

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1372
Economic Matters

(Delegate Myers, *et al.*)

**Unemployment Insurance - Exemption from Covered Employment - Teachers
Providing Music Lessons**

This bill exempts work performed by public or private school teachers who provide music lessons in a place of business that sells musical products and services from unemployment insurance coverage. The bill establishes conditions that must be met so that the work is not covered employment.

The bill takes effect July 1, 2008 and applies retroactively to employer contributions assessed on or after January 1, 2006, as well as to benefit charges for UI claims based on work performed on or after January 1, 2006.

Fiscal Summary

State Effect: This bill would not directly affect State operations or finances.

Unemployment Insurance Trust Fund: Insignificant decrease in Unemployment Insurance Trust Fund revenues due to the narrow application of the bill.

Local Effect: None.

Small Business Effect: Potentially meaningful negative effect on small businesses that sell musical products and services.

Analysis

Current Law: Independent contractors performing under any contract of hire are not covered under unemployment insurance if three conditions are met. First, the individual who performs the work has to be free from control and direction over their performance both in fact and under the contract. Second, the individual customarily has to be engaged in an independent business or occupation of the same nature as that involved in the work. Third, the work has to be outside of the usual course of business of the person for whom the work is performed or performed outside of any place of business of the person for whom the work is performed.

Background: An individual performing services for a business in return for compensation in the form of wages is likely covered for unemployment insurance purposes. The employer reports the wages to the Division of Unemployment Insurance and pays unemployment insurance taxes on those wages. If a person is not a covered employee, the person's wages are not reported, and the employer does not pay unemployment insurance taxes for those services.

In October 2006, the Department of Labor, Licensing, and Regulation completed a random unemployment insurance audit of a music store in Cumberland, Maryland. The audit determined that the business did not meet any of the three-part conjunctive tests for establishing independent contractor relationships as set forth in statute. As failure of any one condition would have been sufficient, unemployment insurance for employees was required. The business was advised that a written request for a review could be submitted. An appeal was not filed.

Most exemptions from covered employment under Maryland law mirror Federal Unemployment Tax Act (FUTA) exemptions. However, Maryland has enacted State-only exemptions not included in FUTA (*e.g.*, yacht salespersons, Class E and F truck drivers, and messenger service drivers).

Small Business Effect: DLLR advises that if a category of employment is exempt from coverage under the State law, but not under FUTA, the employer loses the federal unemployment tax offset credit of 5.4%. The business would thereafter be responsible for paying the full FUTA tax, which would increase from a maximum of \$56 per employee per year to \$434 per employee per year (from 0.8% on the first \$7,000 of wages to 6.2%).

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mam/ljm

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