

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 901
Economic Matters

Unemployment Insurance - Disqualification Exceptions - COVID-19 Vaccination

This bill establishes that the voluntary resignation of an employee is a valid circumstance that does not disqualify that employee from receiving unemployment insurance (UI) benefits if the employee resigned due to the employer (1) requiring that, as a condition of continued employment, the employee be vaccinated against COVID-19 and (2) failing to provide suitable other work that would not require that the employee be vaccinated. The bill also states that an employee's refusal to be vaccinated may not constitute gross misconduct, aggravated misconduct, or misconduct for the purposes of calculating UI benefit eligibility.

Fiscal Summary

State Effect: Nonbudgeted Unemployment Insurance Trust Fund (UITF) expenditures and revenues increase beginning in FY 2023 as claimants are paid under the bill's requirements and UITF is repaid by employers, as discussed below. State expenditures (all funds) increase beginning in FY 2023 to the extent that benefit payments made to State employees must be reimbursed to UITF and UI cases are referred to the Office of Administrative Hearings (OAH), as discussed below; reimbursable revenues and expenditures for OAH increase accordingly.

Local Effect: Local expenditures to reimburse UITF for payments to UI claimants may increase beginning in FY 2023, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Unemployment Insurance

For general information on the State's UI program, including information on the weekly benefit amount, the experience rating process, and recently enacted legislation, see the **Appendix – Unemployment Insurance**.

Generally, an individual who would otherwise be eligible to receive UI benefits is disqualified from receiving benefits if the Secretary of Labor finds that unemployment results from voluntarily leaving work without good cause. The Secretary may find that a cause for voluntary leaving is for good cause only under specified circumstances (e.g., when the cause is directly attributable to the individual or a member of the individual's immediate family being a victim of domestic violence and meets other specified requirements).

A circumstance for voluntarily leaving work is valid only if it is:

- a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit;
- of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment; or
- caused by the individual leaving employment to follow a spouse who serves in the United States military or is a civilian employee of the military or of a federal agency involved in military operations and is transferred.

Misconduct

Generally, an individual who is otherwise eligible to receive UI benefits is disqualified from receiving benefits if unemployment results from discharge or suspension as a disciplinary measure for behavior that the Secretary finds is gross misconduct, aggravated misconduct, or misconduct in connection with employment. The length of the disqualification must be calculated in a specified manner for each type of misconduct.

“Gross misconduct” means conduct of an employee that is (1) deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or (2) repeated violations of employment rules that prove a regular and wanton disregard of the employee’s obligations. It does not include “aggravated misconduct” or “misconduct.”

“Aggravated misconduct” means behavior committed with actual malice and deliberate disregard for the property, safety, or life of others that (1) affects specified individuals, such as the employer, fellow employees, or consumers and (2) consists of either physical assault or property loss or damage so serious that the penalties of misconduct or gross misconduct are not sufficient. It does not include “gross misconduct” or “misconduct.”

State/Local/Small Business Effect: The Maryland Department of Labor advises that under the current practices of the Division of Unemployment Insurance (DUI), staff evaluate each separation of employment related to vaccine requirements on a case-by-case basis to determine whether the separation was a voluntary quit or a discharge, whether good cause or valid circumstances apply, and the length of any applicable penalty. DUI considers many factors, including whether a vaccine mandate imposed by an employer included a regular testing opt-out in lieu of vaccination. The bill removes DUI’s discretion and generally requires UI benefits for any employee separating from employment due to a vaccine requirement.

As a result, the bill likely results in more claimants applying for and receiving UI benefits, and because a voluntary resignation for valid circumstances is considered a quit attributable to the employer, employers are charged for these benefits. The additional payments increase the experience rating for contributory employers (which could increase the rate at which these employers are taxed) and directly require reimbursing employers (such as the State and local governments) to cover 100% of the UI benefits paid to their employees. However, any such impact depends on the vaccine policies and status of employers throughout the State and cannot be reliably estimated without actual experience under the bill.

The bill is anticipated to impact the Maryland Department of Health (MDH) and Morgan State University (MSU). Specifically, the Department of Budget and Management advises that a federal vaccine mandate applies to certain MDH employees and that MSU has a vaccine mandate for its employees.

State expenditures (all funds) increase to the extent that additional cases on UI matters are referred to OAH. Reimbursable revenues and expenditures increase accordingly. Agencies pay OAH on a per-case basis to cover the costs associated with adjudication; in fiscal 2021, the fee was approximately \$3,500 per case. The number of cases referred to OAH annually as a result of the bill cannot be reliably estimated; OAH advises that 140 additional cases would require an additional Administrative Law Judge to adjudicate the increased caseload.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Office of Administrative Hearings; Department of Budget and Management; Department of Legislative Services

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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 (MDL) 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 2020 executive order, also prevents UI *claims* made during the COVID-19 pandemic from increasing an employer's taxes, although employers still paid broadly higher rates under Table F in 2021 and will continue to do so under Table C in 2022 and 2023.

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 modest changes 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 was in effect in 2021 due to the COVID-19 pandemic; prior to that, Table A had been in effect since 2016. Table C will be in effect in 2022 and 2023 pursuant to Chapter 73 of 2021, which also resulted in an \$830 million infusion of federal funds into the trust fund in 2021. A preexisting State law requiring a federal solvency goal to be met prior to moving to a tax table with lower rates will again apply beginning in 2024. The federal solvency goal, which is designed to ensure the State’s ability to pay claims during periods of high unemployment, is approximately \$1.4 billion.

As of January 1, 2022, the trust fund balance was \$1.25 billion.

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.

2021 Legislation Enhanced and Required Evaluation of the State Unemployment Insurance System

The unprecedented volume of claims and benefit payments due to COVID-19 strained the State UI system to its limit, which raised numerous concerns about the system's ability to effectively meet the needs of claimants and employers. Consequently, during the 2021 legislative session, the General Assembly required several system reforms, including an MDL-led study due by December 1, 2021, regarding various longer-term reforms.

Broadly, the new laws (1) required Table C to apply in 2022 and 2023; (2) made administrative changes to assist employers in paying their taxes, specifically allowing them to defer payments under certain circumstances; (3) exempted certain UI benefit payments from being subject to the State income tax; (4) temporarily modified benefit calculations to assist claimants working on a part-time basis; (5) made system administrative changes that must be implemented by MDL; and (6) enhanced the State's work sharing program, which allows an employee to continue working at reduced hours and obtain UI benefits under certain circumstances.