

Recommendations and Policy Options: Operations and Performance of the Virginia Employment Commission

JLARC staff typically make recommendations to address findings during reviews. Staff also sometimes propose policy options rather than recommendations. The three most common reasons staff propose policy options rather than recommendations are: (1) the action proposed is a policy judgment best made by the General Assembly or other elected officials, (2) the evidence indicates that addressing a report finding is not necessarily required, but doing so could be beneficial, or (3) there are multiple ways in which a report finding could be addressed and there is insufficient evidence of a single best way to address the finding.

Recommendations

RECOMMENDATION 1

The secretary of labor should competitively procure a national firm with expertise in evaluating the efficiency of an organization's staffing structure, delegation of staff duties, and work processes to conduct a comprehensive efficiency review of the unemployment insurance (UI) operations of the Virginia Employment Commission to (i) identify specific actions that could be taken to improve the efficiency of VEC's UI operations, including through more efficient and effective use of staff and technology, (ii) recommend improvements to the agency's staffing and workflows to most effectively use existing federal funding for UI operations, and (iii) determine whether current funding is adequate to ensure effective UI operations. (Chapter 3)

RECOMMENDATION 2

The Virginia Employment Commission should establish goals for the ratio of supervisory staff to direct reports, particularly for key functions including call centers, adjudication and appeals centers, and fraud investigations. Agency leadership should regularly monitor the ratio of supervisory staff to direct reports relative to the goals, and report performance in meeting these goals in the monthly commissioner's performance report. (Chapter 3)

RECOMMENDATION 3

The General Assembly may wish to consider including language in the Appropriation Act requiring the Virginia Department of Human Resource Management to lead a multi-agency workgroup, comprising agency leaders and human resources staff from state agencies most likely to be in need of staffing assistance during emergencies, to examine the feasibility of and policies and procedures necessary for (i) granting agencies exemptions from certain competitive hiring requirements during emergencies; (ii) requiring selected state agency staff to temporarily support other agencies in need of staffing assistance during emergencies through existing or new state initiatives; and (iii) providing necessary funding to cover the associated costs. The workgroup should propose criteria to determine under what circumstances these emergency hiring practices may be invoked and a process for invoking this authority as well as terminating it. The workgroup should submit its findings to the secretary of administration, the chair of the House Appropriations Committee, and the chair of the Senate Finance and Appropriations Committee by June 30, 2022. (Chapter 3)

RECOMMENDATION 4

The Virginia Employment Commission should establish meaningful performance goals for its call center operations and fraud investigations, and ensure it has goals for effectively measuring performance in all other aspects of unemployment insurance operations. Agency leadership should regularly monitor performance relative to the goals and report goals and performance in the monthly commissioner's performance report. (Chapter 3)

RECOMMENDATION 5

The Virginia Employment Commission (VEC) should transfer the unemployment insurance quality assurance unit from the unemployment insurance division and have it report directly to the VEC commissioner. (Chapter 3)

RECOMMENDATION 6

The Virginia Employment Commission (VEC) should require its unemployment insurance quality assurance unit to compile its findings and recommendations in a central repository and routinely update VEC leadership on their status. (Chapter 3)

RECOMMENDATION 7

The General Assembly may wish to consider amending § 60.2-111 of the Code of Virginia to require the Virginia Employment Commission to develop and maintain an unemployment insurance resiliency plan that describes the specific actions the agency would take, depending on the level of increase in unemployment insurance (UI) claims, to address staffing, communications and other relevant aspects of operations to ensure continued efficient and effective administration of the UI program. (Chapter 3)

RECOMMENDATION 8

The Virginia Employment Commission (VEC) commissioner should ensure that all key policy or other significant changes that could affect the public, VEC, or VEC staff are communicated clearly and expeditiously to all VEC staff, especially those in leadership or positions communicating with the public. (Chapter 3)

RECOMMENDATION 9

The General Assembly may wish to consider including language in the Appropriation Act or amending § 30-222 of the Code of Virginia to create a subcommittee of the Commission on Unemployment Compensation to monitor the Virginia Employment Commission's: (1) key performance metrics related to UI backlogs; (2) efforts to identify, prevent, and recover incorrect UI benefits payments, including fraudulent payments; (3) project to modernize the UI IT system; (4) expenditure of state funds appropriated for UI administration; and (5) implementation of JLARC recommendations. The subcommittee should include individuals who can represent the interests and experiences of claimants and employers. The subcommittee could include members of the following General Assembly committees: Commission on Unemployment Compensation, House Appropriations, Senate Finance and Appropriations, House Labor and Commerce, and Senate Commerce and Labor. The subcommittee should meet at least once quarterly and sunset on June 30, 2025. (Chapter 3)

RECOMMENDATION 10

The Virginia Employment Commission (VEC) should, as soon as possible, have staff in its internal audit division review and revise documents and online resources to more clearly describe and explain (i) eligibility criteria for Unemployment Insurance (UI), (ii) how to navigate the UI claims and appeals process, and (iii) the status or outcome of a claim. VEC should use examples from other states and input from VEC staff and customers and should competitively procure a third party contractor with expertise in UI and customer communications to assist with these efforts. (Chapter 4)

RECOMMENDATION 11

The Virginia Employment Commission should develop (i) a series of instructional, short videos designed to help claimants better understand their potential eligibility for unemployment insurance, the steps of the application process, and how to file a claim and (ii) an interactive, online eligibility tool that enables claimants to better understand their potential eligibility and benefits under the program. (Chapter 4)

RECOMMENDATION 12

The Virginia Employment Commission should build a reserve of staff to assist with claims during periods of high claims volume by identifying workforce services division staff whose time can practicably be reassigned to non-workforce activities during periods of high unemployment insurance claim volume. These staff should be cross-trained on key unemployment insurance processes. (Chapter 4)

RECOMMENDATION 13

The Virginia Employment Commission should formalize a policy for prioritizing and assigning claims for adjudication during periods of high claims volume. This policy should detail how prioritization may change in response to claims volume and clearly state the expectation that VEC should generally prioritize resolving older claims. (Chapter 4)

RECOMMENDATION 14

The Virginia Employment Commission (VEC) should develop a detailed plan that includes specific actions and a timeline to resolve (i) outstanding adjudications and (ii) all issues on claims that VEC bypassed in 2020 and 2021. The plan should quantify the numbers and qualifications of new staff needed to resolve these claims, outline the actions planned for hiring needed staff, and identify potential risks and mitigation strategies. VEC should submit the plan to the House Labor and Commerce Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor by November 1, 2021 and provide a status update to each body quarterly in 2022. VEC should also publish the plan and updates on its website. (Chapter 4)

RECOMMENDATION 15

The Virginia Employment Commission should maintain an ongoing staff augmentation contract with a provider that is experienced in providing call center services for unemployment insurance programs and can quickly provide increased call center staff when call volumes increase. (Chapter 4)

RECOMMENDATION 16

The Virginia Employment Commission (VEC) should provide a written quarterly update on the performance of its call centers to the House Labor and Commerce Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor by December 31, 2021 and at the end of each quarter in 2022. VEC should also publish these updates on its website. (Chapter 4)

RECOMMENDATION 17

The Virginia Employment Commission (VEC) should establish and maintain a dedicated quality monitoring team composed of VEC staff from each customer contact center. This team should use the recently procured quality monitoring software to regularly review and assess call quality and performance for all VEC call agents, and identify any additional training needs on an agent-by-agent basis through weekly monitoring and assessment of at least three calls per agent. (Chapter 4)

RECOMMENDATION 18

The General Assembly may wish to consider amending § 60.2-619 of the Code of Virginia to specify that non-valid unemployment insurance claims resulting from monetary ineligibility are ineligible for appeal through the Virginia Employment Commission's (VEC's) appeals division. (Chapter 4)

RECOMMENDATION 19

The Virginia Employment Commission should revise monetary determination notices to clearly indicate if a claim is non-valid because of monetary ineligibility, and direct claimants who disagree with their non-valid monetary determination to request a re-determination from the monetary determination unit. (Chapter 4)

RECOMMENDATION 20

The General Assembly may wish to consider amending Article 2 of Chapter 1 of Title 60.2 of the Code of Virginia to direct the Virginia Employment Commission to create an appeals ombudsman position to provide impartial information about the unemployment insurance appeals process and help ensure that all parties are afforded due process in such appeals. (Chapter 4)

RECOMMENDATION 21

The Virginia Employment Commission should develop a standardized training program that explains how to conduct high quality unemployment insurance claims determinations and that is administered by a dedicated training manager to all new and existing adjudication staff. (Chapter 5)

RECOMMENDATION 22

The General Assembly may wish to consider amending §60.2-121.1 of the Code of Virginia to require employers to electronically provide separation information when requested to the Virginia Employment Commission unless they are granted a waiver from providing this information electronically. (Chapter 5)

RECOMMENDATION 23

The Virginia Employment Commission should resume auditing a sample of UI claims to verify compliance of claimants with the unemployment insurance program work search requirement no later than December 1, 2021. (Chapter 5)

RECOMMENDATION 24

The Virginia Employment Commission (VEC) should develop a plan for investigating the backlog of potentially fraudulent claims and establish a strategy for prioritizing its investigations according to the potential dollar amount of fraudulent payments per claim. This plan should include a strategy for hiring additional fraud investigators and expediting training of new hires. This plan should be presented to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by December 31, 2021. VEC should also publish these updates on its website. (Chapter 5)

RECOMMENDATION 25

The Virginia Employment Commission (VEC) should immediately resume overpayment recovery activities for all finalized overpayments and initiate collections activities for all future overpayments immediately after finalization. VEC should also create and adhere to internal timeliness standards for processing all previously received and future overpayment waiver applications to ensure overpayments are finalized and recovery activities are initiated in a timely manner. (Chapter 5)

RECOMMENDATION 26

The Virginia Employment Commission (VEC) should regularly collect feedback on the usability of the new Unemployment Insurance benefits information technology system from claimants and employers and make regular improvements to the system, as necessary, that address such feedback. VEC should provide a summary of user feedback and planned and completed system changes to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by March 31, 2022 and at the end of each quarter in 2022. VEC should also publish this information on its website. (Chapter 6)

RECOMMENDATION 27

The Virginia Employment Commission (VEC) should conduct a request for information to identify additional features needed for a modernized unemployment insurance IT system and hire a vendor to develop these features or develop them using agency staff. (Chapter 6)

RECOMMENDATION 28

The Virginia Employment Commission should require its unemployment insurance IT modernization contractor to develop a plan that includes specific actions and a timeline for addressing all existing tax system problems and details (1) how each problem will be fixed, (2) deadlines for fixing each problem, and (3) any additional resources needed to fix the problems. (Chapter 6)

RECOMMENDATION 29

The Virginia Employment Commission (VEC) should establish a plan with its unemployment insurance modernization vendor to ensure VEC IT staff are sufficiently trained to operate and modify the employer tax system. (Chapter 6)

RECOMMENDATION 30

The Virginia Employment Commission (VEC) should work with the Virginia Information Technologies Agency (VITA) to facilitate an audit of VEC's IT security systems and to identify any necessary IT security improvements. The audit should be completed by a vendor approved by VITA. The audit should validate whether VEC's existing IT security systems meet the requirements issued by VITA. (Chapter 6)

RECOMMENDATION 31

The Virginia Employment Commission should fully transform all agency IT systems and servers to the state's central IT infrastructure as soon as possible. (Chapter 6)

RECOMMENDATION 32

The General Assembly may wish to consider amending section § 60.2 of the Code of Virginia to require the Virginia Employment Commission (VEC) to annually calculate average unemployment insurance (UI) benefit levels, the average income replacement of UI benefits in Virginia, and the reciprocity rate for UI benefits. VEC should provide this information in its annual report to the Commission on Unemployment Compensation. (Chapter 7)

RECOMMENDATION 33

The Virginia Employment Commission (VEC) should conduct a one-year pilot program to identify employers who owe unemployment insurance taxes but are not registered with VEC by auditing employers who do not register with VEC after receiving notifications of potential tax liability. VEC should assess the pilot program's effectiveness to decide whether to use this methodology on an ongoing basis. (Chapter 8)

RECOMMENDATION 34

The Virginia Employment Commission (VEC) should conduct a one-year pilot program to identify employers who owe unemployment insurance taxes but are not registered with VEC by auditing a sample of employers who may be misclassifying workers based on their 1099 tax filings. VEC should assess the pilot program's effectiveness and decide whether to use this methodology on an ongoing basis. (Chapter 8)

RECOMMENDATION 35

The Virginia Employment Commission should reinstate its State Unemployment Tax Act dumping identification system no later than December 2022. (Chapter 8)

RECOMMENDATION 36

The Virginia Employment Commission (VEC) should modify existing unemployment insurance (UI) tax audit policies to require field tax auditors to conduct at least half of their audits per year from a list of employers identified to be at-risk for UI tax avoidance. VEC should define “at-risk” to include industry and employer-specific factors and establish a system for consistently identifying such employers. (Chapter 8)

RECOMMENDATION 37

The Virginia Employment Commission should begin using the federal Treasury Offset Program for applicable delinquent taxes as soon as staff resources become available. (Chapter 8)

RECOMMENDATION 38

The Virginia Employment Commission should provide quarterly reports to tax division regional managers that list each employer with tax debt more than six months past due and require the managers to use this information to ensure that tax field staff are taking all reasonable steps to collect the debt. (Chapter 8)

RECOMMENDATION 39

The Virginia Employment Commission should designate customer service positions in the tax division to handle basic employer communications and questions. (Chapter 8)

RECOMMENDATION 40

The Virginia Employment Commission should require employers to make unemployment insurance payments electronically starting in 2023, develop criteria that would allow employers to be granted an exception to this requirement, and notify employers of the criteria. (Chapter 8)

Policy Options to Consider

POLICY OPTION 1

The General Assembly could include language in the Appropriation Act directing the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) to assess agencies' need for call center staff augmentation, ensure that contractual solutions to meet those needs are in place, and report steps taken and available solutions to the House Appropriations Committee and the Senate Finance and Appropriations Committee by December 31, 2022. (Chapter 4)

POLICY OPTION 2

The General Assembly could include language in the Appropriation Act establishing a pilot program that would require a sample group of employers to proactively provide a separation report to VEC and separated individuals for all employees who separate from employment over a designated period of time and direct the Virginia Employment Commission to collect feedback from employers on the requirement's potential administrative burden and impact on unemployment insurance claim accuracy and timeliness. (Chapter 5)

POLICY OPTION 3

The General Assembly could include language in the Appropriation Act to direct the Virginia Employment Commission (VEC) to (i) review U.S. Department of Labor guidance and model legislation regarding redesigned work search requirements, (ii) evaluate the potential impacts that adopting DOL's guidance would have on incorrect payments and other aspects of VEC's work (e.g., reemployment), and (iii) propose changes to the state's work search policies as needed. VEC should report the results of this review and any proposed legislative changes to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by February 1, 2022. VEC should also publish these results on its website. (Chapter 5)

POLICY OPTION 4

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefits formula to automatically adjust unemployment insurance benefit amounts annually based on a statewide economic metric. (Chapter 7)

POLICY OPTION 5

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefits formula to enact a one-time increase in the maximum unemployment insurance benefit amount. (Chapter 7)

POLICY OPTION 6

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefit formula to create a dependent allowance that is tied to an economic metric or calculated as a portion of the individual's weekly benefit amount. (Chapter 7)

POLICY OPTION 7

The General Assembly could amend section § 60.2 of the Code of Virginia to authorize the Commission on Unemployment Compensation to convene an advisory committee comprising stakeholders and subject matter experts to (1) review UI benefits, replacement ratios, and reciprocity rates; (2) identify factors that affect UI benefits and reciprocity (e.g., design of UI benefit calculations or UI eligibility criteria); (3) assess the advantages and disadvantages of potential changes to benefits; and (4) recommend to the Commission options to change benefit levels when needed. (Chapter 7)

POLICY OPTION 8

The General Assembly could amend § 60.2-229 of the Code of Virginia to increase the unemployment insurance taxable wage base. (Chapter 8)

POLICY OPTION 9

The General Assembly could amend § 60.2-531 of the Code of Virginia to increase the minimum base unemployment insurance tax rate for all employers, to a new rate between 0.01 percent and 0.07 percent. (Chapter 8)

POLICY OPTION 10

The General Assembly could amend § 60.2-531 of the Code of Virginia to increase the maximum base unemployment insurance tax rate. (Chapter 8)
