Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 871 (Senator Kramer)
Finance

Unemployment Insurance - Disqualification - Stoppage of Work Caused by Labor Dispute

This bill establishes that the general disqualification from receiving unemployment insurance (UI) benefits due to a strike does not apply for any week beginning after the first 14 days of an individual's unemployment resulting from the stoppage of work. Other eligibility requirements continue to apply.

Fiscal Summary

State Effect: The Maryland Department of Labor (MDL) can handle the bill's requirements with existing budgeted resources, although there are operational effects and other considerations, as discussed below. Nonbudgeted revenues and expenditures for the Unemployment Insurance Trust Fund (UITF) increase, likely modestly, beginning as early as FY 2025. Other State finances and operations are not materially affected.

Local Effect: Local expenditures may increase, likely minimally, beginning as early as FY 2025, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful for a limited number of small businesses, as discussed below.

Analysis

Current Law: Generally, an individual who otherwise is eligible to receive UI benefits is disqualified from receiving UI benefits for each week for which the Secretary of Labor finds that unemployment results from a stoppage of work, other than a lockout, that exists because of a labor dispute (*i.e.*, a strike) at the premises where the individual last was employed. The disqualification does not apply to an individual who satisfies the Secretary that the individual:

- is not participating in, financing, or directly interested in the labor dispute that caused the stoppage of work; and
- does not belong to a class or grade of workers that, immediately before the stoppage, had any members (1) employed at the premises and (2) participating in, financing, or directly interested in the labor dispute.

To apply for UI benefits, an individual must file a claim in accordance with regulations adopted by the Secretary. Generally, a claims examiner must promptly make an eligibility determination on the claim. However, if the claim involves a disqualification based on a stoppage of work due to a labor dispute, multiple claims, or a difficult issue of fact or law, the claim must be referred to the Board of Appeals for determination. The board must then promptly hear and decide the claim and may designate a special examiner to hear and decide the claim. The administrative process of claim referral and hearing procedures for work stoppage related claims is described in further detail below.

For a general overview of the State UI program, including eligibility requirements, the see **Appendix – Unemployment Insurance**.

State Fiscal Effect: MDL can handle the bill's administrative requirements with existing budgeted resources, although there are operational effects and considerations, described below.

The bill likely results in additional UI benefits paid as a result of allowing striking workers to qualify for benefits. The overall effect is unknown, but likely modest, due to the following factors: (1) infrequent labor dispute determinations by MDL in the past; (2) the continuing requirement that striking workers still be able to work, available to work, and actively seeking work (described in additional detail below); and (3) striking employees potentially being paid strike benefits by their union, which reduces their UI benefits. Still, additional UI benefits paid to striking workers are chargeable, which increases their employers' taxes and/or reimbursements (if they are a local government or nonprofit employer). State employees are prohibited from going on strike by law.

Accordingly, nonbudgeted expenditures for UITF increase to pay additional UI benefits to employees who go on strike beginning as early as fiscal 2025. Based on the timing of the additional benefit payments, nonbudgeted UITF revenues increase beginning as early as fiscal 2025 from reimbursements and beginning as early as fiscal 2026 from employer taxes. The amounts are unknown but likely modest in any particular fiscal year.

Determination of Eligibility Due to a Labor Dispute – Operational Considerations

Claimants involved in a labor dispute are compiled and identified as a "Labor Dispute" at the claims level by the Division of Unemployment Insurance. Once a list of the claimants is compiled, the list is forwarded to the Board of Appeals by the Secretary. UI claims involving labor dispute issues are not paid until the Board of Appeals has completed its determination as to the cause of work stoppage.

Based upon the number of claimants identified, the board then searches for an appropriate physical location to conduct an evidentiary hearing before three board members. Once a location has been identified and secured through a temporary rental agreement, the board sends out notices of an in-person hearing to the parties. The costs involved in these steps are largely dependent upon the size of the claimant list. The board then conducts the evidentiary hearing and issues a written decision of its findings, the timing of which can vary significantly based on the number of individuals, complexity of the facts, and other details.

Under current law, the determination process is necessary, given that the board decides whether the stoppage of work is a lockout or a strike and, therefore, whether the claimant is eligible for UI benefits *at all*. Under the bill, locked out workers remain eligible for UI benefits, and striking workers are eligible for UI benefits after a two-week disqualification or waiting period (instead of being disqualified entirely). This makes the determination process disproportionate to the range of potential outcomes; under the bill, at most, the board determines whether or not there is a two-week disqualification or waiting period.

While it is difficult to predict the length of time required for the board to issue its written decision of its findings on whether the labor dispute at issue is a lockout or a strike, it is almost entirely certain that the process would take longer than the two-week disqualification or waiting period created by the bill.

Able, Available, and Actively Seeking Work – Considerations for Overall UI Benefit Eligibility

Under both current law and the bill, an individual must be able to work and available for work to be eligible for UI benefits. While striking workers would be technically eligible for UI benefits after two weeks, the workers would still have to meet existing requirements to be able to work, available to work, and actively seeking work. The division must verify that striking workers are complying with these requirements, as it must for other claimants. The division advises that it is possible, perhaps even likely, that workers on strike are not able and available, creating an adjudication and eligibility issue at the division level. Issues that would be relevant to the adjudication would include whether the individual is able and available for work if they are picketing during office hours. Under current division policy, claimants must also complete three reemployment activities each week, one of which must be a job contact, and attest to having completed the activities.

Local Fiscal Effect: The Department of Legislative Services is unable to advise on the number of local governments that allow their employees to strike, and local government employees are subject to the same eligibility considerations described above. However, local governments, as employers, reimburse UITF dollar-for-dollar for UI benefits paid on their behalf. Accordingly, local government expenditures may increase, likely minimally, beginning as early as fiscal 2025 to reimburse UITF for UI benefits paid to any striking local employees.

Small Business Effect: UI taxes for small businesses increase beginning as early as fiscal 2026 due to additional chargeable benefits paid to striking employees. The effect may be meaningful for a particular small business, depending on the size and duration of the strike. Chargeable benefits increase an employer's taxes for three tax years – the appendix includes tax ranges under the various tax tables. Small nonprofits experience similar effects, but with reimbursements instead of taxes. The bill may also provide additional incentive (or perceived ability) for employees to strike, which may have additional effects on employee compensation.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 339 (Delegate Vogel, *et al.*) - Economic Matters.

Information Source(s): Maryland Department of Labor; Public Employee Relations Board; Department of Legislative Services

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js/ljm

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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 (MDL) 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 allowed employers with fewer than 50 employees to defer 2021 State UI tax payments or reimbursements until January 31, 2022, and authorized the Secretary of Labor to offer a similar deferment in 2022. The Act, in conjunction with a 2020 executive order, also prevented UI *claims* made during the COVID-19 pandemic from increasing an employer's taxes, although employers still paid broadly higher rates under Table F in 2021 and Table C in 2022 and 2023. With the UITF balance restored, the State is in Table A again in 2024.

Exhibit 1
Tax Tables and Applicable Employer Tax Rates

Tax Table	As of Sept. 30, if the Trust Fund Balance, As a Percentage of Taxable Wages: Exceeds	Up to	Trust Fund Balance ($ in Millions): Exceeds	Up to	Then Next Year's Tax Rates Range from…: No Claims	Single Claim	Up to	Annual Tax Per Employee (Rate x $8,500): No Claims	Single Claim	Up to
A	5.00%	N/A	$1,074.6	N/A	0.30%	0.60%	7.50%	$25.50	$51.00	$637.50
B	4.50%	5.00%	967.2	$1,074.6	0.60%	0.90%	9.00%	51.00	76.50	765.00
C	4.00%	4.50%	859.7	967.2	1.00%	1.50%	10.50%	85.00	127.50	892.50
D	3.50%	4.00%	752.2	859.7	1.40%	2.10%	11.80%	119.00	178.50	1,003.00
E	3.00%	3.50%	644.8	752.2	1.80%	2.60%	12.90%	153.00	221.00	1,096.50
F	0.00%	3.00%	0.0	644.8	2.20%	3.10%	13.50%	187.00	263.50	1,147.50

Notes: Fund balance threshold dollar amounts are based on the 2022 taxable wage base and are subject to modest changes 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 was in effect in 2021 due to the COVID-19 pandemic; prior to that, Table A had been in effect since 2016. Table C was in effect in 2022 and 2023 pursuant to Chapter 73 of 2021, which also resulted in an $830 million infusion of federal funds into the trust fund in 2021. A preexisting State law requiring a federal solvency goal to be met prior to moving to a tax table with lower rates again applies beginning in 2024. The federal solvency goal, which is designed to ensure the State's ability to pay claims during periods of high unemployment, is approximately $1.7 billion and varies with the total wages paid in the State and benefits paid during recessions.

As of January 1, 2024, the trust fund balance was $1.9 billion.

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.

2021 Legislation Enhanced and Required Evaluation of the State Unemployment Insurance System

The unprecedented volume of claims and benefit payments due to COVID-19 strained the State UI system to its limit, which raised numerous concerns about the system's ability to effectively meet the needs of claimants and employers. Consequently, during the 2021 legislative session, the General Assembly required several system reforms, including an MDL-led study regarding various longer-term reforms.

Broadly, the new laws (1) required Table C to apply in 2022 and 2023; (2) made administrative changes to assist employers in paying their taxes, specifically allowing them to defer payments under certain circumstances; (3) exempted certain UI benefit payments from being subject to the State income tax; (4) temporarily modified benefit calculations to assist claimants working on a part-time basis; (5) made system administrative changes that must be implemented by MDL; and (6) enhanced the State's work sharing program, which allows an employee to continue working at reduced hours and obtain UI benefits under certain circumstances.