

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 139

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor, Licensing and Regulation)

Economic Matters

Finance

**Unemployment Insurance - Employer Determinations - Process and Appeal
Rights**

This departmental bill establishes that the Lower Appeals Division in the Department of Labor, Licensing, and Regulation (DLLR) has initial jurisdiction over employer account determinations under the State unemployment insurance law. The bill also generally codifies an existing “review determination” process that occurs prior to an employer filing an appeal, extends the appeals process from 15 to 30 days, and authorizes the electronic delivery of related notices. DLLR must adopt regulations related to the review determination process.

Fiscal Summary

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

Unemployment Insurance Trust Fund (UITF) Effect: To the extent that the bill allows for two agency level hearings instead of one for employer account determinations, UITF expenditures increase; however, any additional costs are anticipated to be minimal and absorbable within existing budgeted resources, offset to some extent by reduced expenditures associated with additional electronic delivery of related notices. The bill does not substantively alter the quantity or process of review determinations currently conducted by DLLR. UITF revenues are not affected.

Local Effect: The bill does not materially affect local government finances or operations. Circuit court caseloads are not materially affected.

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: Initial employer account determinations are made by the Secretary of Labor, Licensing, and Regulation. An appeal of an initial employer account determination, which may involve contribution assessments, tax rates, successor liability, and/or covered employment, is made to the Board of Appeals within the Division of Unemployment Insurance. If an employer wishes for a second level of review, the employer must appeal to a circuit court. Appeals of each decision generally must be made within 15 days or the decision is final.

Prior to filing an appeal to the Board of Appeals, an employer may request an internal agency review of the Secretary's initial decision (a "review determination").

The Bill: Initial employer account determinations are made by the Secretary. An appeal of an employer account determination is made to the Lower Appeals Division within the Division of Unemployment Insurance. An employer may appeal a decision made by the Lower Appeals Division to the Board of Appeals. Appeals of each decision in this appeals process must be made within 30 days or the decision is final.

Prior to filing an appeal to the Lower Appeals Division, an employer *must* request an internal agency review of the Secretary's initial decision (a "review determination"), subject to specified requirements. However, an employer may initiate an appeal if DLLR has not issued a review determination decision within 60 days of receiving the request.

Final decisions by the Board of Appeals may still be appealed to a circuit court.

Background: DLLR advises that, prior to 2008, employers and claimants had the same rights of appeal. If an employer protested the Secretary's decision on an employer account determination, there was an initial appeal to Lower Appeals, followed by a second level of appeal to the Board of Appeals. Chapter 660 of 2008 separated Lower Appeals and the Board of Appeals into two distinct review authorities. As a result, Lower Appeals' jurisdiction to hear and decide employer account determinations was likely inadvertently eliminated. The bill establishes that Lower Appeals has initial jurisdiction over employer account determinations, similar to how claimant appeals cases are currently handled.

DLLR advises that the “review determination” process established in the bill is an existing agency practice that is currently referenced in regulation and used extensively by the department. DLLR has averaged 4,000 review determinations annually over the past two years; only a small number of employers each year request an appeal without first requesting a review determination. The related provisions clarify the process for employers and their advisors and provide a clear decision date from which the appellate authority measures the filing period allowed for an appeal.

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 24, 2017
mm/ljm Third Reader - March 15, 2017

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL:

Unemployment Insurance – Employer Determinations – Review Determination Process – Appeals Rights

BILL NUMBER: HB 139

PREPARED BY: Jared W. Murphy, Director of Legal Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

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

The legislation will not directly impact small businesses or private employers financially. Small businesses, private employers, and not for profit entities will be provided two internal levels of independent review of agency determinations in cases involving contribution assessments, tax rates, successor liability, covered employment, and other determinations under Subtitle 6 of Title 8. The process established by the statutory provisions will create parity with regard to the appeal rights provided in benefit and tax determinations.

Businesses are provided 30 days to protest an agency determination to ensure that businesses are able to respond timely and adequately to agency determinations. The combination of the provisions allowing 30 days to file an appeal and providing for two levels of independent review provides an efficient mechanism of appeals for employers.

Currently, the employers' second level of review would require the employer to petition for review with the Circuit Court, which typically would require the employer to hire an attorney to represent the business. The statute also formalizes the agency review determination process, which the agency currently utilizes without a direct reference to statute.