**HB 955**

# Department of Legislative Services

Maryland General Assembly
2022 Session

## FISCAL AND POLICY NOTE
## First Reader

House Bill 955 (Delegate Charkoudian)
Economic Matters

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**Unemployment Insurance - Procedures for Recovery of Overpayment of Benefits - Alterations**

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This bill modifies the process by which the Secretary of Labor (1) communicates with an unemployment insurance (UI) claimant and (2) recovers benefits paid to a claimant under specified circumstances. The bill establishes a predetermination investigation that the Secretary must conduct before making a finding that entitles the Secretary to recover benefits. The bill also makes certain conforming changes.

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## Fiscal Summary

**State Effect:** Federal fund revenues and federal/general fund expenditures for the Maryland Department of Labor (MDL) increase by $1.3 million in FY 2023 and by $1.7 million annually thereafter. State revenues (all funds) and Unemployment Insurance Trust Fund (UITF) revenues decrease beginning in FY 2023 to the extent that the bill results in fewer benefit overpayments being recovered, as discussed below; this potential impact is not shown below.

| ($ in millions) | FY 2023 | FY 2024 | FY 2025 | FY 2026 | FY 2027 |
|---|---|---|---|---|---|
| FF Revenue | $1.3 | $1.7 | $1.7 | $1.7 | $1.7 |
| GF/FF Exp. | $1.3 | $1.7 | $1.7 | $1.7 | $1.7 |
| Net Effect | $0.0 | $0.0 | $0.0 | $0.0 | $0.0 |

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local revenues may decrease beginning in fiscal 2023, as discussed below. Local expenditures are not affected.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:**

*Notice by Online Portal Prohibited*

The definition of "mailed or otherwise deliver," in reference to unemployment insurance notices and documents includes the inclusion of a document in or attachment of a document to an email but *does not include* posting on an online portal. Similarly, the definition of "send" includes the inclusion of a document in or the attachment of a document to an email but *does not include* posting on an online portal. As a result, notifications sent to UI claimants are not considered sent or delivered when MDL posts the notifications on an online portal.

*Required Investigations for Benefit Recovery*

Before the Secretary of Labor makes a finding that a UI claimant was not entitled to benefits or knowingly made a false statement or representation or failed to disclose a material fact to obtain or increase benefits, the Secretary must conduct a predetermination investigation by:

- promptly sending written notice to the claimant stating that the Secretary believes the claimant may have been overpaid and includes (1) the specific alleged facts or legal basis for the Secretary's belief; and (2) instructions explaining how the claimant may contest the basis for the Secretary's belief; and
- allowing the claimant 30 days after the mailing or other delivery of the written notice to respond in writing or by telephone.

The Secretary may not recover any benefits before conducting this investigation.

*Notification of Overpayment*

The written notice sent to claimants must include (1) the *factual and evidentiary information* used to make the determination to recover the benefits; (2) *whether* the Secretary has assessed any monetary penalty, as specified; (3) instructions explaining how a claimant can appeal the determination, as specified; and (4) instructions on how and when to file an application to request a waiver of the overpayment recoupment.

**Current Law:** The Secretary is authorized to recover benefits paid to a UI claimant if the Secretary finds that the claimant was not entitled to the benefits because (1) the claimant was not unemployed; (2) the claimant received or retroactively was awarded wages; or (3) due to a redetermination of an original claim, the claimant is disqualified or otherwise ineligible for benefits. Additionally, if a claimant knowingly made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase a benefit or other payment, the Secretary may recover (1) all benefits paid to the claimant for each affected week; (2) a monetary penalty; and (3) interest. If the Secretary decides to recover benefits from a claimant, the Secretary must notify the claimant of:

- the amount to be recovered;
- the basis for the recovery of benefits, including any evidence used to make the determination;
- the weeks for which benefits were paid;
- the amount of any assessed monetary penalty;
- the provision of law under which MDL determined the claimant was ineligible for benefits; and
- the appeal rights available to the claimant.

The Secretary must adhere to various other processes and timelines related to appeals made by a claimant and the Secretary's recovery of the benefits.

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.**

**State Fiscal Effect:**

*Administrative Costs and Federal Reimbursements*

MDL advises that its Division of Unemployment Insurance (DUI) has recently updated its unemployment insurance system; DUI's BEACON 2.0 was deployed in September 2020. DUI currently notifies many UI claimants through email and text alerts that inform claimants of new messages or work items in their BEACON portals. DUI advises that it cannot directly send these notices to claimants through email (as envisioned by the bill) because the information contains personally identifiable information, and the BEACON system cannot encrypt information as required under federal law. Therefore, to meet the bill's requirements, DUI will be required to resume mailing all notifications sent to claimants.

As of February 8, 2022, of the claimants who had selected a preferred method of communication 532,933 had selected email, 186,527 had selected text, and 672,619 had selected mail. Thus, expenditures for MDL increase by an estimated $140,000 per month, totaling $1.3 million in fiscal 2023 and by $1.7 million annually thereafter. MDL will also incur a one-time programming cost of $50,000 in fiscal 2023 for DUI to modify its

BEACON 2.0 system. If existing federal administrative funds are insufficient to cover these expenses, additional above-base federal funding will be provided, assuming that the expenses are allowable, beginning in fiscal 2023. Otherwise, general funds are needed to cover these costs.

**Unemployment Insurance Trust Fund Effect:** The process established by the bill to recover overpayments is likely to result in fewer overpayments being recovered by MDL. In certain cases, such as for reimbursing employers that must reimburse DUI for all UI benefits paid to their employees, DUI does not provide refunds to the employer unless and until the claimant repays DUI. However, in other cases, any unrecoverable benefits directly decreases UITF revenues. Any such impact cannot be reliably estimated without actual experience under the bill.

Additionally, the State is a reimbursing employer. Thus, State revenues (all funds) decrease beginning in fiscal 2023 to the extent that MDL recovers fewer overpayments.

**Local Revenues:** Local governments are reimbursing employers and are required to reimburse DUI for all UI benefits paid to their employees. If a claimant is ultimately determined to be overpaid, those employers are not refunded those benefits unless and until the claimant repays DUI. Therefore, local government revenues decrease beginning in fiscal 2023 to the extent the bill decreases the recovery of overpayments.

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## 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 27, 2022
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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.