Julie A. Cameron *Legislative Service Commission*

Bill Analysis

Am. S.B. 81

126th General Assembly
(As Passed by the Senate)

Sens. Armbruster, Hottinger, Spada, Austria, Gardner, Goodman, Harris

BILL SUMMARY

- Establishes revised methods of determining when a trade or business is transferred to another entity and how that transfer affects unemployment compensation liabilities.

- Prohibits a person from acquiring the trade or business of an employer, or a portion thereof, solely or primarily for the purpose of obtaining a lower rate of contributions under the Unemployment Compensation Law and establishes civil and criminal penalties for knowingly violating this prohibition.

- Specifies objective factors the Director of Job and Family Services (JFS) may use in determining whether a trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions.

- Establishes a State Disaster Unemployment Benefit that may be paid to an individual suffering unemployment directly attributable to a major disaster declared by the President of the United States if the individual is not otherwise eligible to be paid unemployment compensation benefits for the first week of the individual's unemployment caused by the disaster and eliminates the provision allowing an individual to receive unemployment compensation benefits during the waiting week when unemployed due to such a disaster.

- Adds Indian tribes as covered, reimbursing employers under the Unemployment Compensation Law and requires them to pay for regular and extended unemployment benefits in the same fashion as state and local government employers.

- Eliminates specified conditions under which an employer's penalty contribution rate for late wage reporting can be waived, and shortens the period during which an employer may furnish wage information in order to avoid a higher penalty contribution rate from 36 months to 18 months beginning in rate year 2006.

- Allows the Director of JFS to issue a corrected determination of benefit rights if the Director finds the determination was erroneous during the 52-week period beginning on Sunday of the week an application for benefits is filed.

- Requires an appellant to file an appeal from a decision of the Unemployment Compensation Review Commission with the court of common pleas of Franklin County if the appellant is not a resident of or last employed in a county in Ohio or does not have a principal place of business in Ohio.

- Requires the Unemployment Compensation Review Commission to file a certified transcript of its record regarding a claim beyond the existing 45-day deadline when allowed by a court, and requires the court to remand the matter to the Commission if the Commission cannot timely file the transcript.

- Specifies that if the operations of an employer involved in a labor dispute are located in only one county, the appellant must file the appeal in the court of common pleas of that county, and if the operations of an employer involved in a labor dispute are located in multiple counties, the appellant must file the appeal in the court of common pleas of the county where the largest number of claimants worked for the employer.

- Modifies provisions governing benefit reductions due to retirement pay.

- Specifies that the Director of JFS need not have the prior approval of the Unemployment Compensation Advisory Council to make payments associated with the sale of real property and requires the Director to submit an annual report regarding these payments to the Council.

- Clarifies that amounts chargeable to other states, the United States, or Canada, pursuant to agreements the Director of JFS enters into with those governments, are credited or reimbursed in accordance with those agreements.

- Makes technical corrections to the Unemployment Compensation Law.

TABLE OF CONTENTS

"SUTA" dumping prevention 3
Background 3
Existing provisions regarding business transfers 4
Replacement provisions concerning business transfers 4
Prohibition 5
Penalties 6
Criminal penalties 6
State disaster unemployment benefits 7
Indian tribes in Ohio 8
Payment structure change relative to Indian tribes 9
Exclusions from coverage 9
Coverage relative to specified jobs in education 10
Coverage relative to extended benefits 10
Penalty contribution rates for employers who fail to timely furnish required wage information 11
Corrected determination by the Director of Job and Family Services 12
Appealing the final decision of the Unemployment Compensation Review Commission 12
Where to file the appeal 12
Duties of the Commission 13
Venue for appealing Director's determination concerning whether individuals are unemployed due to a labor dispute 13
Reasons for denying benefits 13
Benefit reductions 14
Sale of real property 15
Combined claims payment 15
Technical revisions 15

CONTENT AND OPERATION

"SUTA" dumping prevention

Background

Public Law (P.L.) No. 108-295, the "SUTA Dumping Prevention Act of 2004," was signed by the President on August 9, 2004, and requires states to conform their laws to prevent the practice commonly referred to as SUTA dumping (see **COMMENT**). "SUTA" refers to state unemployment tax acts, but

has also been said to stand for, among other things, "State Unemployment Tax Avoidance." The type of practices the federal act seeks to address most frequently involve business mergers, acquisitions, or restructuring schemes, especially those involving shifting of workforce and payroll, that are completed in a manner that avoids unemployment compensation taxes. The bill modifies Ohio's existing law to address these types of business transfers, as explained below.

Existing provisions regarding business transfers

Existing law specifies that if an employer transfers the employer's business or otherwise reorganizes such business, the successor in interest must assume the resources and liabilities of such employer's account, and continue the payment of all contributions, or payments in lieu of contributions, that are due. Additionally, if an employer acquires substantially all of the assets in a trade or business of another employer, or a clearly segregable and identifiable portion of an employer's enterprise, and immediately after the acquisition employs in the employer's trade or business substantially the same individuals who immediately prior to the acquisition were employed in the trade or business or in the separate unit of such trade or business of such predecessor employer, then, upon application to the Director of Job and Family Services signed by the predecessor employer and the acquiring employer, the employer acquiring such enterprise is the successor in interest. In the case of a transfer of a portion of an employer's enterprise, only that part of the experience with unemployment compensation and payrolls that is directly attributable to the segregated and identifiable part is transferred and used in computing the contribution rate of the successor employer on the next computation date. The Director by rule may prescribe procedures for effecting transfers of experience. (Sec. 4141.24(F).)

Also, under current law, two or more employers who are parties to or the subject of a merger, consolidation, or other form of reorganization effecting a change in legal identity or form are deemed to be a single employer if the following conditions are satisfied: (1) the Director finds that immediately after such change, the employing enterprises of the predecessor employers are continued solely through a single employer as successor thereto, (2) immediately after such change such successor is owned or controlled by substantially the same interests as the predecessor employers, (3) the successor has assumed liability for all contributions required of the predecessor employers, and (4) the consideration of such two or more employers as a single employer for the purposes of this section would not be inequitable. (Sec. 4141.24(G).)

Replacement provisions concerning business transfers

The bill replaces some of the statutory provisions above with more specific details concerning business transfers. It specifies that if an employer *or person*

transfers ***all*** of its trade or business to another employer or person, the acquiring employer or person is the successor in interest to the transferring employer and must assume the resources and liabilities of such transferring employer's account, and continue the payment of all contributions, or payments in lieu of contributions, that are due. If an employer or person acquires substantially all, or a clearly segregable and identifiable portion of an employer's trade or business, then upon the Director's approval of a properly completed application for successorship, the employer or person acquiring the trade or business, or portion thereof, is the successor in interest.

The bill additionally specifies that notwithstanding other provisions of the Unemployment Compensation Law (R.C. Chapter 4141.) governing rating, experience, and payroll calculations, both of the following apply regarding assignment of rates and transfers of experience:

(1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, both employers are under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred trade or business, or portion thereof, must be transferred to the employer to whom the business is so transferred. The Director must recalculate the rates of both employers and those rates must be effective immediately upon the date of the transfer of the trade or business.

(2) Whenever a person is not an employer governed by the Unemployment Compensation Law at the time the person acquires the trade or business of an employer, the unemployment experience of the acquired trade or business must not be transferred to the person if the Director finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, that person must be assigned the applicable new employer rate under the normal rating provisions.

The bill requires the Director to establish procedures to identify the transfer or acquisition of a trade or business in addition to adopting rules prescribing procedures for effecting transfers of experience, as under current law. (Sec. 4141.24(F), (G), and (H).)

Prohibition

The bill prohibits a person from acquiring the trade or business of an employer, or a portion thereof, solely or primarily for the purpose of obtaining a lower rate of contributions under the Unemployment Compensation Law. In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Director must use objective factors that may include all of the following:

(1) The cost of acquiring the trade or business;

(2) Whether the person continued the trade or business of the acquired trade or business;

(3) If the trade or business was continued, how long the trade or business was continued;

(4) Whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition. (Sec. 4141.48(A) and (B).)

Penalties

If a person knowingly violates, attempts to violate, or advises another person in a way that results in a violation of the prohibition described above or any other provision of this chapter related to determining the assignment of a contribution rate, the person is subject to the following penalties:

(1) If the person is an employer, the Director must assign the employer the highest maximum rate or penalty rate assignable for the rate year during which the violation or attempted violation occurred and the three rate years immediately following that rate year, except that, if the person's business is already at the highest rate for any of those years, or if the amount of increase in the person's rate would be less than 2% for that year, then an additional penalty rate of contributions of 2% of taxable wages must be imposed for that year.[1]

(2) If the person is not an employer, the Director must assess a fine of $5,000. (Sec. 4141.48(C).)

The bill requires the Director to credit 50% of amounts paid to the Director under rates described in (1) directly above to the individual employer's account and 50% to the mutualized account. It also requires the Director to deposit any fine collected from a person described in (2) directly above into the Special Administrative Fund. (Sec. 4141.48(D) and (E).)

Criminal penalties

The bill further specifies that whoever knowingly transfers employees of a trade or business or advises another person to transfer employees in violation of the prohibition described above is guilty of unemployment tax evasion. In

[1] *The Director must round the contribution rates the Director determines under this provision to the nearest tenth of 1%. (Sec. 4141.48(F).)*

addition to the penalties described above, if the tax avoided by the trade or business is less than $10,000, the violation is a first-degree misdemeanor. If the tax avoided is $10,000 or more, the violation is a felony, with increased criminal penalties as follows:

(1) If the tax avoided by the business is $10,000 or more but less than $50,000, the violation is a fifth-degree felony;

(2) If the tax avoided is $50,000 or more but less than $100,000, the violation is a fourth-degree felony;

(3) If the tax avoided is $100,000 or more, the violation is a third-degree felony. (Sec. 4141.99(F).)

For purposes of the prohibition and associated penalties described above: "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved; "person" has the same meaning as under "The Internal Revenue Code of 1986," 100 Stat. 2138, 26 U.S.C. 7701;[2] "trade or business" includes the employer's workforce; and "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure. (Secs. 4141.48(G) and 4141.99(G).)

State disaster unemployment benefits

Current law specifies conditions an individual must satisfy to be entitled to a waiting period or unemployment benefits. These conditions include requirements that the individual be able to work, available for suitable work, and actively seeking suitable work. The requirement that an individual be actively seeking work is waived, however (1) when the individual is laid off but the employer expects to reemploy the individual within 45 days, and (2) the individual's unemployment is directly attributable to a major disaster declared by the President of the United States pursuant to the "Disaster Relief Act of 1974," 88 Stat. 143, 42 U.S.C. 5121, and the employer whose operation was adversely affected by the disaster, requests a waiver from the Director for the individual to be exempt from the requirement to actively seek suitable work.

Existing law additionally specifies that, except as described below, individuals are not paid benefits for their "waiting week," which is the first week

[2] *The only differences between the definition of "person" under the Internal Revenue Code (IRC) and "person" as defined for purposes of the Revised Code generally (R.C. 1.59) are that "person" includes a "company" under the IRC but not a "business trust" and "person" under R.C. 1.59 includes a "business trust" but not a "company."*

occurring after an individual applies for benefits.[3] An individual may be paid benefits for a waiting week if the individual's unemployment during that waiting week is directly attributable to a major disaster declared by the President of the United States pursuant to the "Disaster Relief Act of 1974."

The bill eliminates the second reason for waiver described above. It also eliminates the potential to be paid benefits for a waiting week. Instead, the bill creates a "state disaster unemployment benefit payment" that may be paid to an individual suffering total or partial unemployment directly attributable to a major disaster declared by the President of the United States pursuant to the "Disaster Relief Act of 1974" if the individual is not eligible to be paid unemployment compensation benefits under Ohio's Unemployment Compensation Law or any other state or federal unemployment compensation law for the first week of the individual's unemployment caused by the disaster.

The bill requires the Director to compute the state disaster unemployment benefit payment as if the individual was otherwise qualified and claiming weekly unemployment compensation benefits under Ohio's Unemployment Compensation Law. This benefit is paid from the Unemployment Compensation Special Administrative Fund, and the Director need not have the prior approval of the Unemployment Compensation Advisory Council to make these payments. The Director must maintain appropriate records of these payments and must submit those records at least annually to the Council as prescribed by the Council. (Secs. 4141.11(C), 4141.29(A)(4)(a)(ii)(I) and (B), and 4141.292.)

Indian tribes in Ohio

The federal Community Renewal Tax Relief Act of 2000 (P.L. 106-554) (hereafter "CAA") was signed into law on December 21, 2000. The CAA amended federal law to change the way American Indian tribes are treated under the Federal Unemployment Tax Act (FUTA). Under the new law, Indian tribes must be treated in a fashion that is similar to the way state and local governments are treated under federal unemployment tax law.

Currently, there are no federally recognized Indian tribes or Indian tribe employers within the state of Ohio. According to the United States Department of Labor, petitions for federal recognition have been filed in Ohio. The bill's provisions with respect to the new treatment of Indian tribes under Ohio's Unemployment Compensation Law will have a real effect only if an Indian tribe in Ohio succeeds in receiving recognition in accordance with federal law.

---

[3] *Technically, the "waiting week" commences on the first day of the first week in which an individual first files a claim for benefits.*

Payment structure change relative to Indian tribes

Under current law unchanged by the bill, employers who employ employees in employment that is subject to the Unemployment Compensation Law must pay into the Ohio Unemployment Compensation Trust Fund ("Trust Fund"). Money from that fund is used to pay benefits to unemployed workers.

For purposes of the Unemployment Compensation Law, employers fall into two categories based on the manner in which they pay into the Trust Fund. "Contributory employers" are required to make quarterly payments to the Trust Fund at a calculated rate that applies to total taxable payroll. "Reimbursing employers" are public employers or nonprofit organizations that reimburse the Trust Fund, after-the-fact, for any benefits paid out to claimants that are properly chargeable to that employer. Reimbursing employers may elect to become contributory employers.

Prior to the CAA, if an Indian tribe employer did exist in Ohio, it would have been required to pay the federal unemployment tax in the same manner as contributory employers, in quarterly installments based on the number of employees, weeks worked by covered employees, and wages paid to employees. The bill however, in conforming to the CAA, makes Indian tribe employers reimbursing employers. Thus, if an Indian tribe gains recognition in Ohio, an Indian tribe employer will be required to reimburse the Trust Fund, after-the-fact, for benefits paid to claimants, unless the Indian tribe employer elects to become a contributory employer. Under the bill, an Indian tribe may make a separate election for itself and each subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe. (Secs. 4141.01 and 4141.242.)

There are two types of "reimbursing employers"—nonprofit organizations and governmental entities. There are differences between what is required of each type. Under the bill, Indian tribes must follow the same requirements set forth in current law that apply to governmental entities.

Exclusions from coverage

The bill excludes from the definition of "employment," and therefore from coverage under the Unemployment Compensation Law, any service that is excluded from unemployment under FUTA, and any service performed for an Indian tribe when performed in any of the following manners:

(1) As a publicly elected official;

(2) As a member of an Indian tribal council;

(3) As a member of a legislative or judiciary body;

(4) In a position which, pursuant to Indian tribal law, is designated as a major non-tenured policymaking or advisory position, or a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours of time per week;

(5) As an employee serving on a temporary basis in the case of a fire, storm, snow, earthquake, flood, or similar emergency;

(6) Service performed after December 31, 1971, for an Indian tribe as part of an unemployment work-relief or work-training program (this exemption applies only to nonprofit organizations and government entities under current law) (sec. 4141.01(A)(3)(z) and (aa)).

The Director is required to immediately notify the United States Internal Revenue Service and the United States Department of Labor if an Indian tribe fails to make required payments and fails to pay any forfeitures, interest, or penalties due within 90 days of receiving a delinquency notice in accordance with rules prescribed by the Director. (Sec. 4141.242(I).)

Coverage relative to specified jobs in education

The bill adds educational institutions operated by an Indian tribe to the existing definition of "educational institution" and "institution of higher education" for purposes of the Unemployment Compensation Law (sec. 4141.01(Y)). As a result schools operated by Indian tribes become subject by the bill to the same rules that apply to other educational institutions and institutions of higher education in current law. For example, this means that an individual employed by an educational institution operated by an Indian tribe is not eligible to receive unemployment compensation benefits between academic years or terms if the individual performs instructional, research, or principal administrative services in the first of those academic years or terms and has a contract or a reasonable assurance that the individual will perform services in any instructional, research, or principal administrative capacity for the school in the second of those academic years or terms (sec. 4141.29).

Coverage relative to extended benefits

Under current law, extended benefits may be approved during times of high unemployment in the state as determined by the Director of Job and Family Services in accordance with federal regulations. Employers are "charged" for the benefits that are paid to claimants, which affects the amount that the employer must contribute to or reimburse to the Unemployment Compensation Trust Fund. A public employer's account may be charged an amount equal to one-half of the "regular benefits" chargeable to their accounts on the claim. If "extended benefits"

are paid to eligible individuals, the full amount of extended benefits are charged to the accounts of public employers. The bill subjects Indian tribes that are employers to this existing payment structure. (Sec. 4141.301(H).)

Penalty contribution rates for employers who fail to timely furnish required wage information

Under current law, if an employer has not furnished the appropriate wage information necessary to compute the employer's contribution rate by September 1 of each year, the employer is assigned a penalty contribution rate equal to 125% of the maximum rate, with the following exceptions:

(1) If the employer files the necessary wage information by December 31 of the year immediately preceding the contribution period for which the rate is to be effective, the employer's rate is computed as normal;

(2) If, within 30 days after the Director mails notice of the penalty contribution rate to the employer, the employer meets all of the following conditions:

- Provides to the Director a written request for waiver of the contribution rate, clearly demonstrating that the failure to timely furnish the wage information was a result of circumstances beyond the control of the employer or the employer's agent, except that negligence on the part of the employer is not considered to be beyond the control of the employer or the employer's agent;

- Furnishes to the Director all of the required wage information and all quarterly reports that are due;

- Pays in full all contributions, payments in lieu of contributions, interest, forfeiture, and fines for each quarter for which such payments are due. (Sec. 4141.26(B)(3)(a) and (b).)

The Director must revise the contribution rate of an employer who has not timely furnished the necessary wage information, and who has been assigned a penalty contribution rate, and who does not meet the requirements for waiver of that penalty contribution rate if the employer furnishes the necessary wage information to the Director within 36 months following December 31 of the year immediately preceding the contribution period for which the rate is to be effective. This revised rate must be equal to 120% of the contribution rate that would have resulted if the employer had timely furnished the necessary wage information. However, the Director must deny an employer's request for this revision if the

Director finds that the employer's failure to timely file the necessary wage information was due to an attempt to evade payment. (Sec. 4141.26(B)(3)(c).)

The bill eliminates the provision described in (2) above regarding waiver from a penalty contribution rate. Additionally, it shortens the 36-month maximum period described immediately above to an 18-month maximum to be able to obtain the revised rate that equals 120% of the normal rate for rate years beginning in 2006. (Sec. 4141.26(B)(3)(c) and Section 3.)

Corrected determination by the Director of Job and Family Services

Currently, the Director of Job and Family Services must issue a corrected determination of benefits if the Director finds, within a claimant's benefit year, that the Director's determination was erroneous due to an error in an employer's report, any typographical or clerical error in the Director's determination, or as shown by correct remuneration information received by the Director. The bill expands this provision to require the Director to issue a corrected determination if the Director finds one of the above-described errors within the 52-week calendar weeks beginning with Sunday of the week during which an application for benefit rights was filed. This means the Director must issue a corrected determination regardless of whether a *valid* application has been filed.[4] (Sec. 4141.28.)

Appealing the final decision of the Unemployment Compensation Review Commission

Where to file the appeal

Under existing law, an appellant may appeal the final decision of the Unemployment Compensation Review Commission if the appeal is filed within 30 days of the final decision. An appellant must file the appeal in the court of common pleas in the county where the appellant is a resident of or was last employed. If the appellant is a business, then the appellant must file in the county where the appellant is a resident or has a principal place of business in Ohio. The bill makes the additional requirement that the appellant must file the appeal with the court of common pleas of Franklin County if the appellant is not a resident of or last employed in a county in this state or does not have a principal place of business in this state. (Sec. 4141.282(B).)

[4] *The difference between the two periods described is that a benefit year starts upon the filing of a valid application for determination of benefit rights.*

Duties of the Commission

Current law requires the Commission to file a certified transcript of the record of the proceedings before the Commission with the clerk within 45 days after an appellant files a notice of appeal. Under the bill, the Commission must file a certified transcript of the proceedings either within 45 days after the appellant files a notice of appeal or within an extended period ordered by the court. The bill also creates an exception to these filing requirements, which stipulates that if the Commission cannot file a certified transcript within that 45 days or extended period, the court must remand the matter to the Commission for additional proceedings in order to complete the record. The bill specifies that additional proceedings may include a new hearing before the Commission or a designated hearing officer. (Sec. 4141.282(F).)

Venue for appealing Director's determination concerning whether individuals are unemployed due to a labor dispute

Under current law, whenever the Director has reason to believe that the unemployment of 25 or more people relates to a labor dispute, the Director must schedule a hearing with a hearing officer concerning the reason for unemployment. The hearing officer's decision issued by the Director is final unless a party files an appeal with the Commission. The Commission then must review the Director's decision and render a decision. (Sec. 4141.282.)

Under existing law, a party may appeal the Commission's decision to the court of common pleas as required by the party's residence, last employment, or principal place of business as described above in "***Where to file the appeal***." The bill creates a different venue for this type of appeal. Under the bill, if the operations of an employer involved in a labor dispute are located in only one county, the appellant must file the appeal of the Commission's decision in the court of common pleas of that county. If the operations of an employer involved in a labor dispute are located in more than one county, the appellant must file the appeal of the Commission's decision in the court of common pleas of the county where the largest number of claimants worked for the employer. (Sec. 4141.283(E).)

Reasons for denying benefits

Under existing law, an individual may not receive benefits if the individual quit work without just cause or has been discharged for just cause in connection with the individual's work. (This reason for denying benefits is just one of the reasons listed under the existing law.) However, this reason for denial does not apply if the individual is separated from employment because the individual applied to or was inducted into the armed forces within 30 days after separation

from employment. The bill modifies the armed forces exception so that the reason for denying unemployment explained above does not apply if the individual is inducted (the *applying* to enter the armed forces within the 30-day period, specifically is deleted by the bill) into the armed forces within 30 days after separation from employment or within 180 days after separation if the individual's date of induction is delayed solely at the discretion of the armed forces. (Sec. 4141.29(D)(2)(a)(i).)

Under existing law, another reason an individual may be denied benefits is if the individual refused to accept an offer of suitable work without good cause or investigate a referral for suitable work. However, this reason for denial does not apply when the individual is attending a vocational training course. The bill removes the requirement that the training course be a *vocational* training course. (Sec. 4141.29(D)(2)(b)(ii).)

Current law also stipulates that an individual is denied benefits if the individual has knowingly made a false statement or representation or knowingly failed to report any material fact with the object of obtaining benefits to which the individual is not entitled. The bill removes this reason for which unemployment benefits are denied. However, the broader provisions of existing law addressing the issue of obtaining benefits fraudulently still apply to this type of scenario. (Sec. 4141.29(D)(2)(d).)

Benefit reductions

Existing law generally requires that an individual's benefits be reduced by the amount that individual is receiving in some form of retirement or pension benefits. Currently, however, if an individual works 26 weeks or more for an employer to whom the retirement payments are not attributable, then any unemployment benefits paid are not reduced by the amount of retirement payments received, and charges for those unemployment benefits are made instead to the mutualized account, not the account of the employer who is paying the retirement. Under the bill, this exception applies regardless of whether an individual works 26 weeks or more, as explained above. (Sec. 4141.31(A).)

The bill also adds a qualification to this benefit reduction provision, specifying that the benefit reduction described above applies to any pension, retirement or retired pay, annuity, or other similar periodic payment only if both of the following are true:

(1) In the case of a payment under a plan not made under the "Social Security Act," 42 U.S.C. 401 et. Seq., or the "Railroad Retirement Act of 1974," 45 U.S.C. 231 et. Seq., or the corresponding provisions of prior law, services performed for such employer by the individual after the beginning of the base

period, or remuneration for such services, affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment.

(2) The payment is under a plan maintained or contributed to by a base period employer or chargeable employer. (Sec. 4141.312(A)(1) and (2).)

While (2) above is essentially not a new provision, (1) above is.

Sale of real property

Currently, the Director pays costs associated with the sale of real property no longer needed by the Director pursuant to the Unemployment Compensation Law from the Unemployment Compensation Special Administrative Fund. The bill specifies that the Director need not have the prior approval of the Unemployment Compensation Advisory Council to make these payments. It also requires the Director to submit a report summarizing the use of that Fund for these payments at least annually to the Council as prescribed by the Council. (Secs. 4141.11(D) and 4141.131(A).)

Combined claims payment

The bill clarifies that "amounts" (costs of benefits) that are chargeable to other states, the United States, or Canada, pursuant to agreements the Director enters into with those governments, are credited or reimbursed in accordance with those agreements. (Sec. 4141.29(H).)

Technical revisions

The bill eliminates an obsolete reference to "temporary partial disability." (Sec. 4141.31(A)(2).)

The bill eliminates obsolete provisions regarding penalty assessments for employers who filed late wage information for contribution periods that occurred before January 1, 1995. (Sec. 4141.26(B)(1) and (2).)

The bill corrects an outdated reference in the Unemployment Compensation Law to a specific provision in the federal "Immigration and Nationality Act," 8 USCA 1101 and 1184. (Sec. 4141.01(A)(1)(d)(ii).)

COMMENT

The federal "SUTA Dumping Prevention Act of 2004" requires the unemployment compensation law of a state to provide all of the following:

(1) That if an employer transfers its business to another employer, and both employers are (at the time of transfer) under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to (and combined with the unemployment experience attributable to) the employer to whom such business is so transferred;

(2) That unemployment experience shall not, by virtue of the transfer of a business, be transferred to the person acquiring such business if:

(a) Such person is not otherwise an employer at the time of such acquisition, and

(b) The state agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(3) That unemployment experience shall (or shall not) be transferred in accordance with such regulations as the Secretary of Labor may prescribe to ensure that higher rates of contributions are not avoided through the transfer or acquisition of a business;

(4) That meaningful civil and criminal penalties are imposed with respect to:

(a) Persons that knowingly violate or attempt to violate those provisions of the state law which implement these provisions, and

(b) Persons that knowingly advise another person to violate those provisions of the state law which implement these provisions, and

(5) For the establishment of procedures to identify the transfer or acquisition of a business for purposes of these provisions.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-01-05	p. 250
Reported, S. Insurance, Commerce & Labor	04-12-05	p. 380
Passed Senate (32-0)	04-12-05	p. 384

S0081-PS-126.doc/jc