HB 1417

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1417 (Chair, Economic Matters Committee)(By Request - Departmental - Labor, Licensing and Regulation)

Economic Matters Finance

Unemployment Insurance - Work Sharing

This departmental bill makes numerous changes to the existing work-sharing unemployment insurance (UI) program administered by the Department of Labor, Licensing, and Regulation (DLLR) by (1) altering eligibility for the program; (2) requiring employers to meet specified criteria; and (3) implementing changes required under recently enacted federal law.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: DLLR can implement the bill with existing resources.

Unemployment Insurance Trust Fund (UITF): The bill allows for continued operation of the work-sharing program and an additional year of federal reimbursement as discussed below.

Local Effect: None; DLLR advises that no governmental entities currently participate in the program.

Small Business Effect: DLLR has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Conformity

The bill makes the following changes to the work-sharing program and employer plans approved under it, which, according to DLLR, are needed to *conform* with recently enacted federal UI law by:

- specifying that work-sharing plan eligibility includes permanent part-time workers;
- requiring employers to provide certain notices if affected employees are not covered by a collective bargaining agreement – employers have to provide each affected employee a description of how notice of the plan will be provided or a detailed description as to why advance notice is not feasible;
- requiring employers to provide an estimate of the number of layoffs that will be avoided if the plan is approved and specify whether the layoffs avoided are temporary, permanent, or both;
- requiring employers to certify that the work-sharing plan and its implementation is consistent with applicable federal and State law;
- requiring employers to, if an affected employee receives health and retirement benefits, ensure that these benefits continue to be provided throughout the duration of the work-sharing plan – an employer is deemed as satisfying this requirement if the employer certifies that a reduction in these benefits applies equally to employees who are not participating in the work-sharing program;
- specifying that an affected employee is considered able to work and available for the employee's normal weekly hours for purposes of receiving work-sharing benefits for each week for all hours in which the employee participates in job skills training that is approved by the Secretary of Labor, Licensing, and Regulation and approved by the employer (including training funded under the Workforce Investment Act of 1998); and
- specifying that an affected employee who has exhausted work-sharing benefits or UI benefits, or both, is considered to be an "exhaustee" for purposes of extended UI benefits and, if otherwise eligible, is eligible for extended UI benefits.

Other Changes

The bill also makes changes which, according to DLLR, are *authorized* by the U.S Department of Labor as *being consistent with* federal UI law by prohibiting:

- employers from hiring new employees in, or transferring employees to, the affected unit while a work-sharing plan is in effect;
- employers from using work-sharing plans to subsidize temporary or intermittent work; and
- the Secretary of Labor, Licensing, and Regulation from approving a work-sharing plan that is submitted by an employer that *either* (1) is new and lacks an earned rating record *or* (2) has failed to file required quarterly wage reports or has failed to pay UI contributions, assessments, reimbursements, and any penalties or interest due through the date of the application.

The bill specifies that the intent of the work-sharing program is not to subsidize (1) normal or unexpected fluctuations in economic activity inherent to the industry or occupation or (2) an employer's usual long-term operation.

The bill also:

- eliminates the requirement that the Secretary of Labor, Licensing, and Regulation charge all regular and extended benefits paid to a claimant who participates in an approved work-sharing program;
- increases, from 26 to 52 weeks, the maximum number of weeks work-sharing employees may receive UI work-sharing benefits;
- specifies that the decision of the Secretary to revoke approval of a work-sharing plan is final and not subject to appeal;
- prohibits the Secretary of Labor, Licensing, and Regulation from approving a work-sharing plan that is inconsistent with statute and the purpose of work sharing.
- requires the Secretary of Labor, Licensing, and Regulation to identify the reason for disapproving a work-sharing plan;
- specifies that, if an affected employee was absent from work without the employer's approval or used unpaid leave, the employee is not considered eligible to receive UI work-sharing benefits;
- requires an employer to comply with any other requirement the Secretary deems necessary and is consistent with State work-sharing law and federal UI law;
- alters the definition of normal weekly work hours to be the usual hours of work for a full-time or regular part-time worker in the affected unit, not to exceed 40 hours and without regard to any overtime;
- requires an employer to submit specified information with an application and require that a work-sharing plan commence within a specified time;
- alters eligibility of the program to include only those work-sharing plans that reduce normal weekly work hours by at least 20% (rather than a floor of 10% in

current law) but no more than 50% and apply equally to all employees in the affected unit unless waived by the Secretary for good cause;

- requires that a work-sharing plan must be part of a plan that reduces normal weekly work hours in order to avoid layoffs and the hours reduced under the plan must correspond with the number of layoffs avoided;
- requires an affected employee who is on paid leave to perform some work during the work week in order to qualify for work-sharing benefits;
- specifies that the work-sharing benefits are calculated without regard to any hours worked for another employer;
- clarifies the eligibility of an affected worker for regular UI benefits if the individual is not provided a minimum amount of work under the work-sharing plan; and
- requires an employer to identify any week in which the employer provides no work for its employees and clarifies that any affected employees who work for another employer may be eligible for partial UI benefits that week.

Current Law: The intent of the work-sharing UI program is to preserve the jobs of an employer during lowered economic activity by reducing work hours or work days instead of laying off some employees while the remaining employees continue to work normal weekly hours.

An "affected employee" is an individual who has been continuously on the payroll of an affected unit for at least three months immediately before the employing unit submits a work-sharing plan. An "affected unit" is a specific plant, department, shift, or other definable unit of an employing unit that has at least two employees and has an approved work-sharing plan. "Normal weekly work hours" is the lesser of the number of hours in a week that an employee usually works for the regular employing unit or 40 hours. A "work-sharing plan" is a plan of an employing unit or employer association under which the normal weekly work hours of affected employees are reduced and affected employees share the remaining work.

An employing unit or employer association that opts to participate in a work-sharing plan must submit to the Secretary of Labor, Licensing, and Regulation a work-sharing plan signed by the employing unit or representative of the employer association. The Secretary is required to provide a written decision approving or denying the plan within 15 days of receiving the proposal. The decision of the Secretary is final; however, an eligible entity may submit a new work-sharing plan after 15 days of the decision.

The Secretary of Labor, Licensing, and Regulation is required to approve a work-sharing plan that (1) applies to at least 10% of employees in the affected unit or at least 20 employees in an affected unit in which the work-sharing plan applies equally to all affected employees; (2) reduces the normal weekly work hours of affected employees by at least 10% but, unless waived by the Secretary, no more than 50%; (3) identifies the affected unit and each employee in the affected unit by name, Social Security number, and any other information required by the Secretary; and (4) terminates within six months of the effective date of the work-sharing plan; (5) specifies the effect that work sharing will have on the fringe benefits of each employee in the affected unit including health and dental insurance, retirement benefits, paid leave, and similar benefits; (6) certifies that each affected employee has been continuously on the payroll of the employing unit for three months immediately before the date of the work-sharing plan submission and that the total reduction in normal weekly work hours is instead of layoffs that would have affected at least the number of affected employees and that would have resulted in an equivalent reduction in work hours; and (7) contains the written approval of the collective bargaining agent for each collective bargaining agreement that covers any affected employee in the affected unit (or a representative of the employees or employee association if there is no agent).

If a work-sharing plan is a transitional step to permanent staff reductions, the work-sharing plan must contain a reemployment assistance plan for each affected employee. A work-sharing employer must agree to (1) submit to the Secretary reports necessary to administer the plan and (2) allow DLLR to have access to all records necessary to verify the work-sharing plan prior to its approval and monitor and evaluate the work-sharing plan after its approval. A work-sharing plan may not subsidize an employing unit that traditionally has used employees who work less than 30 hours per week.

An affected employee is eligible to receive work-sharing benefits for each week in which the Secretary determines that the employee is able to work and is available for more hours of work or full-time work for the work-sharing employer. Work-sharing benefits are equal to the weekly benefit amount of an affected employee multiplied by the percentage reduction in the employee's normal weekly work hours under the approved work-sharing plan. Holiday or vacation pay received by the affected employee is counted as hours worked. An employee can receive a maximum of 26 weeks of work-sharing benefits during each benefit year. Employers who participate in the program are charged for the benefits paid under a work-sharing program.

During a week in which an employee earns wages under an approved work-sharing plan and other wages, the work-sharing benefit is reduced by a specified amount. This reduction applies regardless of whether the employee earned the other wage from the work-sharing employer or another employer. An affected employee who applies for or

receives work-sharing benefits is not eligible for extended benefits, supplemental federal unemployment compensation, or any other federal or State program benefits.

The Secretary may revoke approval of a work-sharing plan for good cause including (1) conduct or an occurrence that tends to defeat the intent and effective operation of the work-sharing plan; (2) failure to comply with an assurance in the approved work-sharing plan; (3) unreasonable revision of a productivity standard of the affected unit; and (4) violation of a criterion on which the Secretary based approval of the work-sharing plan.

Background: Work sharing is a voluntary program within UI that is designed to preserve jobs for regular trained workers when there has been a reduction or disruption of an employer's regular business activities. As a strategy implemented in lieu of layoffs, work sharing allows employers to reduce costs by cutting the hours of work for an entire group of affected employees by a percentage which corresponds with the total reduction of hours that would otherwise be associated with layoffs. To cushion the financial impact of reduced hours of work, work-sharing employees receive a prorated benefit which corresponds with the percentage by which their work hours have been reduced.

Although states are not required to operate work-sharing programs, for those that do, state law must conform to federal UI law. Maryland has had a work-sharing program since 1984, in full compliance with federal law. The Middle Class Tax Relief and Job Creation Act of 2012, signed into law on February 22, 2012, made changes to the federal law applicable to work sharing – including amending definitions in the Federal Unemployment Tax Act. The Act also authorized federal reimbursement for work-sharing benefits paid by states during a specified period. According to DLLR, Maryland must enact required conformity legislation by August 22, 2014, otherwise continued operation of the program may result in the loss of federal certification for Maryland's UI program. In addition, states that enact conformity legislation are eligible to receive full reimbursement of any work-sharing benefits paid through August 22, 2015 (the final year of the federal reimbursement).

A limited number of employers participate in Maryland's program. According to DLLR, a total of $350,000 in work-sharing benefits was paid in calendar 2013 (about $250,000 less than in the prior year), reflecting participation by about 20 employers. During the recession, the program was used by 30 to 60 employers a year. Under current law, employers who participate in the program are charged for the benefits paid under a work-sharing program.

UITF Effect: Enacting the changes required by the Middle Class Tax Relief and Job Creation Act of 2012 ensures that the work-sharing program continues operation beyond August 22, 2014. DLLR expects that an average of $350,000 in UI benefits will continue

to be paid annually. In addition, if the bill satisfies federal conformity requirements, the U.S. Department of Labor will reimburse DLLR benefits paid for an additional year – through August 22, 2015 – thereby increasing federal fund revenues by an estimated $350,000 in fiscal 2015 and minimally in fiscal 2016. Thereafter, the program continues but without federal reimbursement.

Other provisions of the bill are not expected to materially impact UITF benefit payments. Further, repeal of the provision that the Secretary charge all benefits paid under a work-sharing program to the employer participating in the program does not impact revenues, as a separate provision of law that addresses continuous part-time employment will allow DLLR to continue to charge only the work-sharing employer.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Service

Fiscal Note History: First Reader - March 7, 2014
mm/ljm Revised - House Third Reader - March 26, 2014

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Unemployment Insurance – Work Sharing

BILL NUMBER: HB 1417

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This legislation is unlikely to have a significant impact on small business, because participation in work sharing is voluntary. This legislation may benefit small business participating in work sharing by allowing businesses to avoid layoffs and retain trained workers during periods of economic difficulty.