



# Unemployment Insurance

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## UI Drug Testing: A Bad Cure in Search of a Problem Elizabeth Lower-Basch

By the end of this month, Congress must again act to extend federal unemployment insurance (UI) benefits, or millions of workers will lose access to this vital lifeline. In December, the House of Representatives proposed to attach a provision to the extension that would allow states to require workers to take a drug test before receiving benefits.

Such a move suggests that workers have lost their jobs because of their own failings, not due to economic forces beyond their control. Further, no evidence supports the claim that UI recipients are more likely to use drugs than the overall population.

Widespread drug testing of UI recipients is likely to be very expensive and inefficient, costing thousands of dollars for every individual who tests positive. It is unfair to workers to deny them benefits they have earned based on their employment history. Similar drug testing laws for other public benefits have been found unconstitutional and suspicionless testing of applicants for UI benefits may be as well since receiving benefits is not a basis for the government to have probable cause to assume drug use.

Further, states already have authority to deny UI benefits to workers fired for substance use, or workers who are not hired because they fail a pre-employment drug test. Blanket testing all workers who lose their jobs is a solution in search of a problem that would waste taxpayer dollars and stigmatize unemployed workers.

## No Evidence of Widespread Drug Abuse

The perception that applicants for UI benefits are likely to use drugs is based on stereotypes and not rooted in verifiable fact. For example, South Carolina Gov. Nikki Haley called for drug testing of UI applicants last year, claiming that half of applicants for jobs at a local nuclear power facility were rejected for failing drug tests. Officials from the facility later told reporters that the actual figure was less than 1 percent.<sup>1</sup>

Even under programs for more disadvantaged workers, such as cash assistance under the Temporary Assistance for Needy Families (TANF) program and job training under the Workforce Investment Act (WIA), states that have piloted drug testing programs have found less than 2 percent of recipients have tested positive.<sup>2</sup> Positive rates for UI recipients are likely to be even lower because the requirement that workers must have been employed over an extended period in order to qualify for UI benefits is likely to screen out individuals with significant substance abuse problems.

### Drug Testing Is Costly and Ineffective

A federal agency estimates that drug testing costs \$25 to \$75 per test.<sup>3</sup> If only 1 percent of applicants test positive, this means that states will spend between \$2,500 and \$7,500 on testing for every individual it identifies as using drugs. These numbers do not include costs for administering the program or processing test results, which could send the figure soaring ever higher. Moreover, these figures assume that each individual is only tested once, at application. State due process requirements may also mandate storage of a split sample and repeat testing before workers can be denied benefits to protect against false positives.

This cost estimate does not include the cost of matching against documentation of prescription drug use or the legal costs of defending the policy. At a time of high need and constrained budgets, it is highly wasteful to spend limited resources on unnecessary and ineffective drug tests, rather than on employment services or substance abuse treatment programs, both of which have demand far exceeding their capacity.

### Drug Testing Is Unfair to Workers

Proposals to require UI recipients to submit to drug tests are grounded in an assumption that the workers must be to blame for their situation, rather than the victims of persistently high unemployment rates or a job market in which there are four people looking for every one job opening. It is unfair to add additional requirements to deny UI benefits to workers who have earned them. (Although UI benefits are directly funded by taxes on employers, economists agree that workers indirectly pay for these benefits in the form of reduced wages.)

In addition, administering drug tests is a burden on applicants and an invasion of privacy. Testing often requires workers to be watched while they provide a sample. Workers who are using prescription drugs that can cause false positives will have to provide confidential medical information to the UI agency.

Moreover, suspicionless testing of UI applicants or recipients is likely to be unconstitutional, even if Congress authorizes it. Courts have consistently found that drug tests are a form of search, for which government agencies must have a compelling need, such as public safety concerns, to overcome constitutional protections of privacy.

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<sup>1</sup> Arthur Delaney, "Nikki Haley's Jobless Drug Test Claim Exaggerated," *Huffington Post*, updated November 9, 2011, [http://www.huffingtonpost.com/2011/09/09/nikki-haley-drug-test-exaggeration\\_n\\_955900.html](http://www.huffingtonpost.com/2011/09/09/nikki-haley-drug-test-exaggeration_n_955900.html).

<sup>2</sup> Tom Coyne, "Indiana: 2 percent fail job training drug tests," *CBS Money Watch*, December 29, 2011, [http://www.cbsnews.com/8301-505245\\_162-57349726/indiana-2-percent-fail-job-training-drug-tests/](http://www.cbsnews.com/8301-505245_162-57349726/indiana-2-percent-fail-job-training-drug-tests/) and Mike Schneider and Kelli Kennedy, "Florida Welfare Drug Testing Law Blocked By Federal Judge," *Huffington Post*, October 24, 2011, [http://www.huffingtonpost.com/2011/10/24/rick-scott-drug-testing-welfare-florida\\_n\\_1029332.html](http://www.huffingtonpost.com/2011/10/24/rick-scott-drug-testing-welfare-florida_n_1029332.html). Note: Some Florida supporters of drug testing have argued that individuals who did not complete the drug test should be counted among the positives, but that ignores the fact that applicants were required to make a separate trip to a testing facility and pay for the tests out of pocket.

<sup>3</sup> "Drug Testing Facts and Statistics," Substance Abuse and Mental Health Services Administration (SAMSHA), U.S. Department of Health and Human Services, [http://workplace.samhsa.gov/WPWorkit/pdf/drug\\_testing\\_facts\\_and\\_stat\\_fs.pdf](http://workplace.samhsa.gov/WPWorkit/pdf/drug_testing_facts_and_stat_fs.pdf).