

LEGISLATIVE REPORT

ESSB 5193

2022 First Quarter Report



July 2022

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INTRODUCTION

[ESSB 5193](#), regarding unemployment insurance claim adjudicators and system enhancements, requires the Employment Security Department (ESD) to provide a quarterly report on progress implementing the bill to the House Labor and Workplace Standards Committee and the Senate Committee on Labor, Commerce, and Tribal Affairs. It also requires the department to produce a quarterly report on selected performance statistics.

After passage of ESSB 5193, members of the Joint Legislative Audit and Review Committee (JLARC) requested ESD report additional information quarterly. Narrative responses to the JLARC request are included in Part I, and the statistical information is presented in Part II.

This report covers implementation and statistics for calendar quarter one, 2022

Q1 2022 HIGHLIGHTS

- The number of cases awaiting adjudication for UI eligibility was reduced by 82% this quarter, eliminating the backlog of individuals awaiting adjudication by ESD which are associated with claims filed during the height of the pandemic. Backlogs remain in fraud investigations and appeals at the Office of Administrative Hearings.
- ESD met federal timelines for non-separation eligibility determinations.
- 445 reserve adjudicators completed nationally recognized adjudication training.
- ESD completed revisions to letter templates to help claimants better understand eligibility determinations.

PART I

Implementation of ESSB 5193

ESD is making many changes and improvements to the unemployment insurance (UI) system to comply with [ESSB 5193](#). The department has divided implementation into five distinct projects:

- Reserve adjudicators
- Letters
- Advisory committee
- Phone lines
- Online data dashboard

This section contains a summary of ESD's progress on each of these projects.

Reserve adjudicators project

Section 2 of the bill requires ESD to “create a training program to prepare a reserve force of skilled unemployment insurance claims adjudicators who can be available quickly when claims volume demands.”

Q1 2022 update

ESD identified non-permanent staff hired during the COVID-19 pandemic as good candidates to receive nationally recognized National Association of State Workforce Agencies (NASWA) adjudication certification training. Those staff will form the core of the reserve adjudicator pool. As of March 31, 445 total staff completed full certification training and are eligible for the adjudicator pool. An additional 460 staff started the certification process and will be eligible when they complete the training. Most of these are temporary staff leaving state employment. However, the total includes some permanent ESD staff who could be assigned to adjudication duties if the need arises.

Health Care Authority (HCA) and the Department of Social & Health Services (DSHS) were identified as state agencies likely to have staff with job duties and experience that make them good candidates for the adjudication pool. NASWA training will start with 50 HCA staff in fiscal year 2023, when training funds become available.

Letters project

Sections 3(1) and (2) of the bill require ESD to revise all materials related to specific claimant cases and perform user testing. The overall goal is to make materials easier for claimants to understand and meet legal requirements to provide them information about unemployment insurance eligibility decisions.

Q1 2022 update

- UTAB, the UI benefits computer system, uses letter templates to provide customized letters that give details on UI benefit eligibility decisions to every claimant. Overall template improvements to make letters easier to understand were completed in fourth quarter 2021. In first quarter 2022, a system error was corrected to clarify references to past determination letters that claimants received.
- UTAB monetary determination and redetermination letter templates provide customized letters that explain:
 - The total UI benefits available to a claimant.
 - How much claimants will receive each week.
 - Details about what wages are included in benefit calculations.

Second round revisions based on stakeholder feedback and user testing were completed and scheduled for programming. The new templates will be in production in early second quarter 2022.

- 105 monetary determination paragraphs that hold customizable details about monetary determinations were revised and sent out for stakeholder review.
- A letter informing claimants that ESD has re-evaluated their claim was rewritten. Text includes information about possible overpayments. These revisions improved clarity, but they're an interim fix. Further development is under review.

Advisory committee project - complete

Section 3(3) requires ESD to work with an unemployment insurance advisory committee comprising business and worker advocates to explore:

- Thresholds for triggers to adjust staff for assignments and phones.
- A pilot for having caseworkers help claimants with their claims and re-employment services.
- Identifying next steps for translating written UI materials into other languages.
- Frequency of the initial and continuing adjudicator training.

ESD completed legislatively required consultations with the equity, diversity and inclusion subcommittee of the Employment Security Advisory Committee (ESAC) and with the Unemployment Insurance Advisory Committee during the fourth quarter of 2021.

During consultations, ESD received comments about:

- The quality of customer service.
- Suggestions about the importance of providing phone-based services.
- Suggestions on improving relationships with marginalized communities.

ESD did not receive concrete suggestions on:

- Establishing triggers for staffing increases.
- Alternatives to the casework pilot model that ESD presented.

ESD presented information regarding non-English speaking customers and plans to implement translation services using USDOL grant funds. ESD will solicit additional feedback as the translation project is underway.

ESD is considering the feedback it received as it moves forward with equity grant implementation and planning for the new Claims Center phone system implementation. Consultation with stakeholders and community-based organizations will continue through a reconstituted Unemployment Insurance Advisory Committee and ESD's PEAR committee, which will be essential to our ongoing engagement with stakeholders.

Thresholds for establishing triggers to adjust staff for assignments and phones requires redistribution of resources. Any staffing decisions must be made within budget limits using existing staff. Implementing suggestions requiring additional resources would need to align with the budget cycle. Using customer service targets presented to stakeholders and updated workload assumptions, ESD is preparing a biennial funding request to support additional service level staffing for the 2023 session.

Phone lines project

Section 3(4) of the bill requires ESD to establish dedicated toll-free phone lines for claimants who lack computer skills or access to computers, claimants with disabilities, and claimants with limited English proficiency (LEP).

Q1 2022 update

Work on dedicated phone lines for claimants with disabilities and claimants with limited English proficiency was completed in fourth quarter 2021.

The implementation team continues to identify options to assist claimants who lack computer skills or access. ESD's pilot project to interview a select group of claimants who told us that they struggle with technology, monitor their experience, and provide proactive assistance with accessing benefits was ongoing through first quarter 2022. ESD will complete the pilot and analyze the data in second quarter 2022. Information gathered can be incorporated into interim solutions to help customers who only use phones. It will also help with ESD's major phone replacement project scheduled for implementation in late 2022.

Online data dashboard project - complete

Section 4 of the bill required ESD to create an online data dashboard and provide a quarterly written report on specific performance metrics. The agency included additional metrics on the dashboard in response to a request from the Joint Legislative Audit and Review Committee (JLARC).

The [dashboard](#) was completed in Q4 2021.

Program and funding update

Section 5(b) requires ESD to provide updates on any new federal programs or funds received by the department for unemployment compensation and administration, and the use of such funds.

Q1 2022 update

ESD implemented staffing reductions as supplemental funding ended from the United States Department of Labor (USDOL), driven by the pandemic workload. ESD began a phased reduction of non-permanent positions with a combination of attrition and layoffs. A total of 720 non-permanent positions were eliminated by April 30. An additional 161 permanent staff who were on temporary assignments reverted to their permanent jobs.

Despite the reduction in federal funding and required staffing cuts, ESD has a large body of pandemic-related work remaining. Although the backlog of cases awaiting adjudication from the pandemic has been eliminated, maintenance on claims continues as staff move weeks between regular UI benefits and federally funded benefits to meet federal requirements.

Staff are also:

- Processing overpayment waiver requests that could not be completed automatically.
- Reviewing requests for retroactive backdating of Pandemic Unemployment Assistance (PUA) claims.

New CARES Act work will be generated in future quarters as ESD implements additional federal requirements. The Mixed Earners Unemployment Compensation (MEUC) will retroactively provide supplemental benefits for claimants who worked for employers and had self-employment income. ESD must also present revised PUA initial claims questions and revised weekly claims questions to past claimants. Claimants who answer the new questions differently will require new eligibility determinations.

As of March 31, ESD had not yet received formal notice from USDOL on its \$6.8 million grant request to promote equitable access to unemployment compensation. ESD received the full grant award in May. While this one-time grant award will enable Washington to establish important new services, there is no indication that federal funding will be made available to sustain translation and equitable access initiative over the long term.

Software and technology

Section 5(c) requires reporting on any software or technology issues related to claims processing, including any issues causing claim delays or inaccurate automated notifications.

Q1 2022 update

Implementation and administration of requirements for federally funded programs is ongoing. Completed technology system enhancements, corrections and implementation of state and federal requirements include:

- Programming for the Mixed Earners Compensation Program (MEUC) - retroactive federal supplement payments to UI claimants who had both earnings from self-employment and wages from employers.
- Implementation of the Disaster Unemployment Assistance Program (DUA) for Washingtonians impacted by flooding in late 2021.
- Information requests to identify claims for follow-up processing and extra customer outreach on their claims.
- Forty issues touching claims processing, including individual corrections to claims that were allowed a PUA backdate per federal regulations.
- Eight corrections to claimant notifications.
- Four requests regarding payment delays.

Protecting sensitive data

Section 5(d) requires updates on the department's protocols and process for protecting sensitive data.

ESD continues to evaluate its options for updating unemployment claimant identity verification processes. The agency is engaged in preliminary stakeholder discussions on options and

mitigation strategies, seeking to incorporate feedback into our proposal. Should the department decide to move ahead with a proposal that uses facial recognition technology in any form, the department will engage the statutory requirements described in RCW 43.386. Implementation of the identity verification project remains on hold as this preliminary work is underway.

Other unemployment reporting

Section 5(e) requires reporting other relevant unemployment issues or information related to enhancing the unemployment insurance system, as determined by the department.

ESD will continue to address its workload on claims requiring corrections to past federal entitlements. ESD also has several additional CARES-related projects that will continue through summer 2022. These projects include processing MEUC claims and implementing federal requirements that PUA participants from 2020 respond to additional weekly eligibility questions.

JLARC-requested performance improvement plan

Improving adjudication timeliness and quality

JLARC requested details on steps taken to improve timeliness and quality of the adjudication decisions that allow or deny access to benefits.

Q1 2022 update

The reduction in new workload from the end of federal benefits allowed ESD to establish a positive trend in fourth quarter 2021, when the adjudication backlog was reduced by 79% to 20,200 as of Dec. 30, 2021. The positive trend continued in first quarter 2022. Total case counts were 3,549 as of March 31, down an additional 82%. The pandemic-related backlog in cases awaiting adjudication has been eliminated.

A backlog remains in fraud-related work. As of April 1, the Fraud Division had 21,387 cases for investigation and an additional 18,338 work tasks to process that could potentially lead to investigations. Approximately two-thirds of that workload is pandemic-related. The Office of Administrative Hearings (OAH), the independent state agency that reviews UI eligibility, also continues to work through its large backlog of pandemic-related appeals, which was more than 40,000 as of April 1.

See Part II, Adjudication timeliness and quality for further discussion on meeting federal standards.

PART II

ESSB 5193 Section 4(2) requires ESD to provide quarterly reports on selected unemployment insurance performance metrics. At the request of JLARC, ESD included additional performance metrics. The following tables contain data for January, February and March 2022.

Unemployment rate

The U.S. Bureau of Labor Statistics defines the total unemployment rate as the average number of unemployed workers 16 years of age or older actively seeking work divided by the total civilian labor force.

Table 1: Seasonally adjusted unemployment rates (2022)

Month	January	February	March
Unemployment rate	4.4%	4.3%	4.2%

Source: Employment Security Department, Labor Market & Economic Analysis/U.S. Bureau of Labor Statistics, local area unemployment statistics

Reciency rate

The unemployment insurance reciency rate is the number of individuals receiving unemployment compensation divided by the total number people who are unemployed. This data comes from the monthly seasonally adjusted local area unemployment statistics gathered in the federal Bureau of Labor Statistics survey. Unemployment compensation includes state unemployment compensation, unemployment compensation for federal employees, and unemployment compensation for ex-service members. The reciency rate does not include claimants receiving federally funded benefits in our calculation of total benefit recipients. As of Q1 2022, Washington's reciency rate for regular benefit programs ranked 23rd nationally.

Table 2: Unemployment insurance reciency rates (2022)

Month	January	February	March
Reciency rate	33.5%	26.3%	27.8%

Source: ETA Report 5159 Claims and Payment Activities and Labor Market & Economic Analysis/U.S. Bureau of Labor Statistics, monthly seasonally adjusted local area unemployment statistics

Individuals and benefits paid

The following table counts the total number of unduplicated individuals paid per month and the total benefit they received from all unemployment insurance compensation sources:

- State-funded regular unemployment (UI).
- Pandemic Emergency Unemployment Compensation (PEUC) - Allowed additional weeks of benefits for recipients.
- Pandemic Unemployment Assistance (PUA) - Provided benefits to workers not covered by traditional unemployment benefits.
- Federal Pandemic Unemployment Compensation (FPUC) - Provided weekly stimulus payments to all receiving benefits.

The first quarter 2022 numbers include some federal benefits paid for weeks claimed in previous periods that were allowed for backdated claims or for weeks paid on redetermined or appeals denials that were changed to allow benefits.

Table 3: Individuals paid and total benefits paid (2022)

Month	January	February	March	Q1 2022 Total
Individuals paid	69,367	56,675	56,163	
Benefits paid	\$ 127,859,698	\$ 109,004,784	\$ 113,230,415	\$ 350,094,897

Source: ESD operational data query

Initial eligibility. Unemployment insurance claimants file an initial application to establish eligibility for or disqualification from receiving benefits based on why they are no longer working. They then file a weekly claim every week they seek benefits. Claimants found initially eligible will receive payment. If ESD questions a claimant's initial eligibility for benefits, the claimant receives no weekly payments until the eligibility issue is decided. Claimants ultimately found eligible will receive back payments for weeks filed while awaiting their adjudication decisions.

Conditional payments. In addition to establishing their initial eligibility, claimants must stay eligible while they're claiming. To do this, they must be able, available, actively seeking work and following other program requirements, such as participating in eligibility reviews. Claimants certify each week that they continue to meet eligibility requirements. If ESD questions their eligibility, they continue to receive benefits (conditional payments) until the issue is decided. If ESD determines they were not eligible, claimants must pay back benefits received.

The table below shows the status of weekly claims filed by month. Because eligibility is determined each week and not for the entire benefit year, people may have weeks in all three categories. Aggregate totals for the quarter of January, February and March 2022:

- 68% of weeks claimed were paid.
- 32% of weeks claimed were not paid because the claimant was determined ineligible.
- 1% of weeks claimed were still pending a decision.

Table 4: Total weekly claims paid, pending, and not paid (2022)

Month	January	February	March	Q1 2022 Total
Weekly claims paid	220,806	159,812	146,828	527,446
Weekly claims pending	1,291	1,131	2,254	4,676
Weekly claims not paid	108,969	73,434	65,557	247,960
Total	331,066	234,377	214,639	780,082

Source: ESD operational data query, status as of April 14, 2022

Overpayments

Overpayments are established when ESD determines that a claimant received benefits when they shouldn't have, either because they were ineligible or paid an incorrect weekly benefit amount. Overpayments may be waived if all three of the following conditions are met:

- The claimant was not at fault for creating the overpayment.
- The payment was not "conditional" as ESD was determining eligibility.
- Collecting the overpayment would create a financial hardship.

When claimants are potentially eligible for a waiver, ESD offers a waiver request form that requests financial information from the claimant to determine their ability to pay. When ESD receives that completed form, an adjudication staff member determines if the claimant is eligible for a waiver. Under certain conditions, ESD may also automatically waive some overpayments without adjudication if the overpayment is not the claimant's fault. In response to specific federal authorization, ESD also automatically waives some overpayments created when federal law required that claimants be moved between state and federal benefit entitlements that have lower weekly benefit amounts.

ESD created overpayments and waivers in first quarter 2022 as it continued enforcing federal requirements to move claimants to regular unemployment insurance claims and off federal

entitlements. Table 5 shows overpayments established. For a variety of reasons, this total may overstate actual overpayments. Some of these overpayments were later reversed when claim weeks were moved back to other entitlements. Many claimants did not respond to requests to file a new claim (potential new claim issue) or provide PUA required documents until after they received large overpayment notices. The totals established do not reflect overpayments that were later reversed after claimants complied and filed a new claim or submitted required documents, allowing ESD to redetermine their denials. There were also many overpayments created when claimants failed to respond to requests for information on other claim issues. These overpayments would be reversed if the claimant later provides information verifying eligibility for benefits.

A workgroup convened May 2022 to create and operationalize policies and procedures to address overpayments that occurred during the pandemic. This work is ongoing at this time of this report.

Table 5: Overpayments established by benefit entitlement (first quarter 2022)

Benefit type	Cases	Overpayments
Regular	16,658	\$29,135,623
FPUC	16,631	\$99,799,097
PEUC	1,788	\$7,792,619
PUA	13,762	\$70,604,510
Total	48,839	\$207,331,849

Sources: ETA Report 227 (Regular, FPUC, and PEUC), ETA Report 902P (PUA)

ESD issued and approved a large number of automated waivers in March 2022 for claimants whose overpayments were created by federal requirements to move claims from federally funded benefits to claims with a lower weekly benefit amount. These automated waivers do not typically show in the totals provided; however, these waivers required additional manual processing and are reported below.

Table 6: Overpayment waiver requests and outcomes (2022)

Month	January	February	March	First quarter 2022 total
Approved	354	300	4,931	5,585
Denied	428	368	540	1,336
Total	782	668	5,471	6,921
Approval rate	45.3%	44.9%	90.1%	80.7%

Adjudication timeliness and quality

The USDOL requires that 80% of nonmonetary issues with the potential to affect a claimant's benefit rights be determined within 21 days of when the issue was detected. Timeliness is calculated for separation issues (quits and discharges from employment) and for all other non-separation issues that could potentially prevent benefit payments.

ESD reached a major milestone by meeting federal timelines for non-separation eligibility determinations in all three months of first quarter 2022.

ESD is making good progress on separation timeliness. Timeliness results were low in January as staff completed work on pandemic-related backlogged cases. The backlog was complete by February and timeliness statistics climbed in February and March, although they were still below target. ESD will analyze data during second quarter to verify why we are successful meeting non-separation timeliness but not separations.

A possible factor is claimants who are required to verify their identity but do not respond in a timely fashion. An identity denial prevents all further adjudication on a claim unless the claimant responds and ESD can redetermine the denial. Once the claim is allowed, other issues, including separation issues, can be adjudicated. An analysis of fourth quarter 2021 and first quarter 2022 data indicates about 18% of all identity issues set remain denied because claimants do not respond to us and about 15% are redetermined.

A second factor for further study is the time elapsed from an identify issue being set to completed verification of valid identity. Separation issues are not presented for adjudication until the verification process is complete. Data shows about 51% of all created identity issues result in ESD positively verifying the claimant's identity, which then allows the eligibility determination process to continue. Average time from the date an issue is created to completed positive identity verification was 17 days in fourth quarter 2021 and 18 days in first quarter 2022. These initial delays may make the other issues late before they are even available to staff to address. Additional work will verify if these factors affect the timeliness difference between separation and non-separation issues.

States across the country continue to fall well below target. The U.S. national averages for adjudication timeliness in first quarter 2022 were 31.4% for separations and 57.4% for non-separations. ESD exceeded the national average by more than 6 percentage points for separations, and 25 percentage points for non-separations in the quarter.

Table 7: Timeliness of adjudication decisions – separations (2022)

Month	January	February	March	First quarter 2022 total
Total workload	11,072	7,303	6,829	25,204
Determined within 21 days	10.2%	45.4%	57.0%	

Source: ETA Report 9052

Table 8: Timeliness of adjudication decisions – non-separations (2022)

Month	January	February	March	First quarter 2022 Total
Total workload	29,437	21,367	20,726	71,530
Determined within 21 days	81.0%	83.7%	82.3%	

Source: ETA Report 9052

Benefit timeliness and quality (BTQ)

The USDOL Benefit Timeliness and Quality (BTQ) program estimates overall quality of adjudication by reviewing a statistically representative sample of UI benefit eligibility determinations against 100-point scoring criteria. The standard requires that at least 75% of determinations reviewed receive a score of 95 or higher. Normally, ESD would enter a corrective action plan (CAP) with USDOL through our State Quality Service Plan (SQSP) if we did not meet the standard. However, because Washington (as well as many other states) was allowed to bypass BTQ for certain quarters during the pandemic, there is insufficient data to properly administer a CAP. All states were given an exception this year for SQSP and were not required to write new CAPs for any area that did not meet performance during the period of April 1, 2020, to March 31, 2021, used to measure SQSP baseline performance. BTQ has resumed and we are tracking performance internally to ensure success of the program and that federal performance targets are met and maintained.

Separation and non-separation samples are scored separately. ESD met quality standards for adjudications completed in the quarter ending December 2019. BTQ reviews are typically done quarterly but were suspended for much of the pandemic. BTQ resumed for the quarter ending June 2021. Most recent results available are for the quarter ending December 2021.

Table 9: Quality of adjudication decisions

BTQ sample quarter ending December 2021	Separations	Non-separations
Sample size	50	50
Case material not found	0	0
Invalid cases*	10	9
Scored cases	40	41
Score	52.5%	78.1%

Source: USDOL Benefit, Timeliness and Quality

*Invalid case – case should not have been included in the sample for review.

Appeals

A claimant or employer can make a written request for a hearing to appeal an ESD determination. The Office of Administrative Hearings (OAH), an independent state agency, hears unemployment benefits appeals. ESD can transmit only one appeal to OAH per determination of an issue, although a claimant may submit multiple appeal requests on the same issue. ESD staff review appeal requests received via U.S. mail, fax, or eServices. Appeal requests have one of three outcomes:

Redetermined. The eligibility issue case associated with the appeal request has been reviewed by staff prior to being sent to OAH. The outcome has been redetermined to allow benefits based on new information.

No action taken. The request has been reviewed by staff who close the work item with no further action because the request is a duplicate, the request is moot because the requested relief has already been granted, or because the claimant is not an aggrieved party.

Sent to OAH. A formal request for an appeal hearing is sent by ESD staff to OAH after a staff review determines that the denial of benefits still stands or any of the relief requested in the appeal was not granted and thus the claimant is an aggrieved party.

The following table shows the status of appeal requests as of the date of the data extract. The requests are grouped by the month in which the request was received. For the quarter, 89% of the appeal requests have been resolved and 11% were pending resolution.

Table 10: Disposition of appeal requests (2022)

Month	January	February	March	First quarter 2022 total
Pending	1,353	1,297	1,738	4,388
Submitted to OAH	9,554	6,991	5,623	22,168
Redetermined	5,529	3,524	2,435	11,488
No action taken	739	478	330	1,547
Total	17,175	12,290	10,126	39,591

Source: ESD operational data

Claims center phone services and staffing

Claims centers track the number of calls answered by staff after the calls enter the phone system, the number of calls abandoned by customers after they enter the system, and the number of calls that are not connected because there is no capacity to handle the call. Because one person may make repeated calls, the number of individuals attempting to be served via the phone is also tracked. The tables below show:

Answered. Count of calls answered by an agent from queues for the following claims center units: intake, adjudication and Secure Access Washington (SAW) portal help desk.

Abandoned. Count of calls abandoned by a customer from queues before being answered by an agent for the following claim center units: intake, adjudication and SAW portal help desk.

High-call-volume messages. Count of calls (not customers) that are played a high-volume message asking the caller to try again later.

Total calls. High-call-volume messages played + answered + abandoned.

Individuals. Individual callers (by count of unique Social Security number) attempting to speak with an agent during the day. This count includes both callers who received a high-volume message and callers who entered the phone system. Individuals are counted once each day they attempt to call, and multiple times if they call over several days.

Average wait. For all calls answered in all call queues, the average time a call remains in queue until answered by a claims center staff member.

Average wait times were less than 11 minutes in December 2021. ESD has been unable to maintain that service level as it implemented planned staffing reductions. However, wait times are still less than half of those experienced in October and November.

Table 11: Calls to claims centers (2022)

Month	January	February	March	First quarter 2022 total	Percent of total
High call-volume messages	33,947	5,838	3,563	43,348	19.3%
Answered	63,507	45,134	39,405	148,046	65.9%
Abandoned	14,294	7,464	11,412	33,170	14.8%
Total calls	111,748	58,436	54,380	224,564	100%
Average wait time	0:17:52	0:09:56	0:18:21		

Source: ESD operational data

Table 12: Individuals calling claims centers (2022)

Month	January	February	March	First quarter 2022 Total
Individuals	68,200	43,175	41,475	152,850

Source: ESD operational data

ESSB 5193 asked ESD to calculate the ratio of staff phone agents to employers and ratio of staff phone agents to claimants. ESD does not have FTE counts of phone agents because no staff members are assigned exclusively to answering phone inquiries. As of April 1, 2022, the Unemployment Insurance Customer Support Division in total:

- Had 570 UI benefits permanent and non-permanent staff positions to serve an average of 60,735 claimants who received payment in the first quarter.
- Had 196 UI tax & wage permanent and non-permanent staff positions to serve 264,009 active employers.