

# Virginia legal aid groups drop lawsuit against unemployment agency despite massive backlog of unresolved claims

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Nearly four months after a court-ordered deadline for the Virginia Employment Commission (VEC) to address a backlog of requests for assistance expired, thousands of unemployed Virginians remain without any help from the state.

According to NBC News, as of October, nearly 440,000 claims for unemployment remained on the state's backlog. This is despite a May 2021 court decision which required Virginia to formally respond to at least 92,000 of its backlogged claims by Labor Day last September.

On Wednesday, January 5, legal aid groups working on the class action suit agreed to dismiss the lawsuit. According to the proposal, the VEC "has met or substantially achieved the various performance standards and benchmarks set forth" in the lawsuit.

The dropping of the suit comes as the Democratic Party statewide and nationally seeks to accustom the population to an unending pandemic in which nearly 900,000 Americans have lost their lives and over 500,000 people contract COVID-19 daily.

Despite the legal aid groups deciding to relent in their charges against the unemployment agency, ABC News reported "another backlog" of benefits appeals from tens of thousands of Virginians in November who had been wrongly denied benefits by the VEC. "That backlog has grown. It's now up to about 89,000 cases or so," Pat Levy-Levelle, a lawyer with the Virginia Legal Aid Justice Center, told WAVY.com last week.

Virginia has been reported to be the worst in the United States in addressing the massive backlog of unemployment claims that have piled up during the pandemic. A previous Richmond *Times-Dispatch* report from June referred to the VEC as "a dinosaur"

due to its "antiquated information technology system and ... bare-bones staff."

An audit in November by the Virginia General Assembly's Joint Legislative Audit and Review Commission (JLARC) of the state's unemployment system's mishandling of record numbers of unemployment benefits claims exposed the criminal impact of decades of underfunding and understaffing.

The 200-page report reiterated basic criticisms raised by other groups, such as the "deficient staffing levels, [an] antiquated UI IT system, performance monitoring, and oversight ... revealed during the COVID-19 pandemic." The audit notes that the VEC was hit with claims "totaling 236,000 in April 2020" alone. This number represents an increase by a "factor of 34 within the first two months of the pandemic."

In terms of its benefit amounts per recipient, the auditors note that Virginia's 2019 "replacement ratio" for lost wages was 34 percent, ranking the state at 33 out of 50 states. This was despite experts' belief that unemployment benefits should equate to roughly 50 percent of a worker's wage. Virginia's federal funding is "above the 50-state median, in total and per claim."

This failure to prepare resulted in massive burdens for its staff. "VEC staff worked over 191,000 hours of overtime between March and December 2020 to handle the increased workload," the report notes. This "was a 1,600 percent increase compared with 2019 overtime and equivalent to 92 full-time staff positions."

This placed office employees in jeopardy. The report noted that "VEC closed some offices because of outbreaks of COVID-19 infections among VEC staff."

Despite this severe backlog and once-in-a-century crisis, the VEC did not hire additional workers to

address the tidal wave of social need. It did not hire contractors to help with processing claims until November 2020, “well after large backlogs had accumulated.”

The study sees the VEC’s ultimate failing as the alleged \$1.25 billion in “incorrect payments,” or nearly a quarter of the VEC’s 2020 Fiscal Year budget, which it racked up during the pandemic.

False claims which, according to Reuters, can consist of “fraudulent first-time claimants” who “sneak through” certification systems to collect undue benefits, as well as individuals who do not report a return to work, while perhaps significant, are far less numerous than the \$1.25 billion amount suggests.

While JLARC cites over \$930 million in false claims in 2020, the VEC has contested this. Megan Healy, the state’s Secretary of Labor under the outgoing Democratic administration of Ralph Northam, has stated that her department has only been able to verify \$87 million in fraud.

Lauren Axselle, who led the audit, told the *Times-Dispatch* “the smaller number reflected only confirmed cases that had already gone through the system, not the backlog of cases under adjudication or appeal for eligibility.” In other words, JLARC’s claim of \$1.25 billion in fraud is based on the VEC’s own determinations, which the study itself states were not carried out in an “accurate and timely manner.”

The JLARC report concludes, “Given VEC’s critical role during severe increases in unemployment—and the operational challenges that arise from them—future secretaries of labor must effectively fulfill their role to ensure the agency is performing adequately.”

Republican Governor-elect Glenn Youngkin had made claims during his election campaign that he would “fix the Virginia Employment Commission.” On Thursday, he announced that his selection for Secretary of Labor was George “Bryan” Slater, a veteran state Republican operator.

Slater was the former Secretary of Administration under former Republican Governor Jim Gilmore (1998-2002) and later the Assistant Secretary of Administration for the Department of Transportation under former President Donald Trump.

“Bryan’s experience and leadership will be critical to the development of talent, training of workers, and protection of Virginia’s right-to-work laws that will

attract investment to Virginia,” Youngkin declared in announcing his pick. The appointment and the comments announcing it signal that the incoming administration will likely “fix” the VEC through the further depriving the agency, and the state’s working people, of resources.



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