Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 74 (Chair, Finance Committee)(By Request - Departmental - Labor, Licensing and Regulation)

Finance Economic Matters

Unemployment Insurance - Effect of Retirement Payments on Eligibility for Benefits - Revision

This departmental bill clarifies the definition of "retirement payment" and the criteria used to determine the effect of a retirement payment on eligibility for unemployment insurance (UI) benefits.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: The Department of Labor, Licensing, and Regulation (DLLR) can implement the bill with existing resources. The bill is clarifying in nature and helps ensure continued conformity with federal law, thereby preventing the loss of federally provided UI administrative funds.

Local Effect: None. The bill is clarifying in nature.

Small Business Effect: DLLR has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law:

Current Law: "Retirement payment" means an amount in the form of a pension, annuity, or retirement or retired pay from a trust, annuity, profit sharing plan, insurance fund, annuity or insurance contract, or any other similar lump sum or periodic payment that is based on any previous covered employment for a base period employer under a plan *paid for wholly or partly* by a base period employer. It does not include a payment from a state or federal workers' compensation program.

The Bill: "Retirement payment" means an amount in the form of a pension, annuity, or retirement or retired pay from a trust, annuity, profit sharing plan, insurance fund, annuity or insurance contract, or any other similar lump sum or periodic payment that is based on any previous covered employment for a base period employer under a plan *maintained or contributed to* by a base period employer. It still does not include a payment from a state or federal workers' compensation program.

Current Law: To determine the effect of a retirement payment on eligibility for unemployment benefits:

- if a *base period employer* paid the full cost of the plan that provides the retirement, the full retirement payment must be considered; and
- if a *base period employer* paid only part of the cost of the plan that provides the retirement payment, 50% of the retirement payment must be considered.

The Bill: To determine the effect of a retirement payment on eligibility for unemployment benefits:

- if an *individual did not contribute to* the plan that provides the retirement payment, the full retirement payment must be considered; and
- if an *individual contributed to* the plan that provides the retirement payment, 50% of the retirement payment must be considered.

Background: States must be in conformity with certain provisions of the Federal Unemployment Tax Act (FUTA) in order to receive administrative funding for their state UI programs and for the states' employers to receive federal UI tax credits. The Maryland UI program is 100% federally funded. Employers' FUTA taxes are 5.4% of each employee's first $7,000 in wages ($378 annually per employee); however, states whose laws are in conformity receive a credit for most of that amount (4.8%), making the effective tax rate 0.6% (which translates into $42 annually per employee).

DLLR advises that the bill ensures that Maryland law conforms to FUTA in light of two recent circuit court decisions which interpreted the current statute (in effect since 1994) in such a way that makes current law out of conformity. Both decisions centered on *employers' contributions* to the plan, rather than whether the *employees* had contributed to the plan. DLLR has historically interpreted and administered the statute by determining whether the employees contributed to a plan.

The first decision concerned whether an employer, who had bought an existing business, including the pension plan, was considered to have paid the full cost of the plan that was initiated by the prior employer – ***not*** whether the employee had contributed to the plan. The second decision held that since the employer had contributed to the plan only 50% of the pension should be deducted.

If these or other circuit court decisions were appealed, a higher court decision could place Maryland out of conformity with FUTA, at which point the U.S. Department of Labor would institute conformity proceedings. DLLR advises that a finding of Maryland being out of conformity could result in a loss of approximately $55 million in UI administrative funds and approximately $750 million in Maryland employers' FUTA tax credits.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - January 15, 2016
md/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Unemployment Insurance – Deduction of Retirement Payments

BILL NUMBER: SB 74

PREPARED BY: Susan Bass, Chief, Policy and Planning, Division of Unemployment Insurance, DLLR

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X_ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

With respect to the Agency's administration of the statute, there will not be any impact on the business community as this legislation is being proposed solely to clarify the existing statute. However, considering the past conflicting judicial decisions and the potential for more in the future, this proposal will benefit employers by ensuring that as long as the employer contributed to the plan and the employee did not contribute, retirement payments are fully deductible.

This legislation will also ensure that the interpretation of Maryland UI law remains in conformity with federal law, which ensures that Maryland employers will retain the full Federal Unemployment Tax Act (FUTA) tax credit of 4.8% and continue to pay annual FUTA taxes at the .6% rate, totaling no more than $42/employee/year.