

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 64
Economic Matters

(Delegate McConkey, *et al.*)

Unemployment Insurance - Exemption from Covered Employment - Continuing Education Instructors

This bill exempts work performed by certain continuing education instructors from unemployment insurance coverage. The bill establishes provisions that must be met so that the work is not covered employment, which include the requirement that the work be performed for a nongovernmental entity.

Fiscal Summary

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

Unemployment Insurance Trust Fund Effect: Minimal decrease in Unemployment Insurance Trust Fund revenues.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Continuing education instruction provided for a nongovernmental entity is not considered covered employment for the purposes of unemployment insurance if the following conditions are met:

- the instruction is outside the usual course of business for the entity for which the instruction is provided;

- the duties performed are related to the regular profession of the instructor;
- the instructor enters into a written agreement with the entity certifying that the hours of instruction and the curriculum are set by the instructor and that the instruction will not take place on the premises of the instructor's employing unit;
- the written agreement expressly states that the work is not covered employment and that the instructor is responsible for paying State and federal income taxes and Social Security contributions for self-employment; and
- the Secretary of Labor, Licensing, and Regulation is satisfied that all of the required conditions have been met.

Current Law: Independent contractors working 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 his or her 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.

State law specifies that employment performed outside the course of the business or trade of the individual's employer is not covered employment unless, during the calendar year, the employer pays cash compensation of at least \$50 for employment. Furthermore, the individual has to perform work for at least 24 days during the calendar quarter or the preceding calendar quarter.

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 a preliminary audit, the Department of Labor, Licensing, and Regulation (DLLR) determined that an organization providing continuing education courses to professionals was found to have instructors who did not meet the definition of independent contractor; thus, they were subject to unemployment insurance coverage. Upon review of the audit, prior to its being final, it was determined that these services were already exempt from unemployment insurance coverage because the instructors were employed for less than 24 days in each calendar quarter.

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).

Unemployment Insurance Trust Fund Effect: In general, revenues to the Unemployment Insurance Trust Fund decrease for each additional employee exempted from unemployment insurance coverage. Revenues to the Unemployment Insurance Trust Fund decrease by a minimal amount, due to the limited application of the bill. The number of nongovernmental organizations that provide continuing education instruction services and currently are subject to unemployment insurance is unknown but is not expected to be significant. The term “continuing education services” is not defined in the bill, but it does not apply to entities that primarily provide continuing education, such as community colleges and technical schools.

Nongovernmental entities affected by the bill include trade associations that offer continuing education services to professionals in their respective industries. These entities represent a wide range of professions and may include organizations that provide continuing education to teachers and school administrators, finance and accounting professionals, realtors, health professionals, sales professionals, and many other professions.

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 is subject to losing the Federal Unemployment Tax offset credit of 5.4%. The business is thereafter responsible for paying the full FUTA tax, which increases 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): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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