Summary: Operations and Performance of the Virginia Employment Commission

WHAT WE FOUND

COVID-19 pandemic had a substantial negative impact on VEC operations

The rise in Virginia's unemployment caused by COVID-19 led to a rapid increase in the demand for unemployment insurance (UI) benefits administered by the Virginia Employment Commission (VEC). The number of UI claims increased at a much more rapid rate during COVID-19 than in previous recessions. New UI claims increased by a factor of 34 within the first two months of the pandemic, totaling 236,000 in April 2020. Continued weekly claims increased by a factor of 13 within this same time period, totaling 1.3 million.

VEC staff worked over 191,000 hours of overtime between March and December 2020 to handle the increased workload; this was a 1,600 percent increase compared with 2019 overtime and equivalent to 92 full-time staff positions.

VEC temporarily closed multiple offices during COVID-19 to help protect staff's health and safety and stopped providing in-person assistance at most local offices. VEC closed some offices because of outbreaks of COVID-19 infections among VEC staff.

WHY WE DID THIS STUDY

The Joint Legislative Audit and Review Commission (JLARC) approved a study resolution that directed JLARC staff to review the operations of the Virginia Employment Commission (VEC). Staff were directed to evaluate COVID-19's impact on VEC and the effectiveness of VEC's response; VEC's administration of the Unemployment Insurance (UI) program, including overpayments, appeals, and customer service; VEC's UI IT system; the sufficiency of VEC staffing, funding, and management; and UI benefits compared to other states.

ABOUT VEC

The majority of VEC's funding and staff support its administration of the UI program, which provides temporary financial assistance to eligible individuals who have lost their jobs. VEC employs more than 1,000 staff and received about $4.4 billion in funding in FY20. VEC is almost entirely dependent on federal funding for its operations and is subject to oversight by the U.S. Department of Labor as well as Virginia's secretary of labor in the executive branch of state government.

Insufficient funding, staff, and information technology contributed to VEC's inability to operate effectively during the pandemic

Significant weaknesses in VEC's operations—particularly its deficient staffing levels, antiquated UI IT system, performance monitoring, and oversight—were revealed during the COVID-19 pandemic. Staffing shortages prevented VEC from administering UI claims in an accurate and timely manner. The delayed replacement of its outdated IT system meant VEC was reliant on inefficient, paper-based processes that severely hampered timely and satisfactory responses to claimants. More comprehensive performance monitoring and prompt executive actions by VEC may have helped VEC respond more effectively to these and other challenges.

Funding

VEC leadership attributes the agency's underperformance to a lack of sufficient funding to administer the UI program. The federal government has provided insufficient funding to states for UI program operations. Nevertheless, the total amount of funding Virginia received in 2019 was above the 50-state median, in total and per claim.

VEC receives less federal funding for UI operations than what DOL estimates it needs, and this is partly due to VEC's operational inefficiencies. The federal formula for allocating this funding penalizes states that operate their UI programs less efficiently than other states. In each of the five years preceding COVID-19, VEC reported lower operational efficiency than other states for most core UI functions. VEC also has a relatively high proportion of administrative staff compared with other states, which DOL's funding formula also penalizes. While DOL does not publish the specific amount it penalizes VEC for its inefficiencies, a subject matter expert interviewed for this study estimated it could be a relatively small portion of VEC's total funding. Nevertheless, because VEC relies almost exclusively on federal funding for operating the state's UI program, the agency should do all it can to maximize the amount of federal funding it is eligible for and efficiently spend the funding it receives.

For federal fiscal year 2022, Virginia will receive at least $41.2 million in UI operational funding. This amount is 20 percent higher than the amount DOL provided VEC at the beginning of federal fiscal year 2021 and is driven by VEC's higher workload during the pandemic.

Staffing

Inadequate staffing has contributed to VEC's mounting backlogs of UI claims for intake and adjudication, the poor performance of VEC's UI customer call center, undetected fraud, and the long-delayed replacement of VEC's antiquated UI claims processing IT system. The agency has experienced substantial fluctuations in staffing levels, prolonged vacancies, high turnover, and insufficient numbers of supervisory staff. VEC's staffing challenges were particularly prominent during the COVID-19 pandemic but are not new. The agency had not maintained an adequate staffing level in key UI functions for several years before the pandemic. VEC leadership attribute low staffing levels to inadequate federal funding for UI operations.

Information Technology

VEC has been in the process of modernizing its UI IT system for 12 years and is eight years behind schedule. VEC plans to launch the final phase of the project in November 2021 and to complete the project by June 2022. Like Virginia, many other states were in the process of modernizing their UI IT systems during the pandemic, but VEC's UI modernization project has taken significantly longer than several other states.

Delays in the UI modernization project have caused VEC customers and staff to rely on outdated, manual UI claims processes that contributed to persistent inefficiencies at VEC. VEC's legacy system does not have a customer-facing portal or dashboard; therefore, customers have had to rely on call centers and physical mail to check their UI claim status and submit required documents. Additionally, VEC staff have had to manually process claims and build workarounds to overcome system limitations. The legacy system also lacks certain automated data analytics, which increases the risk of inaccurate or fraudulent benefit payments.

Insufficient staffing and ineffective project management have caused project delays. Neither VEC nor the contractor have consistently dedicated enough staff to the UI IT modernization project. VEC staff assigned to the project also indicated that the prolonged timeline has detracted from their ability to focus on their primary responsibilities at VEC. VEC's UI modernization project has also been delayed by difficulties converting claimants' data from the legacy system to the new system, including data on past claims, benefit payments, and personally identifiable information. The COVID-19 pandemic also delayed the project. VEC paused the UI modernization project for one year between May 2020 and May 2021 to focus on UI claims backlogs.

Significant UI claims backlogs accrued while VEC was slow to increase staff for UI claims intake, adjudication, and appeals

VEC has experienced significant backlogs in all areas of UI claims processing: initial intake, adjudications, and appeals. While backlogs in these areas did not exist prior to the pandemic, VEC was underperforming some DOL performance metrics for claims processing before 2020.

VEC had insufficient staff to process UI claims prior to the pandemic and did not act quickly or effectively to increase staff during the pandemic. For example, VEC did not hire

- contractors to assist with initial claims intake until November 2020, well after large backlogs had accumulated;
- contractors to help process a backlog of 580,000 employer separation reports until August 2021;
- employees for the majority of the newly created adjudication positions until after January 2021; or
- contractors to assist with adjudication until May 2021.

The backlogs of uncompleted claims at VEC will continue to grow. In May 2021, VEC estimated that its staff had approximately 2 million UI claims "issues" still to review, about 1 million of which may require adjudication. VEC's updated estimate as of October 2021 indicated that approximately 440,000 UI claims issues still require review to determine if adjudication is necessary. Some of the issues that are adjudicated will eventually be appealed, adding to the appeals workload. Moreover, the over 580,000 employer separation reports that have not been reviewed will also add to adjudication and appeals backlogs. In many cases, benefits have already been paid on these claims.

Rate and cost of incorrect benefit payments have increased substantially during COVID-19, estimated to exceed $1 billion

VEC may have incorrectly paid an estimated $930 million in 2020 in state UI benefits and an additional estimated $322 million between January and June 2021. Almost all of these incorrect payments are overpayments, which can occur because of mistakes made by VEC, the claimant, the employer, or because of fraud. VEC may eventually determine a portion of these overpayments are eligible for the federal Pandemic Unemployment Assistance program, which could declassify them as overpayments or transfer the financial liability from the state to the federal government. Nevertheless, the volume and amount of overpayments is expected to be substantial, and VEC is required by the federal government to try to recover overpayments for state and federal programs. Problems with the quality and accuracy of VEC's UI determinations are not new—VEC has not met the federal quality standard for most UI eligibility determinations over the past decade.

During COVID-19, many incorrect payments may be attributable to practices VEC implemented to pay benefits more quickly. These included not investigating certain claims issues, discontinuing fact-finding interviews as part of the adjudication process, and providing minimal training to new staff on how to accurately complete claims intake and adjudication. Another key driver of incorrect payments before and during COVID-19 is employers' incomplete and delayed submission of reports describing separation circumstances. Separation-related incorrect payments accounted for about 59 percent of VEC's UI overpayments in 2020, and about 24 percent of overpayments between 2016 and 2019. VEC is also not identifying many claimants who fail to meet weekly work search requirements. VEC stopped its manual work search verification process before 2020 because of staffing limitations.

VEC's estimated overpayments attributable to fraud have increased significantly since 2020. VEC's overall estimated fraud rate for the *state UI program* grew 440 percent from 1.4 percent in 2019 to 7.5 percent in 2020. At this rate, VEC has paid out an estimated $70 million in fraudulent state UI benefits in 2020 and an additional estimated $29 million in the first quarter of 2021. VEC did not begin using some critical fraud prevention and detection best practices until 2021, which likely would have reduced fraudulent payments made during the pandemic. VEC's *confirmed* fraud rates are much lower than its *estimates* because at least 164,456 potentially fraudulent claims were backlogged and awaiting VEC investigation as of October 2021.

VEC call centers did not sufficiently respond to increases in call volume throughout the pandemic

VEC call centers have struggled to meet call demand throughout the pandemic and continue to answer only a small percentage of total calls received. In June 2020, VEC received approximately 3.3 million calls and answered only about 6 percent, with customers who did get through waiting over one hour, on average, to speak with an agent.

In June 2021, VEC received approximately 3.4 million calls and answered about 4 percent.

Several factors, including sustained high call volume and insufficient staffing levels, have contributed to VEC's poor call center performance. Between February 2020 and April 2020, total call volume increased nearly 3,000 percent, from approximately 100,000 monthly calls to over 3 million. Call volume increased sharply to nearly 5 million monthly calls in early 2021. VEC reports that only about 85 staff were responsible for taking phone calls prior to the pandemic, which was insufficient to handle the increased call volume.

VEC has only recently taken meaningful steps to increase call center staff and better address customer service needs. The agency purchased a larger physical space for the customer contact center and had almost 390 staff and contractors answering calls as of July 2021. VEC has also recently contracted with an additional third-party vendor who has experience managing high-volume call centers and has launched new customer service technology solutions, including a virtual chat agent that can more efficiently address customer inquiries. The third-party vendor allowed VEC to bring on approximately 440 new agents through October 2021 with plans to add up to 200 additional agents by the end of November 2021. Because of these actions, VEC's call centers answered a higher percentage of total calls, blocked fewer callers, and improved wait times in September 2021.

New UI IT system is expected to improve claimant experience and increase operational efficiencies

VEC's new UI benefits system includes several key functions that experts recommend should be part of modernized UI IT systems. Most importantly, VEC's new system will have an online customer portal that will allow UI claimants to view their UI claim status, notices VEC has sent them, information they still need to provide VEC, and the total amount of weekly benefits they have received. These improvements should reduce the number of calls VEC receives related to claim status inquiries. The new system will also have guided workflows (automatic prompts that help claimants provide correct information) and pop-up prompts to help claimants understand specific terms and steps in the UI application process.

Some functions recommended by experts will not be fully implemented as part of the new system, including the ability to reset personal identification numbers (PINs) electronically or receive notifications by text regarding claim status. Additionally, given the amount of time it has taken VEC to complete the modernization project, it is possible that features of truly modern IT systems are not incorporated into the VEC system. Finally, unaddressed deficiencies in the employer tax portion of the UI modernization project (completed in 2015) suggests there will be challenges to address after the new system's final phase is implemented.

UI trust fund has been effectively managed, but VEC should take steps to maximize trust fund revenues

UI benefits are paid out of Virginia's UI trust fund, and Virginia has managed the trust fund well. While Virginia needed to borrow money from the federal government to pay UI benefits in the last two economic recessions, its loan amounts were lower than other states, and Virginia paid back its loans faster than other states. However, Virginia has not always rebuilt its trust fund back up as quickly as DOL recommends to be prepared for future recessions.

VEC should improve its efforts to collect UI taxes owed by Virginia employers to maximize revenue collection and rebuild the UI trust fund more quickly. The General Assembly could also consider increasing employer UI taxes to build a larger trust fund reserve to limit fluctuations in employer tax rates in response to recessions, but revenue increases are not essential because Virginia's tax structure is generally sound, and the state can take federal loans to ensure solvency.

VEC may have responded more effectively to the pandemic with stronger administration oversight and assistance and different executive decisions—continued legislative oversight is needed

VEC and the administration made changes to the UI program to better respond to the increase in demand for UI benefits during the pandemic. VEC leadership also appeared to appropriately prioritize the health and safety of its own staff and provide effective support to staff who faced exceedingly difficult personal and professional demands during the pandemic.

However, some of the most impactful executive actions by VEC leadership that would have helped VEC respond to the surge in UI claims were delayed over a year into the pandemic. Taking certain actions earlier in the pandemic—especially those related to staffing increases and IT system improvements—may have helped VEC respond more effectively to the increased UI claims volume and program challenges.

VEC could also have benefited from additional oversight and assistance from the administration and could have better availed itself of expertise and resources in other areas of state government. Given VEC's critical role during severe increases in unemployment—and the operational challenges that arise from them—future administrations and secretaries of labor need to provide strong oversight and assistance to VEC during severe economic downturns or other relevant emergencies.

Moving forward, the volume and complexity of the actions that VEC needs to take to improve its operation of the state's UI Program, along with the still-unfolding effects of the pandemic, necessitate continued oversight by the legislature.

Virginia's UI benefit levels are low relative to other states

Virginia's UI benefits provide less income replacement than many other states. Experts generally agree that UI benefits should replace roughly 50 percent of an individual's weekly wages. Virginia's average 2019 replacement ratio was 34 percent, ranking 33rd among other states. Virginia also has relatively low weekly benefit amounts compared with other states. In 2019, Virginia's *maximum* weekly benefit amount was $378, which ranked 37th nationwide, and Virginia's *average* weekly benefit was $316, which ranked 36th nationwide. Furthermore, Virginia's standard state UI benefits cover less than half of basic food, housing, and transportation costs for many individuals, particularly those who qualify for lower benefits, live in expensive areas, or have dependents.

WHAT WE RECOMMEND

Legislative action

- Create a subcommittee of the Commission on Unemployment Compensation to monitor VEC's performance in eliminating backlogs, addressing incorrect UI benefit payments, implementing and improving its new UI benefits system, spending General Assembly-appropriated funds for UI operations, and implementing JLARC's recommendations.
- Direct the Department of Human Resource Management to lead a workgroup of agency leaders and human resources staff to examine the feasibility of and policies and procedures necessary for granting agencies exemptions from competitive hiring requirements and requiring staff from selected state agencies to temporarily work for other state agencies in need of staffing assistance during emergencies.
- Require VEC to develop and maintain an unemployment insurance resiliency plan that describes how the agency would change its programs, staffing, and communications during periods of high unemployment to ensure efficient and effective administration of the UI program.
- Require employers to provide information related to UI claims, such as employer separation reports, to VEC electronically and to make unemployment insurance tax payments electronically.

Executive action

- Conduct a comprehensive efficiency review of VEC's UI operations using a national firm with relevant expertise.
- Cross-train staff from VEC's workforce division to assist with UI claims during future periods of high claims volume.
- Develop a detailed plan and timeline for resolving the backlog of claims that need to be adjudicated and the potentially fraudulent claims that need to be investigated.

- Establish and maintain a dedicated quality monitoring team in the VEC call centers, maintain an ongoing contract with a third party that provides call center staff augmentation services, and establish call center performance metrics that reflect industry standards.
- Regularly collect feedback on the usability of the new UI benefits system, make improvements to the system as necessary, issue a request for information to identify additional features needed for the modernized UI claims system that could be implemented by a contractor or VEC IT staff, and incorporate the features.
- Conduct a pilot program to test the effectiveness of additional methods to identify employers that are liable for—but not paying—UI taxes, implement a system to detect actions used by employers to avoid paying UI taxes, modify employer audit policies to more effectively identify unpaid employer taxes, and use the federal Treasury Offset Program to collect delinquent taxes.

POLICY OPTIONS FOR CONSIDERATION

Staff typically **propose policy options rather than make recommendations** when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

- Direct the Department of General Services and the Virginia Information Technologies Agency to assess agencies' needs for call center staff augmentation, ensure that contractual solutions to meet those needs are in place, and report the steps taken and available solutions.
- Increase the unemployment insurance taxable wage base to generate more revenue for the UI trust fund.
- Increase the minimum and maximum base unemployment insurance tax rate paid by employers.
- Modify the UI benefits formula to automatically adjust UI benefits according to a statewide economic metric, such as the increase in average weekly wages.