

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 453 (Delegate Bromwell)
Economic Matters

Unemployment Insurance - Exemption From Covered Employment - Bulk
Vending Item Assembly

This bill specifies that work is not covered employment when performed by an individual engaged in the light assembly of bulk vending items for bulk vending machines if the Secretary of Labor, Licensing, and Regulation is satisfied that certain conditions are met.

Fiscal Summary

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

Unemployment Insurance Trust Fund Effect: Unemployment Insurance Trust Fund (UITF) revenues decrease minimally beginning in FY 2020 from reduced employer taxes. UITF expenditures may decrease minimally beginning in FY 2020.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Specifically, for work to not be considered covered employment under the bill, the Secretary of Labor, Licensing, and Regulation must be satisfied that:

- the individual performs the work in the individual's home;
- the work is performed according to specifications furnished by the person for whom the services are performed;

- the work is performed on bulk vending items furnished by the person for whom the services are performed;
- the bulk vending items must be returned to the person for whom the services are performed or that person's designee; and
- the individual receives less than \$750 per quarter for the light assembly of bulk vending items.

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.

Federal Tax

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).

State Tax

A Maryland employer's State UI tax rate is based on the employer's unemployment history and ranges within a certain percentage of the total taxable wages of the employer's employees. Taxable wages are defined as the first \$8,500 earned by each covered employee in a calendar year. The taxes are deposited in UITF and can be used only to pay benefits to eligible unemployed individuals. The rates paid by employers are set annually based on the balance in UITF, which determines the applicable tax table (A through F). Table A, which is in effect in 2019, has the lowest rates, ranging from 0.3% to 7.5% of total taxable wages (\$25.50 to \$637.50 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.

This is one form of what is colloquially known as the “ABC test.”

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.

Bulk Vending Machines

A “bulk vending machine” as defined in the Tax-General Article means a vending machine that (1) contains unsorted merchandise and (2) on insertion of a coin, dispenses the unsorted merchandise in approximately equal portions at random and without selection by the customer. In practice, they are often found in supermarkets or other public places and typically contain a range of candy and small toys.

UITF Effect: UITF revenues and expenditures decrease minimally beginning in fiscal 2020, as discussed below.

A small number of individuals likely qualify under the bill’s narrow exemption from covered employment. Employers must pay State UI taxes for wages paid to covered employees. Therefore, UITF revenues decrease beginning in fiscal 2020. The amount cannot be estimated at this time but is likely minimal.

To be exempt from covered employment under the bill, workers must be paid less than \$750 per quarter for the relevant work. This amount is less than the minimum income threshold for UI benefit eligibility. However, those earnings would have otherwise been used in any UI eligibility/award determinations associated with other covered employment. Therefore, UITF expenditures decrease to the extent that the bill reduces or eliminates UI benefit payments. The amount cannot be estimated at this time but is likely minimal.

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, depending on a particular employer’s State UI tax liability.

Additional Information

Prior Introductions: None.

Cross File: SB 444 (Senator Klausmeier) - Finance.

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

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