

June 22, 2020

RE: Amethyst Payne, Et Al v State of NV, Et Al
Washoe Country, Second Judicial District Court - State of Nevada
case no. CV20-00755 Honorable Barry L. Breslow, presiding.

Dear putative class members— (all gig workers still not being paid unemployment compensation even though they have a valid claim pending with DETR):

Attached to this email is a stamped copy of some of the papers we filed with the Court in the above captioned class action against DETR for failing to pay approximately 60,000 gig workers a half billion dollars in Unemployment Compensation “when due.” I think the summary of argument in the Memorandum of Points and Authorities in Support Of *Ex Parte* Writ of Mandamus sets out fairly well our theory of the case. We believe that the eight declarations from class members that we filed, plus the two declarations from our staff showing official DETR documents and a summary of the content of class member communication, describes the typical experiences and frustrations most self-employed gig workers are having with DETR.

We also included a sample of over thirty of your emails to show the court that the difficulties described in the declarations are not outliers. We could have included more emails, and filed more declarations, but there wasn’t enough time and frankly, the point has been made: DETR is not doing its statutory job of paying unemployment compensation to gig workers “when due.” A full set of papers will be posted on our web site at www.thiermanbuck.com and are also available from the court’s website as well.

This is a putative class action. You don’t have to “join” in order to be covered. You need not contact the office to “belong to” this lawsuit. Later you may or may not be given an opportunity to opt out of the class, but for now, you don’t have to do anything to get the benefits of our litigation.

However, you can help by contacting your elective representatives to ask for help. Although it is not your responsibility to figure out why DETR is not doing its duty of paying unemployment compensation quickly, the governor and other higher up politicians can talk to the people at DETR who can fix this problem. DETR has a statutory duty to pay claims “when due” which means as quickly as possible once DETR determines the claim is not totally phony. DETR is not so much denying claims as ignoring them. DETR is simply not doing its job.

But DETR is not a person, it is not evil or nice, it does not have a soul. DETR employs people, most of whom are nice, caring and try hard to do their job and to help people like you get paid when you are owed the money. But the system has DETR’s employees in a trap as much DETR has you in one. No one is getting paid, and thus the phones are overrun with complaints about not being paid. It’s an infinite regression to a bad outcome.

Having said that, I speculate on the causes of this mess by DETR. I do not think this is a staffing issue so much as a workflow issue. Here is what I mean- almost all of delays in payment stem from the rule that a worker is not supposed to get paid twice for the same thing. That makes common sense. DETR reads the exact language of the statute and the advice memos from the Department of Labor to mean that if you have any account balance in a regular Unemployment Compensation program, like a “credit” in DETR’s internal system for earning w-2 income many years ago, even if you are not eligible to take out any money from that regular UI program, you can’t be in the new PUA program for gig workers who aren’t paid w-2 wages. The statute and regulations don’t say that. Nor do they require DETR to make this exhaustive investigation before issuing a check. The statute and regs say that if you are getting paid or can get paid from regular UI program, you can’t get paid from the PUA program and if the claimant thinks he may be eligible for UI instead of PUA payment, the claimant should let DETR know. I don’t know why DETR is making this so difficult.

But it really doesn’t matter to you which program pays you, as long as you get paid. The payment amounts are the same under both regular UI and the PUA programs. And both programs are basically federally funded, although the federal government does use payroll taxes to fund UI and probably will have to use general revenues to fund the other. (There is no state income tax in Nevada). Because DETR can’t decide from which of two first level programs it ought to pay the worker the base level unemployment compensation, DETR pays from neither. And since neither first level program is paying, the second level 600 \$/week isn’t being paid either, despite the fact it would be paid if either program pays even a penny.

And the worst part is that even when the adjudicators say to pay you, the computer program will not let the humans override it—kind of like an old Star Trek plot where the computers rule the human beings instead of the other way around (until the computers realize how imperfect humans are and tries to get rid of them, in which case Dr. Spock comes to the rescue and saves civilization from automation.) Actually, in the DETR situation, doing the initial determinations all by hand would probably have worked better, and you would have gotten paid quicker than putting the computer in charge of the humans. So that’s the catch 22- you can’t get paid by either program because you might be in both, and therefore it is theoretically possible that you will get paid twice, even though you can’t be double paid in fact, so you won’t get paid at all.

Second, the relevant statute says DETR must pay claims “when due” and “when do” basically means as soon as possible after an initial determination of eligibility. The statute also says, as the US Supreme Court has held in a case out of California many years ago, DETR can’t deny a claim without a full hearing, and we argue that retroactively determining that a claimant was originally ineligible after the claim was initially accepted is the same thing as a denial of an already accepted claim. It is a labeling sleight of hand bureaucrats use to get around the requirements that they pay all claims initially accepted as valid until an administrative law judge decides otherwise, after a full hearing. Many of you have received a letter from DETR determining that of you are qualified for benefits and a determination of how much you should get paid in PUA money. The letters never deal with the \$600 per week in addition FPUC money, since that is automatically paid if any underlying unemployment claim gets paid. But DETR delays payment until it can re-evaluate the claims, and most of

the time, deny payment retroactively because you are potentially in another program, even if you could not have been paid by other program, and not pay the \$600 / week either. All the money for payment comes from the federal government so I don't understand what DETR can gain by not paying you money that clearly you are owed.

I don't think DETR is doing this on purpose, but the result is that about 60,000 people are being denied half a billion dollars in benefits because the system is over-engineered to deny a few of those people the opportunity of double dipping for a few thousand dollars. The "fix" is to spot for duplicate payments, not duplicate "participation" in the two programs, by cross checking social security numbers on checks or payments made. If there is a mistake, DETR has a whole process to take back any overpayments. DETR should just make a quick decision which program gets credit (debited) internally for the payment to you, and if it's wrong, change the allocation after payment is made. All the programs are federally funded, and all pay base program pay the same amount, so it's just an accounting issue.

At the very least, once it is determined that you are eligible under any base program, DETR should pay the 600 \$/week FPUC money immediately because that is due no matter which base program people you are in. DETR should also pay the base rate of \$181 to \$469 per week as soon as DETR determines that you qualify for any program. If you don't qualify for the PUA program just because you qualify for payment under the regular UI program, DETR can switch its accounting and back charge itself to make the books balance. The money is the same, the source is the same, so why delay all payments because you may qualify for two payments, as long as you are only going to get one payment.

Hopefully, the governor will find someone to fix this and disburse money immediately. I will try to keep you updated. Thank you for listening. Hope this helps.

Very truly yours

Mark R. Thierman