SOUTH CAROLINA
Department of Employment and Workforce

Opening Statement

By Abraham J. Turner, Executive Director
Senate LCI Sub-Committee Hearing
August 15, 2012

I would like to thank the LCI subcommittee chairman and members for allowing me to address how the South Carolina Department of Employment and Workforce has prepared for and implemented Act 247 relating to the disqualification for unemployment benefits.

My staff worked very closely throughout the spring of 2012 with the Governor's staff to draft changes to Section 41-35-120 that would accomplish the will of the General Assembly while abiding by all federal laws, regulations, and guidelines. The primary change to section 41-35-120 was the addition of "misconduct connected with the employment" as a basis for total disqualification of benefits.

I am very confident that the Department has successfully implemented all aspects of Section 1 of Act 247. In response to the Chairman's request, we submitted 518 claims that were filed after the effective date of the law and adjudicated the week of July 9th through July 13th.

Of these claims, 59 percent were found to have been separated for misconduct and therefore fully disqualified; 11 percent were partially disqualified for cause other than

misconduct; 4 percent were indefinitely disqualified; and the remaining 26 percent were determined eligible.

The penalty for misconduct is that the claimant is fully disqualified for 20 weeks. Thus, these individuals will receive no state-funded unemployment benefits.

Per state law, individuals fired for cause can be partially disqualified for between 5 and 19 weeks. By internal policy, all cases that are found to be fired for cause not related to medical absenteeism are disqualified for between 16 and 19 weeks. The average level of partial disqualification in the claims sent to the committee, not including claims with medical issues, was nearly 17 weeks.

Let me provide some perspective on where we are and where we have come from. Prior to the implementation of Act 247, there was not a total disqualification of benefits for misconduct. DEW tightened the disqualification parameters by way of internal policy. In 2011 the minimum disqualification was increased from 10 weeks to 12 weeks, and beginning April 1, 2012, the minimum disqualification was raised even further from 12 weeks to 16 weeks.

On June 18, 2012, Act 247 became effective. In July 2012, an average disqualification of nearly 17 weeks was imposed on claimants that were found to have been fired for

cause, excluding discharges associated with medical conditions. This compares with an average disqualification of only 12 weeks for the same month in 2011.

Moving to the remaining two categories of claims sent to the committee; let me explain what the 4 percent of claims that were indefinitely disqualified are. These are claims that were decided under other sections of 41-35-120, specifically sections 3 and 4 dealing with illegal drug use and gross misconduct. We typically see a small percentage of these claims.

The last category of the claims sent to the subcommittee is the claims that have been held eligible. There are essentially three types of eligible claims in this set. The first are the claims where the employer has not responded. There are more “no employer response” claims than the other two types here put together. We are working on a solution to bring as many employers as we can into the process as early as we can. I will come back to this point in a few minutes.

Of the 133 claimants who were found eligible, 70 claims had no employer response. Without any other documentation to evaluate, the Department is left with no other option than to use what the claimant has reported as the only source of factual information. That does not mean that we always decide in favor of the claimant in these situations because there are times when even if everything the claimant said was true, the law

does not allow for unemployment benefits to be provided. There are claims within the 518 sent to you where the employer did not reply and we disqualified the claimant for misconduct.

The second largest group of eligible claims was the “substandard performance” exception from Section 41-35-120(2)(b). In claims where the substandard performance was “due to inefficiency, inability, or incapacity,” the statute requires the Department to find the claimant eligible**.**

The third type of eligible claims sent to the subcommittee is a small assortment of claims that on their individual circumstances did not meet the definition of misconduct, cause, gross misconduct, or illegal drug use.

As you may be aware, every case must be decided on its own merits using the information supplied by each party. State law allows up to 10 calendar days for a business to respond to any claims made by the individual applying for benefits. We are reaching out early to businesses by contacting them by phone to receive their input and speed up the initial determination process. If DEW does not get a response within 10 days, we make another phone contact pursuant to federal standards then provide the business an additional 2 days to respond. Prior to the 10 days’ time limit, DEW makes

additional efforts to contact businesses. If no response is received by the fifth day, DEW begins to reach out by telephone. A second attempt is made after 7 days.

Out of the 518 claims provided to the committee, 103 claims (or approximately 20 percent) had no business response to the Agency's request for separation information. There are several ways that businesses can reply to DEW's request for separation information on the claimant. A paper copy of the request can be mailed, an electronic request can be sent through the SC Business OneStop (SCBOS), or an electronic request can be sent through the State Information Data Exchange System (SIDES).

We have been encouraging businesses to register for the electronic communication as we have found that the response times are typically much quicker than the paper version. Currently about 56 percent of all requests go to the businesses electronically either through SCBOS or SIDES. The average response time for businesses using SCBOS was between 4 and 5 days. Nearly 80 percent of businesses that received a request for separation information through SCBOS provided a response back to the Agency. Receiving the information from businesses is crucial in helping the Agency make accurate decisions on eligibility and disqualification.

Per the Social Security Act Section 303(a)(1) and 303(a)(8), unemployment compensation information is collected and maintained for the administration of the UI

program. Additionally, under federal guidelines, this information is confidential and not generally subject to disclosure. As a result, we have taken steps to redact personal identifiable information in the claims we have provided to this subcommittee. However, because of the speed in which this manual process had to be accomplished and the variable nature of documents submitted, we recognize that some personal information has not been redacted. It is absolutely critical that both claimants' and employers' confidential information be protected. Please take all necessary steps to safeguard this confidential information.

Also, to protect the due process rights of both the claimant and the employer who may still be in the appeals process, it would not be appropriate to discuss the details of these cases because they are still under consideration. I am happy to address your general questions regarding eligibility and disqualification.