

Chapter 121

(House Bill 583)

AN ACT concerning

Unemployment Insurance – Relief from Charges for Overpayment of Benefits – Restrictions

FOR the purpose of altering the circumstances under which the Secretary of Labor, Licensing, and Regulation is prohibited from removing a benefit charge from the earned rating record of an employing unit; requiring, except under certain circumstances, the Secretary to remove benefits charged to a not for profit organization or governmental entity from the account of the not for profit organization or governmental entity under certain circumstances; prohibiting the Secretary, under certain circumstances, from removing benefits charged to a not for profit organization or governmental entity; specifying that, for certain purposes, the employing unit or the employing unit's agent, not for profit organization, or governmental entity must raise the issue of good cause in writing and has the burden of proving good cause; prohibiting the Secretary from finding good cause under certain circumstances; providing for the application of this Act; and generally relating to the relief from charges for the overpayment of unemployment benefits.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 8–611 and 8–620
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

8–611.

(a) For each employing unit, the Secretary shall keep an earned rating record that shows all benefits that are based on covered employment that was performed for the employing unit.

(b) Except as provided in subsection (d) of this section, the Secretary shall charge pro rata against the earned rating record of each base period employer all regular benefits and the share of extended benefits required under subsection (c) of this section in the same proportion as the wages paid by the base period employer is to

the total wages of the claimant during the base period, and rounded to the nearest dollar.

(c) (1) Notwithstanding any other provision of this title, the Secretary may not charge against the earned rating record of an employing unit an extended benefit payment for which the State receives full reimbursement from the federal government.

(2) Except as provided in subsection (d) of this section, the appropriate share of extended benefits:

(i) for a governmental entity, is all extended benefits paid to a claimant; and

(ii) for other employing units, is 50% of extended benefits paid to a claimant.

(d) The Secretary shall charge all regular and extended benefits paid to a claimant against the earned rating record of an employing unit that caused the claimant's unemployment during any period in which the unemployment is caused by:

(1) participation of the employing unit in a work sharing unemployment insurance program that the Secretary has approved; or

(2) a shutdown of the employing unit:

(i) to have employees take their vacations at the same time;

(ii) for inventory;

(iii) for retooling; or

(iv) for any other purpose that is primarily other than a lack of work and that causes unemployment for a definite period.

(e) The Secretary may not charge benefits paid to a claimant against the earned rating record of an employing unit if:

(1) the claimant left employment voluntarily without good cause attributable to the employing unit;

(2) the claimant was discharged by the employing unit for gross misconduct as defined in § 8-1002 of this title;

(3) the claimant was discharged by the employing unit for aggravated misconduct as defined in § 8-1002.1 of this title;

(4) the claimant left employment voluntarily to accept better employment or enter training approved by the Secretary;

(5) the employing unit participates in a work release program that is designed to give an inmate of a correctional institution an opportunity to work while imprisoned and unemployment was the result of the claimant's release from prison;

(6) the claimant was paid additional training benefits under § 8–812 of this title; or

(7) the claimant left employment for good cause directly attributable to the claimant or the claimant's spouse, minor child, or parent being a victim of domestic violence as defined in § 8–1001(b)(3) of this title.

(f) (1) Except as provided in paragraph (2) of this subsection, if the Secretary determines before the first day of the calendar year for which the rate is assigned, that benefits that have been charged against the earned rating record of an employing unit are recoverable under § 8–809 of this title, the Secretary shall remove those charges from the earned rating record before computation of the earned rate.

(2) (I) The Secretary may not remove a benefit charge from an earned rating record if:

1. the benefit was paid as a direct or indirect result of the failure of the employing unit, **OR THE EMPLOYING UNIT'S AGENT**, to provide **TIMELY OR ADEQUATE** information **RELATING TO A CLAIM FOR BENEFITS IN RESPONSE TO A REQUEST FOR INFORMATION MADE BY** the Secretary [as required by] **UNDER** this title or regulations adopted to carry out this title; **AND**

2. **THE EMPLOYING UNIT, OR THE EMPLOYING UNIT'S AGENT, HAS NOT SHOWN GOOD CAUSE FOR FAILING TO PROVIDE TIMELY OR ADEQUATE INFORMATION.**

(II) **IN DETERMINING WHETHER THE SECRETARY IS PROHIBITED FROM REMOVING A BENEFIT CHARGE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH:**

1. **AN EMPLOYING UNIT, OR THE EMPLOYING UNIT'S AGENT, MUST RAISE THE ISSUE OF GOOD CAUSE IN WRITING FOR THE ISSUE TO BE CONSIDERED; AND**

2. **THE EMPLOYING UNIT, OR THE EMPLOYING UNIT'S AGENT, HAS THE BURDEN OF PROVING THERE WAS GOOD CAUSE FOR FAILING TO PROVIDE TIMELY OR ADEQUATE INFORMATION.**

(g) The Secretary may not charge the earned rating record of an employing unit that has employed a claimant on a continuous part-time basis and continues to do so while the claimant is separated from other employment and is eligible for benefits because of that separation.

(h) The Secretary may not charge the earned rating record of an employing unit for benefits that are paid to a claimant during a period in which the claimant is disqualified as a result of a reversal or redetermination.

(i) (1) If, as a direct or indirect result of an erroneous report of wages or other information by an employing unit, benefits are paid to a claimant who is not entitled to the benefits, the Secretary shall charge the benefits against the earned rating record of the employing unit responsible for the erroneous report.

(2) Notwithstanding paragraph (1) of this subsection, on request of an employing unit, the Secretary for cause may waive a charge to the employing unit earned rating record that results from erroneous report by the employing unit.

(j) (1) If the Secretary allows an adjustment or refund under this title, the Secretary shall correct the employing unit's earned rating record.

(2) (i) The Secretary may not change an earned rate assigned to an employing unit as a result of an adjustment or refund unless under this title the application is submitted by the December 31 preceding the calendar year for which the rate is assigned.

(ii) The Secretary shall waive the December 31 deadline for good cause.

8-620.

(a) (1) Reimbursement payments shall be made in accordance with this section.

(2) Unless there is an application for review and redetermination of a bill under § 8-621 of this subtitle, a not for profit organization or governmental entity shall pay the bill under this section within 30 days after the Secretary mailed the bill to the last known address of the not for profit organization or governmental entity or otherwise delivered the bill to it.

(b) If benefits paid to an individual are based on wages paid by 2 or more employing units, the amount payable by each employing unit under an election shall be an amount whose ratio to total benefits paid is the same as the ratio that total base period wages paid to the individual by that employing unit has to total base period wages paid by all base period employing units.

(c) Except as provided in subsection (d) of this section, at the end of each calendar quarter or any other period set by the Secretary, the Secretary shall send:

(1) to each not for profit organization that has made an election or if the Secretary has approved a group account under § 8–619 of this subtitle, to the group representative, a bill for all regular and work sharing benefits, and 50% of extended benefits paid during that period that are attributable to covered employment for that not for profit organization; and

(2) to each governmental entity that has made an election, a bill for all regular, work sharing, and extended benefits paid during that period that are attributable to covered employment for that governmental entity.

(d) (1) On request, the Secretary may allow a not for profit organization or governmental entity that has made an election to make reimbursement payments as provided in this subsection.

(2) If the Secretary approves a request, the method of payment shall become effective on approval.

(3) At the end of each calendar quarter or other period set by the Secretary, the Secretary shall mail to a not for profit organization or governmental entity at its last known address or otherwise deliver to it:

(i) a bill for a percentage of its total payroll for the immediately preceding calendar year as determined by the Secretary, based each year on the average cost of benefits that are attributable to covered employment for the not for profit organization or governmental entity during the immediately preceding calendar year; or

(ii) if the not for profit organization or governmental entity did not pay wages during the 4 calendar quarters of the preceding calendar year, a bill for a percentage of its payroll during that year as determined by the Secretary.

(4) At the end of each calendar year:

(i) the Secretary may modify the periodic percentage of payroll payable under this subsection for the upcoming year to minimize excess or insufficient payments;

(ii) the Secretary shall determine the difference between payments made by a not for profit organization or governmental entity and the amount it is required to reimburse to the Unemployment Insurance Fund under § 8–616 of this subtitle; and

(iii) if the Unemployment Insurance Fund has not been reimbursed fully, the Secretary shall mail to the not for profit organization or governmental entity at its last known address or otherwise deliver to it a bill for the difference and require payment in accordance with subsection (a)(2) of this section.

(5) If the total payments for a calendar year exceed the amount required to be reimbursed, the Secretary may:

(i) refund all or part of the excess from the Unemployment Insurance Fund; or

(ii) retain all or part of the excess in the Unemployment Insurance Fund as part of the payments that may be required for the next calendar year.

(e) An employing unit may not deduct, wholly or partly, any payment made under this subtitle from the compensation of individuals in the employ of the not for profit organization or governmental entity.

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF THE SECRETARY RECOVERS BENEFITS CHARGED TO A NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY UNDER § 8-809 OF THIS TITLE, THE SECRETARY SHALL REMOVE THOSE CHARGES FROM THE ACCOUNT OF THE NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY.

(2) (I) THE SECRETARY MAY NOT REMOVE A BENEFIT CHARGE RECOVERED BY THE SECRETARY UNDER § 8-809 OF THIS TITLE FROM THE ACCOUNT OF A NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY IF:

1. THE BENEFIT WAS PAID AS A DIRECT OR INDIRECT RESULT OF THE FAILURE OF THE NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, TO PROVIDE TIMELY OR ADEQUATE INFORMATION RELATING TO A CLAIM FOR BENEFITS IN RESPONSE TO A REQUEST FOR INFORMATION MADE BY THE SECRETARY UNDER THIS TITLE OR REGULATIONS ADOPTED TO CARRY OUT THIS TITLE; AND

2. THE NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY HAS NOT DEMONSTRATED GOOD CAUSE FOR FAILING TO PROVIDE TIMELY OR ADEQUATE INFORMATION.

(II) IN DETERMINING WHETHER THE SECRETARY IS PROHIBITED FROM REMOVING A BENEFIT CHARGE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH:

1. THE NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, MUST RAISE THE ISSUE OF GOOD CAUSE IN WRITING FOR THE ISSUE TO BE CONSIDERED; AND

2. THE NOT FOR PROFIT ORGANIZATION OR GOVERNMENTAL ENTITY, EITHER DIRECTLY OR THROUGH AN AGENT, HAS THE BURDEN OF PROVING THERE WAS GOOD CAUSE FOR FAILING TO PROVIDE TIMELY OR ADEQUATE INFORMATION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to benefit determinations issued on or after October 1, 2013.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, April 9, 2013.