HB 908

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 908 (Delegate Carey)
Economic Matters Finance

Unemployment Insurance - Employer Contributions and Reimbursement Payments

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This emergency bill enhances existing requirements for employer payment plans when Table F is applicable for purposes of determining State unemployment insurance (UI) taxes, as specified. The bill also alters Chapter 39 of 2021, the Recovery for the Economy, Livelihoods, Industries, Entrepreneurs, and Families (RELIEF) Act, to (1) require that small employers still submit employment and contribution reports, even if they elect to defer the payment of UI taxes as originally authorized under the Act and (2) if specified federal aid is not provided, allow large nonprofit organizations and governmental entities to defer third quarter 2021 reimbursement payments until January 31, 2022. These RELIEF Act provisions must be construed to apply only prospectively to bills for contributions and reimbursement due on or after the effective date of the bill. **Except for provisions related to enhanced employer payment plans, consistent with the authorization in Chapter 39, the bill terminates June 30, 2023.**

Fiscal Summary

State Effect: The Maryland Department of Labor (MDL) can implement the bill with existing budgeted resources and experiences operational efficiencies due to the continued filing of contribution and employment reports. Nonbudgeted Unemployment Insurance Trust Fund (UITF) revenues may be reallocated between fiscal years beginning in FY 2021, as discussed below. Other State expenditures are not materially affected in the near term, but nonbudgeted UITF expenditures to repay the principal on outstanding loans and general fund expenditures for interest payments may increase in future years, as discussed below. Modifications to the RELIEF Act do not materially affect State finances.

Local Effect: Local governments may potentially defer one quarter of UI reimbursement payments in FY 2022, but total expenditures are unaffected. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The Secretary of Labor must offer a variety of payment plan options that spread payments through the end of August. Under current law, the Secretary must *adopt regulations* to do so (and has not, although in practice, payment plans are available). Further, under the bill, the Secretary must offer a variety of additional payment plan options that mutually serve the interest of the Division of Unemployment Insurance and provide more flexibility than the general through-August payment plans.

Current Law: By regulation, the Secretary of Labor must set (1) the date when contributions are due and (2) the manner in which contributions are to be paid. The regulations must require that, for any calendar year in which Table F is applicable, the Secretary offer a variety of payment plan options that spread through the end of August the dates when contributions are due on taxable wages for covered employment of the first six months of the calendar year. No regulations have been adopted.

Additionally, each calendar quarter, each employing unit must submit to the Secretary of Labor a contribution and employment report on or before the date that the Secretary sets. MDL regulations specify the same quarterly due dates as for contributions.

Under the RELIEF Act, for calendar 2021, an employer with fewer than 50 employees may elect to defer submitting the contribution and employment reports for the calendar quarters ending March 31, June 30, and September 30. An employer that elects to defer must submit the report by the December 31 quarter's due date (January 31, 2022). A reimbursing employer with fewer than 50 employees is similarly allowed to defer the payment of quarterly bills in 2021. The Secretary may authorize similar deferrals for taxable and reimbursing employers in 2022. In practice, MDL is allowing the deferral of the employer reports (and taxes) and reimbursing employer bills under the Act.

For more information on the State's UI program, see the **Appendix – Unemployment Insurance**.

State Fiscal Effect:

Payment Plans and Third Quarter 2021 Deferrals for Large Reimbursers

While no Table F payment plan regulations have been adopted as required under current law, in practice, MDL offers payment plans to employers, and the department's website advises employers to apply through its BEACON 2.0 portal (the system used to administer the State's UI program). The general plan offered in 2020 was 50% due with the quarterly payment, with the remaining 50% due over three equal monthly installments. There is a separate option for any individual plan that mutually serves the interest of DUI and the employer. In contrast, under the bill, payment plans *must* be made available through August of each year while the State is in Table F, and the Secretary *must* offer a variety of additional payment plan options with even more flexibility. Therefore, this estimate assumes that the bill causes more flexible payment plans to be available and/or used than otherwise would be when the State is in Table F. The State is in Table F in 2021; under Chapter 73 of 2021, the State will be in Table C in 2022 and 2023.

Since payment plans and reimburser deferrals do not reduce amounts owed, the bill's effect is generally limited to potentially reallocating revenue between fiscal years, with some foregone interest revenue. In the near term, UITF revenues potentially decrease in fiscal 2021 and increase correspondingly in fiscal 2022. In light of Chapter 73 of 2021 and the anticipated $1.1 billion infusion of federal funds into UITF, there should be little to no other effect.

However, in future years, depending on the UITF balance (or lack thereof), a delay in UITF revenues received may result in additional borrowing to cover MDL's cash flow needs as UITF recovers from whatever future economic shock led to Table F. Interest on balances owed to the federal government must be paid back – with State general funds or some other source, not UITF – at the end of each September. In that case, UITF expenditures would be affected only to the extent that funds are used to repay the principal on outstanding loans.

RELIEF Act Changes

Chapter 39 of 2021, the RELIEF Act, authorizes employers with fewer than 50 employees to defer the payment of 2021 UI taxes or reimbursements until January 31, 2022, and authorizes the Secretary of Labor to provide a similar option for deferrals for 2022. However, the Act also inadvertently authorizes the deferral of related quarterly contribution and employment reports, rather than just the taxes. This bill modifies Chapter 39 so that the quarterly reports are still required, which MDL advises are important to the effective administration of the UI program. As such, this change increases operational efficiencies at the department relative to the *status quo* under the RELIEF Act.

Potentially authorizing large reimbursers to defer third quarter 2021 bills until January 31, 2022, has no net effect on UITF, as all amounts are still owed, and the deferral happens entirely within fiscal 2022. There is likewise no net effect on State (as an employer) expenditures for UI claims in fiscal 2022.

MDL advises that administrative costs associated with these RELIEF Act changes are approximately $32,000 and are an allowable federal expense. Based on the modest cost, this estimate assumes existing federal funding is sufficient for implementation; if not, additional above-base federal funding will be provided.

Small Business Effect: Small businesses benefit from additional flexibility provided under the bill when paying State UI taxes under Table F. As discussed in the appendix, Table F has the highest overall tax rates, but Chapter 39 of 2021 allows small employers to defer payments until January 31, 2022. Employment and contribution reports are part of the ongoing compliance process with the State's UI law, and continuing to require such reports has a minimal effect on small businesses. By definition, nonprofits with 50 or more employees, which may defer third quarter 2021 payments until January 31, 2022, are not small businesses.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 816 (Senator Klausmeier)(Chair, Joint Committee on Unemployment Insurance Oversight) - Finance.

Information Source(s): Maryland Department of Labor; Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2021
mr/ljm Third Reader - March 25, 2021
Revised - Amendment(s) - March 25, 2021
Revised - Updated Information - March 25, 2021
Enrolled - April 30, 2021
Revised - Amendment(s) - April 30, 2021
Revised - Updated Information - April 30, 2021

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Appendix – Unemployment Insurance

Program Overview

Unemployment Insurance (UI) provides temporary, partial wage replacement benefits of up to $430 per week 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. Generally, 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. The Maryland Department of Labor's Division of Unemployment Insurance administers the State's UI program.

Each state law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

Employer Contributions

Most Maryland employers pay State UI taxes, although State and local governments and some nonprofit organizations reimburse the Unemployment Insurance Trust Fund (UITF) for claims paid in lieu of paying taxes. Therefore, for most Maryland employers, the State UI tax rate is a function of:

- the employer's specific unemployment claims history; and
- the applicable tax table, which is based on the State's UITF balance and applies to most taxable employers.

Exhibit 1 shows the range of State UI taxes a typical employer owes based on the tax table in effect; there are other rates for new employers and in other limited circumstances. State UI taxes and reimbursements are typically due quarterly; however, Chapter 39 of 2021 allows employers with fewer than 50 employees to defer 2021 State UI tax payments or reimbursements until January 31, 2022, and authorizes the Secretary of Labor to offer a similar deferment in 2022. The Act, in conjunction with a recent executive order, also generally prevents UI claims made during the COVID-19 pandemic from increasing an employer's taxes – although Table F, with its broadly higher rates, is in effect in 2021.

Exhibit 1
Tax Tables and Applicable Employer Tax Rates

	As of Sept. 30, if the Trust Fund Balance, As a Percentage of Taxable Wages		Trust Fund Balance ($ in Millions)		Then Next Year's Tax Rates Range from…			Annual Tax Per Employee (Rate x $8,500)		
Tax Table	**Exceeds**	**Up to**	**Exceeds**	**Up to**	**No Claims**	**Single Claim**	**Up to**	**No Claims**	**Single Claim**	**Up to**
A	5.00%	N/A	$995.8	N/A	0.30%	0.60%	7.50%	$25.50	$51.00	$637.50
B	4.50%	5.00%	896.2	$995.8	0.60%	0.90%	9.00%	51.00	76.50	765.00
C	4.00%	4.50%	796.6	896.2	1.00%	1.50%	10.50%	85.00	127.50	892.50
D	3.50%	4.00%	697.1	796.6	1.40%	2.10%	11.80%	119.00	178.50	1,003.00
E	3.00%	3.50%	597.5	697.1	1.80%	2.60%	12.90%	153.00	221.00	1,096.50
F	0.00%	3.00%	0.0	597.5	2.20%	3.10%	13.50%	187.00	263.50	1,147.50

Notes: Fund balance threshold dollar amounts are based on the 2020 taxable wage base and are subject to change each year. A "single claim" represents the tax rate applicable to the lowest possible rate associated with nonzero (.0001 to .0027) benefit ratios. Taxes are applied to the first $8,500 earned by each employee, each year; compensation less than that amount reduces taxes owed accordingly. Table F is in effect in 2021. Table A had been in effect since 2016.

Source: Department of Legislative Services

Benefit Payments

Generally, the weekly benefit amount a claimant is eligible for is based on the quarterly wages that the claimant was paid for covered employment in the calendar quarter of the claimant's base period in which those wages were highest. The base period is the first four of the last five completed calendar quarters immediately preceding the start of the benefit year, or, if the individual does not qualify under that definition, the four most recently completed calendar quarters immediately preceding the start of the benefit year.

Weekly benefit amounts range from $50 to $430 per week, based on earnings in the base period. There is also a dependent allowance of $8 per dependent, for up to five dependents, although the allowance cannot raise the weekly benefit amount above $430. The first $50 of any wages earned by an individual receiving UI benefits in a given week is disregarded for purposes of calculating the weekly benefit amount, after which the benefit payment is reduced dollar for dollar. These amounts do not adjust for inflation. Generally, during a benefit year, a claimant is entitled to 26 times the claimant's weekly benefit amount. During periods of high unemployment, extended benefits may also be available.