

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

Senate Bill 303 (Senator Kittleman)
 Finance

Labor and Employment - Exemption from Covered Employment - Home Care Workers

This bill exempts work performed by a home care worker from unemployment insurance (UI) coverage.

Fiscal Summary

Unemployment Insurance Trust Fund (UITF): UITF revenues decrease by \$3.3 million in FY 2011 as UI taxes are not assessed to employers of home care workers. Future year revenues reflect a reduction in employer charge-backs and annualization. UITF expenditures decrease by \$951,800 in FY 2011 for decreased UI benefits payments. Future years reflect increases in average weekly benefit amounts and annualization.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
UITF Revenues	(\$3,287,000)	(\$3,855,400)	(\$4,134,400)	(\$4,421,800)	(\$4,514,600)
UITF Expenditures	(951,800)	(1,307,200)	(1,346,400)	(1,386,800)	(1,428,400)
Net Effect	(\$2,335,100)	(\$2,548,200)	(\$2,788,000)	(\$3,035,000)	(\$3,086,200)

State Effect: None. The Department of Labor, Licensing, and Regulation (DLLR) can implement the bill with existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The Secretary of Labor, Licensing, and Regulation must be satisfied that (1) the worker and home care agency have entered into a written agreement that is currently in effect; (2) the worker is not restricted as to the number of home care agencies the worker may work for; (3) the worker is permitted to negotiate the rate of payment; and (4) the written agreement states that the worker is an independent contractor and the worker knows of the responsibility to pay State and federal income taxes and make any required Social Security contributions for self employment and that the work is not considered covered employment for UI purposes.

Current Law: Home care workers are considered covered employees for UI purposes. Covered employment is defined as work performed by an individual for an employing unit.

Chapter 188 of 2009 requires the Secretary of Labor, Licensing, and Regulation to adopt regulations to provide specific examples of when work performed by the home care services industry is considered covered employment and when it is considered to be performed contractually. A draft of the regulations has been proposed but has not yet been adopted.

Independent contractors working under any contract of hire are not covered under UI 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.

Background: Unemployment benefits are funded through Maryland employers' State UI taxes. All private business employers and nonprofit employers employing one or more persons, at any time, are subject to the Maryland Unemployment Insurance Law. An employer's 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. The taxes are deposited in UITF and can be used only to pay benefits to eligible unemployed individuals.

An individual performing services for a business in return for compensation in the form of wages is likely covered for UI purposes. The employer reports the wages to the Division of Unemployment Insurance and pays UI 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 UI taxes for those services.

The Federal Unemployment Tax Act (FUTA) requires all services performed by employees of state and local governments, certain nonprofit organizations, and federally recognized Indian tribes, to be considered covered employment by state law unless they are specifically exempted by federal law. Most exemptions from covered employment under Maryland law mirror FUTA exemptions. Maryland has enacted State-only exemptions not included in FUTA (*e.g.*, yacht salespersons, Class E and F truck drivers, recreational sports officials, and messenger service drivers), but they do not apply to State and local governments or certain nonprofit organizations. If State law does not cover services performed for State and local governmental entities, federally recommended Indian tribes, and certain nonprofit organizations, as required by FUTA, the result is the loss of certification for *all* employers in the State.

Unemployment Insurance Trust Fund Effect:

Trust Fund Revenues

In general, UITF revenues decrease for each employee exempted from UI coverage as employers no longer make UI contributions for exempt employees. UITF revenues also decrease from a reduction in employer charge-backs, which an employer would be charged to repay a portion of UI benefits paid to former employees.

Based on employer filings for the past three years, DLLR estimates the taxable wage base of employers of home care workers to be \$91.3 million. Based on an average tax rate of 4.0%, exempting home care workers will reduce employer contributions and thus decrease UITF revenues by \$3.3 million in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. UITF revenues decrease by approximately \$3.7 million in fiscal 2012 and annually thereafter.

Of the amount of UI benefits paid to individuals, approximately 64.1% of the benefits paid are charged back to one or more employers over a three-year period, beginning the year following benefits payment. The difference that cannot be charged back to private-sector employers is, ultimately, recovered through premiums paid by all employers. As UITF expenditures for benefits decrease, UITF revenues from employer charge-backs are also reduced. Thus, UITF revenues further decrease by \$203,200 in fiscal 2012, by \$482,200 in fiscal 2013, by \$769,600 in fiscal 2014, and by \$862,400 in fiscal 2015.

Trust Fund Expenditures

Based on UI claims data for the past three years, DLLR estimates UI benefits paid to home care workers average \$1.3 million annually. Since workers who are exempt from UI coverage will no longer be eligible to receive UI benefits, UITF expenditures decrease by \$951,900 in fiscal 2011, taking into account the October 1, 2010 effective date of the bill. Future year expenditures decrease by \$1.3 million each in fiscal 2012 and 2013, and by \$1.4 million each in fiscal 2014 and 2015. The following facts and assumptions were used in this estimate:

- the average weekly benefit amount is \$310 and increases by 3% each year; and
- each benefit recipient receives on average 17 weeks of unemployment benefits.

State Fiscal Effect: Federal law specifies services performed by employees of not-for-profit organizations and governmental entities can only be exempt from UI coverage if the services are exempt under FUTA. As advised by DLLR, home care agencies affected by the bill are for-profit organizations. Therefore, the bill does not appear to conflict with FUTA.

Small Business Effect: For employers with employees that are exempt from UI coverage under State law, State UI tax liability will decrease; however, as these services are not exempt under federal law, federal unemployment tax liabilities will increase. If an employer has paid all State taxes due on services, then the employer is allowed a federal unemployment tax credit under which the employer pays 0.8% of the first \$7,000 in wages of each employee or \$56 per employee per year. If State UI taxes are not paid on these employees, then the tax credits are not allowed and the employer must pay the full federal tax of 6.2% or \$434 per employee per year.

Additional Information

Prior Introductions: None.

Cross File: HB 714 (Delegate Krysiak, *et al.*) - Economic Matters.

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

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