged the toll that the events of the last 15 months have taken on staff. They are seeking to be understanding and supportive of the needs of staff, making available resources for staff who need assistance, encouraging the importance of self-care.

CONCLUSION

The Ombudsman appreciates the Department's willingness to engage the Ombudsman in conversation and attention to the issues raised by current and former employees who are not only concerned about their working conditions, but who genuinely seek to provide a crucial function of state government to people in economic distress. Indeed, it is not only claimants who have expressed concerns, but also their employers, whose taxes fund the program intended to assist their employees.

CLOSING MESSAGE FOR EMPLOYEES

The Ombudsman's Office is grateful to all current and former staff who have spoken to us about your concerns. We trust that this report accurately reflects the issues that were shared with us. We trust that the administration is giving attention to these issues in good faith. Additionally, the Ombudsman was particularly pleased to perceive the genuine attention of administration to its duty to serve the public at a high level while caring for those who are providing this important service during uniquely challenging times.

Carl Eskridge, Deputy State Ombudsman
December 3, 2020