HB 140

Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 140 (Delegates Palakovich Carr and Charkoudian)
Economic Matters Finance

Unemployment Insurance - Recovery of Benefits - Limitation and Methods

This bill limits the amount that the Secretary of Labor may deduct from weekly benefits payable to an unemployment insurance (UI) claimant when recovering UI benefit overpayments that are unrelated to fraud. Specifically, the Secretary may deduct up to 50%, from the weekly benefits payable to the claimant in the future, or, if the weekly benefit amount is $100 or less, up to 25%. Other overpayment collection options – both for those related to fraud and those unrelated to fraud – remain unchanged. **The bill takes effect April 1, 2024.**

Fiscal Summary

State Effect: The Maryland Department of Labor (MDL) can implement the bill with existing budgeted resources. Nonbudgeted Unemployment Insurance Trust Fund (UITF) expenditures increase (due to a reduction in allowable offsets) beginning in FY 2024. UITF revenues increase beginning in FY 2024 as other collection methods are used. The bill does not otherwise materially affect State finances or operations. The cumulative effect of the bill over time on the applicable rate table is discussed below.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

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 of 15%; and (3) interest. The Secretary must adhere to various processes and timelines related to appeals made by a claimant and the Secretary's recovery of the benefits.

For overpayment recoveries not related to fraud, the Secretary may recover amounts (1) by deduction from benefits payable to the claimant in the future; (2) through civil suit; (3) by assessment; or (4) through other reasonable means of collection, including those permitted under State law for the collection of debts owed to the State or under federal law. For overpayment recoveries related to fraud, the Secretary may recover amounts (1) through civil suit; (2) through other reasonable means of collection; or (3) if the deduction is made by another jurisdiction under an intergovernmental agreement providing for the recovery of overpaid benefits, by deduction from future benefits (excluding the monetary penalty and interest).

Statute does not specify the amount that may be deducted from future Maryland benefits payable. MDL regulations specify that the amount may be 100% of future weekly benefit entitlements.

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 Expenses

MDL advises that administrative costs associated with the changes in the bill are approximately $16,400 in fiscal 2024 for a one-time programming expense. This estimate assumes existing federal funding is sufficient for implementation; if not, additional above-base federal funding will be provided for any allowable expense. Absent federal funding, general funds are required.

Unemployment Insurance Trust Fund

Generally, UITF expenditures increase (due to a reduction in allowable offsets from 100% to 50% or 25%) beginning in fiscal 2024. The amount in any year is unknown, but it could be significant. For context, MDL advises that reducing benefit offsets by 50% and 75%, as applicable, in 2022 would have resulted in the department being unable to recoup approximately $9.0 million in overpayments. However, the Department of Legislative Services advises this is more appropriately considered a maximum amount for that year, as at least some claimants should have had additional remaining weeks of benefit eligibility that could be used to recoup the total amount owed, albeit at a slower rate.

Presumably, UITF revenues increase beginning in fiscal 2024, as some unrecouped amounts are recovered through other legal means under current law, although MDL advises that benefit offsets, along with tax intercepts, are the most effective methods of collection. Therefore, the overall effect on UITF is likely negative.

Additional Comments: While not part of this estimate, if the cumulative effect of the bill's changes over time leads to a change in the applicable rate table in a given year, then UITF revenues are further affected, although such an effect is likewise unknown. For example, a deep recession may move the State to Table F, even without this bill, but the bill may keep the State in Table F longer – increasing revenues in subsequent year(s) from what they would otherwise have been. The effect is mostly at the margins in the first several years. The earliest potential rate table change would be based on the UITF balance on September 30, 2024, which would affect the tax table in effect in 2025 (fiscal 2025 and 2026).

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 136 (Senator Klausmeier) - Finance.

Information Source(s): Maryland Department of Labor; Comptroller's Office; Judiciary (Administrative Office of the Courts); 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 authorized the Secretary of Labor to offer a similar deferment in 2022. The Act, in conjunction with a 2020 executive order, also prevented 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 Table C in 2022 and will continue to do so under Table C in 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	$1,038.2	N/A	0.30%	0.60%	7.50%	$25.50	$51.00	$637.50
B	4.50%	5.00%	934.4	$1,038.2	0.60%	0.90%	9.00%	51.00	76.50	765.00
C	4.00%	4.50%	830.5	934.4	1.00%	1.50%	10.50%	85.00	127.50	892.50
D	3.50%	4.00%	726.7	830.5	1.40%	2.10%	11.80%	119.00	178.50	1,003.00
E	3.00%	3.50%	622.9	726.7	1.80%	2.60%	12.90%	153.00	221.00	1,096.50
F	0.00%	3.00%	0.0	622.9	2.20%	3.10%	13.50%	187.00	263.50	1,147.50

Notes: Fund balance threshold dollar amounts are based on the 2021 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 is 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, 2023, the trust fund balance was $1.5 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 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.