



STATE OF SOUTH DAKOTA  
M. MICHAEL ROUNDS, GOVERNOR

44387  
DOL

March 23, 2009

Douglas J. Holmes  
President  
UWC  
910 17<sup>th</sup> Street, N.W., Suite 315  
Washington, DC 20006

Dear Douglas,

Thank you for your letter regarding unemployment funds the federal government is offering states as part of the congressional stimulus package. I appreciate you taking the time to share your thoughts.

South Dakota will receive an initial \$5.9 million by implementing Option 1, an alternative base period, on July 1, 2009.

I have not made a decision on Option 2, which would provide an additional \$11.7 million in unemployment stimulus funds, because it is available until August 2011. I am awaiting recommendations from the South Dakota Unemployment Insurance Advisory Council on further expansion of benefits. I will share your information with them, because they will be extensively reviewing this option over the next year.

When deciding the issue, I must consider both the well-being of South Dakota's citizens and its business community, which provides jobs and also is suffering in these difficult economic times. I agree with you, the terms and conditions of the expansion in benefits are too broadly defined by the U.S. Department of Labor at this time, and that complicates the decision-making process. Thank you again for your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Michael Rounds".

M. Michael Rounds

MMR:ls

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PIERRE, SD



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*"The Voice of Business on Unemployment & Workers' Compensation"*

March 5, 2009

The Honorable Mike Rounds  
500 East Capitol Avenue  
Pierre, SD 57501

## Office of the Governor

TO: DOL CC: \_\_\_\_\_  
FROM: Re \_\_\_\_\_  
DATE: 3-11-09 \_\_\_\_\_  
PLEASE:  Draft reply for Gov's Signature

Dear Governor Rounds:

I am writing to urge your opposition to enactment of state legislation that would implement certain provisions of the American Recovery and Reinvestment Act (HR 1) related to the payment of unemployment compensation to individuals who quit employment:

Section 2003 of HR 1 as interpreted by the United States Department of Labor is fundamentally inconsistent with the foundations of the Unemployment Insurance system that individuals may only be eligible for unemployment if they become unemployed through no fault of their own. The terms in the provision within this section that would prohibit a state from disqualifying an individual who quits employment for an ill or disabled immediate family member, are so vaguely defined that an individual could quit for almost any short or long-term self-defined illness of a member of his or her extended family, without medical verification, and be eligible for unemployment compensation.

The definitions of "illness", "disability" and "immediate family member" were released by USDOL just nine days after the stimulus bill was enacted, without being published in the Federal Register or being available for public comment.

The USDOL definition of "immediate family member" would include "at a minimum" spouses, parents and minor children under the age of 18; however it also would permit virtually any other definition of "immediate family member," and provides that grandparents, sisters, brothers, domestic partners, adult children or foster children may also be included within the definition.

"Illness" is defined as "a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise)". This leads to numerous important questions that bear careful scrutiny. What does the willingness of the employer to grant leave have to do with whether an immediate family member is "ill"? How does this relate to paid or unpaid personal or FMLA leave? Must there have been a "separation" from employment of more than a short period to be considered as a "separation" instead of temporary leave?

"Disability" is defined as "a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise) for". The definition of "Disability" encompasses all types of disability, including: (1) mental and physical disability; (2) permanent and temporary disabilities; and 3) partial and total disabilities. The key, according to the

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USDOL definition is that the individual's illness or disability necessitates care by another individual and the employer does not accommodate the employee's request for time-off.

USDOL goes on to make the point that these definitions are minimum standards for a state to receive its incentive payment. States may have broader eligibility provisions. However, a state law provision would not be certified if it has a narrower definition of illness or disability or provides for overly restrictive limits on the types of verification of illness. **For example, if the state requires a medical doctor to verify an illness or disability when other sources of verification are available, the application would not be accepted by USDOL.**

Verification of total disability is certainly not something that should be left to the individual who claims to be disabled. A state should not only be permitted to require verification by a medical doctor, but should be encouraged to require verification from medical professionals in the cases of illnesses and disability.

I urge you to quickly eliminate consideration of the provisions that would enable individuals to quit ~~employment for the illness or disability of an immediate family member.~~ The definitions of "ill" and "disabled" are too vague, and the prohibitions against a state requesting verification by a medical doctor are inconsistent with proper UI claims administration. **It is fundamentally at odds with the principles of the unemployment insurance system and inappropriately imposes federal requirements on state unemployment insurance benefit determinations.**

Thank you for your attention to this matter. If you or your staff has questions, please do not hesitate to contact me.

Sincerely,



Douglas J. Holmes  
President