

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 70
Finance

(Senator Waugh)

Economic Matters

Unemployment Insurance - Exemption From Covered Employment - Youth
Sports Workers

This bill specifies that work is not covered employment when performed by a “qualifying youth sports worker” for a “youth sports organization.”

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Unemployment Insurance Trust Fund (UITF) Effect: UITF revenues decrease minimally beginning in FY 2018 from reduced employer taxes, as discussed below. UITF expenditures may decrease minimally beginning in FY 2018 from reduced benefits paid, as discussed below.

Local Effect: None.

Small Business Effect: None on for-profit small businesses; however, potential meaningful for small nonprofit businesses, as discussed below.

Analysis

Bill Summary: “Qualifying youth sports worker” means an individual who provides services or performs duties as an athletic coach, manager, program leader, or team assistant for compensation of up to \$1,250 per quarter of a calendar year, for either the current calendar year or the preceding calendar year. “Compensation” does not include actual and necessary expenses that are incurred by, and reimbursed to, a qualifying youth sports worker in connection with the services provided or duties performed by the individual.

“Youth sports organization” means an athletic or recreational program:

- organized for competition against another team, club, or entity or for athletic instruction exclusively for participants who are younger than age 19;
- that is qualified under § 501(c)(4) (social welfare organizations) or § 501(c)(7) (social clubs) of the Internal Revenue Code ;
- that does not have any part of the net earnings benefiting any private shareholder; and
- that has an adult employee or a qualifying youth sports worker who has supervisory or disciplinary authority over youth participants.

It does not include a public or private educational institution’s athletic program or a school-associated athletic activity.

Current Law/Background: Unemployment insurance (UI) provides temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Both the federal and state governments have responsibilities for UI programs. Funding for the program is provided by employers through UI taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their UI trust funds. Using federal tax revenues, the UI program is administered pursuant to state law by state employees. Each state law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

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 6.0% of each employee’s first \$7,000 in wages (\$420 annually per employee); however, employers typically receive a credit for most of that amount (5.4%), making the effective tax rate 0.6% (which translates into \$42 annually per employee).

Covered Employment

Employment is presumed to be covered employment if:

- regardless of whether the employment is based on the common law relation of master and servant, the employment is performed for wages or under a contract of hire that is written or oral or express or implied; and

- the employment is performed either in the State or partly in the State, or in connection with the State, subject to specified conditions.

To overcome the presumption of employment, an employer must establish that the person performing services is either an independent contractor or is specifically exempted under the law.

Independent Contractors

Work that an individual performs under any contract of hire is not covered employment if the Secretary of Labor, Licensing, and Regulation is satisfied that:

- the individual who performs the work is free from control and direction over its performance both in fact and under the contract;
- the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and
- the work is (1) outside of the usual course of business of the person for whom the work is performed or (2) performed outside of any place of business of the person for whom the work is performed.

Specific Exemptions from Covered Employment

There are several exemptions in State law for certain types of employment. For example, under specified conditions, officiating services performed by a recreational sports official (an umpire, referee, or judge) is not covered employment. There are other exemptions for specific individuals and circumstances, including newspaper delivery, cosmetology, and taxicab drivers.

There are also federal exemptions for certain types of employment under FUTA. The federal exemptions are included in the State UI law. If a certain type of employment is exempt under State UI law but not federal UI law, an employer is subject to the loss of federal UI tax credits.

UITF Effect: The Department of Labor, Licensing, and Regulation (DLLR) has identified 376 active employers who self-identify in the sports and recreation instruction industry, 23 of which are nonprofit businesses under § 501(c)(3) of the Internal Revenue Code. Those 23 businesses paid approximately \$13,000 to UITF in fiscal 2015 for their 397 workers. There were no benefit charges associated with these workers during that year, meaning no workers successfully filed for and received UI benefits.

DLLR notes that additional nonprofit sports organization employers are likely to exist under other sections of the Internal Revenue Code, but the department does not currently collect information on nonprofits beyond charities under § 501(c)(3). DLLR also does not receive information on the age of participants in sports organizations.

UITF entered 2017 with a fund balance in excess of \$1.0 billion; UITF revenues and expenditures in a given year frequently exceed half a billion dollars. Therefore, in this context, UITF revenues decrease minimally beginning in fiscal 2018 from reduced employer taxes paid by exempt employers under the bill. The amount cannot be reliably estimated at this time.

As no benefit charges were applied to any workers at nonprofit sports organizations that DLLR could currently identify, UITF expenditures may decrease minimally beginning in fiscal 2018 from reduced benefits paid. However, if no UI claims are made by affected workers, then UITF expenditures are unaffected. The amount, if any, cannot be reliably estimated at this time.

Small Business Effect: If a certain type of employment is exempt under State UI law but not federal UI law, an employer is subject to the loss of federal UI tax credits. If the bill causes any Maryland employer to be in conflict with federal UI law, that employer's FUTA tax increases due to the loss of the federal credit, which may partially or wholly offset any savings from the exemption. DLLR advises that the nonprofits potentially affected by the bill, social welfare organizations and social clubs, must pay FUTA taxes.

Employers' FUTA taxes are 6.0% of each employee's first \$7,000 in wages (\$420 annually per employee). Employers typically receive a credit for most of that amount (5.4%), making the effective tax rate 0.6% (which translates into \$42 annually per employee).

Additional Information

Prior Introductions: None.

Cross File: None.

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

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