HB 1105

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1105 (Delegate Wivell)
Economic Matters

Unemployment Insurance - Earned Rating Record - Charging of Benefits

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This emergency bill prohibits the Secretary of Labor from charging unemployment insurance (UI) benefits against the earned rating record of an employing unit if, through no fault of the employing unit, the claimant is unemployed due to an official order for the employing unit to shut down that is issued by the Governor, the chief executive officer of a county, the governing body of a county or a municipality, or a unit or instrumentality of the State or a political subdivision.

Fiscal Summary

State Effect: Federal fund revenues and federal/general fund expenditures for the Maryland Department of Labor (MDL) increase to the extent that the department requires additional administrative funding to implement the bill, beginning in FY 2021. Nonbudgeted Unemployment Insurance Trust Fund (UITF) revenues decrease by an unknown amount beginning in FY 2022, as discussed below. Nonbudgeted UITF expenditures are affected only to the extent that funds are used to repay any principal on outstanding loans. Depending on the UITF balance, general fund expenditures may increase for interest payments, beginning as early as FY 2022.

Local Effect: None. Local governments reimburse UITF dollar-for-dollar and are unaffected by benefit charges against an earned rating record.

Small Business Effect: Meaningful.

Analysis

Current Law: The Secretary of Labor may not charge benefits paid to a claimant against the earned rating record of an employing unit under certain circumstances, such as if the claimant left work without good cause attributable to the employing unit, or if the claimant left employment voluntarily to accept better employment. An employer's earned rating record is one of two inputs used to determine an employer's UI taxes – the other being the tax table.

The Secretary may waive the benefit charges against the earned rating record of an employer during a state of emergency if the benefits are paid to the claimant during a period in which the claimant is temporarily unemployed because the employer shut down due to a natural disaster and the Governor declared a state of emergency due to the natural disaster.

For a more detailed discussion of how employer UI taxes are calculated, and the UI program in general, see the **Appendix – Unemployment Insurance**.

State Fiscal Effect:

Administrative Costs

MDL indicates administrative costs of approximately $250,000 are necessary to implement the bill (information technology and mailings), plus staff costs of approximately $800,000 on an annual basis for an additional 12 staff to adjudicate relevant issues and handle appeals. The Department of Legislative Services cannot independently verify these estimates at this time. If existing federal administrative funds are insufficient to cover such expenses, additional above-base federal funding will be provided, assuming that the expenses are allowable, beginning in fiscal 2021. Otherwise, general funds are needed to cover those costs.

Unemployment Insurance Trust Fund

Chapter 39 of 2021, in conjunction with a recent executive order, generally prevents UI claims made during the COVID-19 pandemic from increasing an employer's taxes. Under the executive order, the three-year lookback period for 2021 taxes is fiscal 2017 through 2019. For at least 2022 and 2023 taxes, Chapter 39 uses that same pre-pandemic lookback period, *if doing so would result in a lower tax rate for that year*. That requirement continues for two consecutive tax year determinations after the expiration of the State of emergency.

Therefore, UITF revenues decrease beginning in fiscal 2022 to the extent that the bill results in an employer's experience rating being lower during the normal three-year lookback period (due to the bill's exclusion) than they were in the pre-pandemic lookback period. UITF revenues also decrease in future fiscal years to the extent that the bill excludes UI claims related to other shutdown orders. While a precise estimate of the revenue loss attributable to the bill cannot be determined at this time, *for illustrative purposes only*, MDL estimates a potential revenue decrease of $12.9 million in FY 2022.

Depending on the UITF balance (or lack thereof) over time, the bill's UITF revenue reduction could represent an increase in net borrowing. Interest on balances owed to the federal government must be paid back – with State general funds or some other source, not UITF – at the end of each September. The current interest rate on federal loans for UI programs is 2.277%. Any interest payments would begin as early as fiscal 2022.

UITF expenditures are only affected to the extent that funds are used to repay the principal on outstanding loans, beginning as early as fiscal 2022.

Small Business Effect: Generally, small businesses that experience layoffs caused by one of the specified reasons in the bill may benefit from reduced UI taxes beginning as early as fiscal 2022. However, not all businesses pay UI taxes based on the table of rates. New employers pay a fixed rate, currently 2.6%, which is not affected by the bill. Further, many employers will not be affected through the duration of the provisions in Chapter 39.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2021
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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 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 allows employers with fewer than 50 employees to defer 2021 State UI tax payments or reimbursements until January 31, 2022, and authorizes the Secretary of Labor to offer a similar deferment in 2022. The Act, in conjunction with a recent executive order, also generally prevents UI claims made during the COVID-19 pandemic from increasing an employer's taxes – although Table F, with its broadly higher rates, is in effect in 2021.

Exhibit 1
Tax Tables and Applicable Employer Tax Rates

	As of Sept. 30, if the Trust Fund Balance, As a Percentage of Taxable Wages		Trust Fund Balance ($ in Millions)		Then Next Year's Tax Rates Range from…			Annual Tax Per Employee (Rate x $8,500)		
Tax Table	**Exceeds**	**Up to**	**Exceeds**	**Up to**	**No Claims**	**Single Claim**	**Up to**	**No Claims**	**Single Claim**	**Up to**
A	5.00%	N/A	$995.8	N/A	0.30%	0.60%	7.50%	$25.50	$51.00	$637.50
B	4.50%	5.00%	896.2	$995.8	0.60%	0.90%	9.00%	51.00	76.50	765.00
C	4.00%	4.50%	796.6	896.2	1.00%	1.50%	10.50%	85.00	127.50	892.50
D	3.50%	4.00%	697.1	796.6	1.40%	2.10%	11.80%	119.00	178.50	1,003.00
E	3.00%	3.50%	597.5	697.1	1.80%	2.60%	12.90%	153.00	221.00	1,096.50
F	0.00%	3.00%	0.0	597.5	2.20%	3.10%	13.50%	187.00	263.50	1,147.50

Notes: Fund balance threshold dollar amounts are based on the 2020 taxable wage base and are subject to change 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 is in effect in 2021 and is likely to be in effect for at least two more years; Table A had been in effect since 2016.

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.