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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Boyd and Boggs

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SUMMARY

Contract Worker Compensation Grant Program

- Creates the Contract Worker Compensation Grant Program to provide grants to an individual who is unable to perform contract work due to an individual or an immediate family member being quarantined or isolated or an entity ceases operation due to an order or regulation.
- Requires the Director of Job and Family Services to administer and enforce the program and to give great weight and deference to decisions made under Ohio's Unemployment Compensation Law with respect to unemployment compensation in administering and enforcing the program.
- Requires the Director to adopt rules to implement the program.
- Describes the manner in which weekly grant amounts are calculated, including maximum amounts, which is similar to the manner in which weekly benefit amounts are calculated under the Unemployment Compensation Law.
- Requires the Director to use eligible funds to issue grants.
- Prohibits waiver of a grant and exempts grants from creditor claims and from levy, execution, attachment, and all other process or remedy for recovery or collection of a debt.
- Prohibits recklessly violating or failing to comply with the program and disobeying an order given by the Director or a court in connection with the program and establishes penalties for violating the orders.
- Makes an appropriation to fund the program.

Leave provisions

- Requires every employer, during the period of emergency declared by Executive Order 2020-01D, issued March 9, 2020, to provide 14 days of quarantine or isolation pay to an employee.
- Requires every private sector employer, this period, to provide each of the employer’s employees one hour of sick leave for each completed 30 hours of service performed by the employee during the one-year period before the bill’s effective date, up to a maximum of 56 hours.
- Specifies the circumstances under which an employee may use quarantine or isolation pay and the sick leave provided by the bill.
- Prohibits an employer from failing to comply with the bill’s leave requirements or retaliating against an employee because the employee requests the leave or fails to report to work under the specified circumstances.
- Allows an employee to sue or file a complaint with the JFS Director when the employee believes the employee’s employer has violated the bill’s leave provisions.

Emergency

- Declares an emergency.

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DETAILED ANALYSIS

Contract Worker Compensation Grant Program

The bill creates the Contract Worker Compensation Grant Program to provide compensation to an individual who is unable to perform contract work due to an individual or an immediate family member being quarantined or isolated or an entity ceases operation due to an order or regulation described in the bill. The Director of Job and Family Services administers the program in accordance with the bill's requirements. A "contract worker" is an individual who performs services for remuneration under any contract of hire free from the control and direction of the hiring entity in connection with the performance of the work. "Contract worker" does not include a person who performs work on a casual basis (work that is irregular or intermittent and that is not performed by an individual whose vocation is to be employed in or about the employer's or individual's residence).¹

The Director must enforce the program in accordance with rules the Director adopts under the bill in accordance with the Administrative Procedure Act.²

In administering and enforcing the program, the Director must give great weight and deference to decisions made under the Unemployment Compensation Law with respect to unemployment benefits.³

Eligibility for grants

Under the bill, an individual is eligible to receive a grant for a week in which the individual satisfies all of the following requirements:

- The individual is unable to perform services as a contract worker because the individual or an immediate family member has been quarantined or isolated or the entity for which the individual performs services ceases operations under an order or regulation made or issued by any of the following:
 - The Governor;
 - The board of health of a city health district;
 - The board of health of a general health district;
 - A health commissioner;
 - The Ohio Department of Health;
 - The Director of the U.S. Centers for Disease Control and Prevention or any other federal agency pursuant to federal law.

¹ R.C. 4143.01(B) by reference to R.C. 4111.14, not in the bill, and 4143.02.

² R.C. Chapter 119.

³ R.C. 4143.08.

- The individual is not otherwise eligible for unemployment benefits;
- The individual satisfies the eligibility requirements established by the Director in the rules the Director adopts.⁴

Under the bill, the Director must adopt rules to establish eligibility requirements an individual must satisfy to receive a grant, including the definition of an individual's "base period," which must be similar to the requirements an individual must satisfy to receive unemployment benefits.⁵ To receive unemployment benefits, continuing law requires an individual to do all of the following:

- Have worked in "covered employment" (almost all types of employment, with certain exclusions such as church employment or casual labor) for at least 20 qualifying weeks within the individual's base period (the bill requires the Director to define base period under the program);
- Have had an average weekly wage of 27½% of the statewide average weekly wage within the base period (for 2020, \$269);
- Have become unemployed for a nondisqualifying reason;
- Be able to, available for, and actively seeking suitable work;
- Be a U.S. citizen or legal alien.⁶

Additionally, under the bill the Director must adopt rules establishing procedures for an individual to follow to apply for a grant and procedures for the awarding and payment of grants. The procedures must be similar to the manner in which a claim for unemployment benefits is applied for, awarded, and paid.⁷ For unemployment benefits, the Director first determines whether an individual has earned enough and worked long enough to qualify overall for unemployment compensation. The Director next examines whether, for each weekly claim, the individual is qualified for unemployment benefits, examining the reason for unemployment and whether the individual satisfies the work search requirements.⁸

The bill allows the Director to use the information the Director obtains under the Income and Eligibility Verification System to determine an individual's eligibility for a grant under the program.⁹

⁴ R.C. 4143.01(F), by reference to R.C. 4141.284, not in the bill; and 4143.04(A).

⁵ R.C. 4143.03(A)(1).

⁶ R.C. 4141.01(R) and 4141.29, not in the bill. See also ODJFS, *Worker's Guide to Unemployment Insurance*, available [here](#).

⁷ R.C. 4143.03(A)(2).

⁸ R.C. 4141.28, not in the bill.

⁹ R.C. 4143.04(B), by reference to R.C. 4141.162, not in the bill.

Payment of grants

Similar to unemployment benefits, the bill requires all grants to be paid through public employment offices in accordance with the Director's rules. The Director must use eligible funds to issue grants, except from the Unemployment Compensation Fund, which is the fund from which unemployment benefits is paid.¹⁰

Grant amounts

The amount of a grant awarded under the bill is similar to the amount of unemployment benefits one may receive. Under the bill, a grant is payable to an eligible and qualified individual for each week the individual is unable to perform services as a contract worker for a reason specified in the bill (see "**Eligibility for grants,**" above) at the weekly grant amount determined by the following:

- Computing the individual's average weekly wage;
- Determining the individual's dependency class discussed below;
- Computing the individual's weekly grant amount to be 50% of the individual's average weekly wage.

An individual's grant amount cannot exceed the following amounts:

- For dependency class A, 50% of the statewide average weekly wage (SAWW) as calculated under the Unemployment Compensation Law;
- For dependency class B, 60% of the SAWW;
- For dependency class C, 66²/₃% of the SAWW.

A dependent under the program is the same as a dependent under the Unemployment Compensation Law (generally, dependent children and spouses). An individual is assigned a dependency class as described in the table below:

Class	Description of dependents
A	No dependents, or has insufficient wages to qualify for more than the maximum weekly grant amount as provided under dependency class A
B	One or two dependents
C	Three or more dependents

The total amount of a grant to which an individual is entitled in any grant year cannot exceed the lesser of the following two amounts:

- An amount equal to 26 times the individual's weekly grant amount; or

¹⁰ R.C. 4143.04(C) by reference to R.C. 4141.09, not in the bill.

- An amount computed by taking the sum of 20 times the individual's weekly grant amount for the first 20 base period qualifying weeks plus one times the weekly grant amount for each additional qualifying week beyond the first 20 qualifying weeks in the individual's base period.

Any weekly grant amount that is not a multiple of one dollar must be rounded to the next lower multiple of one dollar. Any grant paid must be calculated against the maximum total unemployment benefits payable to the individual in a benefit year under the Unemployment Compensation Law.¹¹

Reduction in grant amounts

The Director must adopt rules to reduce the amount of any weekly grant amount paid in a similar manner as reductions of unemployment benefits.¹² For those benefits, if in any week a participating employee reports the receipt of any of the following types of payment, the unemployment benefits payable to that individual must be reduced by the amount of those payments received for that week:

- Remuneration in lieu of notice;
- Compensation for wage loss under Ohio's Workers' Compensation Law or a similar provision under another state's or federal workers' compensation law;
- Payments in the form of retirement, or pension allowances as provided in continuing law;
- Unless an exception concerning military service applies, remuneration in the form of separation or termination pay paid to an employee at the time of the employee's separation from employment;
- Vacation pay or allowance payable under the law, terms of a labor-management contract or agreement, or other contract of hire, which payments are allocated to designated weeks;
- The determinable value of cost savings days.¹³

The Director also must adopt rules to establish procedures and requirements addressing child support obligations similar to those that apply to unemployment benefits.¹⁴ Under the Law, the Director must notify the appropriate state or local child support enforcement agency enforcing a child support obligation if a claimant has been determined to be eligible for

¹¹ R.C. 4143.04(D) through (G), by reference to R.C. 4141.30, not in the bill.

¹² R.C. 4143.03(A)(4) and 4143.05.

¹³ R.C. 4141.31 and 4141.312, not in the bill.

¹⁴ R.C. 4143.03(A)(5) and 4143.05.

unemployment benefits. The Director must withhold and deduct specified amounts from those benefits.¹⁵

Under the bill, the Director must deduct from a grant for purposes of federal income tax payment in a similar manner as the Director makes that deduction with respect to unemployment benefits.¹⁶ Currently, with respect to unemployment benefits, the Director must inform an individual who files an application for determination of benefit rights of all of the following:

- That benefits are subject to federal income tax;
- That requirements exist pertaining to estimated tax payments;
- That the individual may elect to have federal income tax deducted and withheld from the benefits payable to that individual in the amount specified in the Internal Revenue Code;
- That the individual may change the withholding status the individual has previously elected once during the individual's benefit year.

The Director must make the income tax deduction if an individual elects to have it made and must comply with procedures established by the U.S. Department of Labor in making that deduction.¹⁷

Appeals

An individual may appeal a determination made by the Director in accordance with the Director's rules. Those procedures must include the time limits in which the individual has to file an appeal.

The determination made on completion of the appeals process established by the Director is a final determination that may be appealed pursuant to the procedures in Ohio's Administrative Procedure Act to appeal to a court.¹⁸

Overpayment

The bill requires the Director to adopt rules establishing penalties for overpayments and procedures to collect those overpayments, which must be similar to the penalties and procedures for overpayments under the Unemployment Compensation Law.¹⁹ If an individual obtains unemployment benefits through fraudulent misrepresentation, then under that law the Director must do all of the following:

¹⁵ R.C. 4141.284, not in the bill.

¹⁶ R.C. 4143.05.

¹⁷ R.C. 4141.321, not in the bill.

¹⁸ R.C. 4143.03(A)(6) and 4143.06, by reference to R.C. 119.12, not in the bill.

¹⁹ R.C. 4143.03(A)(7).

- Within a specified time period, reject or cancel the individual's entire weekly claim for benefits that was fraudulently claimed, or the individual's entire benefit rights if the misrepresentation was in connection with the filing of the individual's application;
- Declare the individual ineligible for two otherwise valid weekly claims for benefits claimed within six years subsequent to the discovery of the misrepresentation;
- Require the total amount of unemployment benefits rejected or canceled be repaid before the individual may become eligible for further benefits and withhold any unpaid sums from future payments;
- Assess, if the benefits are not repaid within 30 days after the Director's order becomes final, interest on the amount remaining at a rate of 14% per annum, compounded monthly;
- Assess a mandatory penalty on the individual equal to 25% of the total amount of benefits rejected or canceled.

The Director also may take action to collect compensation that has been fraudulently obtained, interest, and court costs, through attachment proceedings under Ohio's Attachment Law and garnishment proceedings under Ohio's Garnishment Law.

If an overpayment is not the result of fraudulent misrepresentation, subject to certain limitations, the Director must cancel that waiting period and require that the unemployment benefits be repaid or be withheld from any benefits to which the applicant is or may become entitled before any additional benefits are paid.²⁰

Prohibitions and penalties

Similar to unemployment benefits, except with respect to child support obligations, no agreement by an individual to waive the individual's right to a grant is valid, nor may a grant be assigned, released, or commuted. A grant also is exempt from all creditor claims and from levy, execution, garnishment, attachment, and all other process or remedy for recovery or collection of a debt, and that exemption may not be waived.

Also similar to unemployment, the bill prohibits an individual claiming a grant under the program from being charged fees of any kind by the Director in any program proceeding and prohibits any person from charging or receiving anything of value in violation of the bill. Whoever violates these prohibitions is guilty of a first degree misdemeanor. Any individual claiming a grant may represent the individual's self personally or be represented by a person admitted to the practice of law or by a person not admitted to the practice of law in any proceeding before the Director. No person representing an individual claiming a grant may either charge or receive for those services more than an amount approved by the Director.

The bill prohibits any person from recklessly doing any of the following:

²⁰ R.C. 4141.35, not in the bill.

- Violating the bill's program provisions;
- Doing any act prohibited by those provisions;
- Failing to perform any duty lawfully enjoined, within the time prescribed by the Director, for which no penalty has been specifically provided;
- Failing to obey any lawful order given or made by the Director or any judgment or decree made by any court in connection with the program.

Whoever violates these prohibitions must be fined not more than \$500 for the first offense, and for each subsequent offense, fined not less than \$25 or more than \$1,000. Every day during which any person fails to comply with any order or to perform any duty constitutes a separate violation.²¹

Liberal construction

The bill requires the program to be liberally construed.²²

Funding

On the bill's effective date, or as soon as possible thereafter, the bill requires the JFS Director to certify to the Director of Budget and Management the amount necessary to provide grants under the program through the remainder of FY 2020 and for FY 2021. The OBM Director must transfer the amount certified from the Budget Stabilization Fund to the General Revenue Fund. The certified amount cannot exceed the balance of the Budget Stabilization Fund. The bill appropriates the certified amount into the Department of Job and Family Services Program Support budget.

On July 1, 2020, or as soon as possible thereafter, the JFS Director may certify to the OBM Director an amount up to the unexpended, unencumbered balance of the initial appropriation at the end of FY 2020. The bill reappropriates the amount certified to FY 2021. If the JFS Director determines that the funds available are insufficient to provide full benefits under the program, the Director must proportionately reduce the benefits so they do not exceed available funds.²³

Administration

In addition to the rules discussed above that the Director must adopt, the Director may adopt rules the Director determines necessary to administer and enforce the program. These rules must be consistent with any similar provision addressed in Ohio's Unemployment Compensation Law. Additionally, the bill allows the Director to apply any agreement the Director has entered into pursuant to the Unemployment Compensation Law, to the extent permitted under an agreement, in administering the program, or the Director may enter into

²¹ R.C. 4143.07 and 4143.99.

²² R.C. 4143.09.

²³ Sections 2 and 3.

similar agreements as the Director determines necessary. Many of these agreements concern enforcement and administration involving claimants who make a claim in or previously worked in multiple jurisdictions. The bill requires the Director to cooperate with the Industrial Commission, the Bureau of Workers' Compensation, the U.S. Internal Revenue Service, the U.S. Employment Service, and other similar departments and agencies, as determined by the Director, in the exchange or disclosure of information as to wages, employment, payrolls, unemployment, and other information in the administration of the program.²⁴

The bill allows the Director to administer oaths, certify to official acts, take depositions, issue subpoenas, and compel the attendance and testimony of witnesses and the production of documents and testimony in connection with the administration of the program. If a witness refuses to attend or testify, or to produce documents, as to any matter regarding which the witness might be lawfully interrogated in the administration of the program, the court of common pleas of the county in which the person resides or is found, the court of appeals that has jurisdiction over the county in which the person resides or is found, or a judge of either court, on the Director's application, must compel obedience by proceedings like those used for refusal to obey a similar order of the court.²⁵

Additional program definitions

The bill defines the following terms for purposes of the program:

- "Average weekly wage" means the amount obtained by dividing an individual's total remuneration for all qualifying weeks during the base period by the number of such qualifying weeks (same as the Unemployment Compensation Law).
- "Duration of inability to contract" means the full period of individual's inability to contract next ensuing after a separation from any base period, as defined in rules adopted by the Director, or subsequent work and until an individual has become reemployed in employment subject to the program or the Unemployment Compensation Law, the unemployment compensation act of another state, or of the United States, and until the individual has worked six weeks and for those weeks has earned or been paid remuneration equal to six times an average weekly wage of not less than the amount as determined in the rules adopted by the Director.
- "Grant year," with respect to an individual, means the 52-week period beginning with the first day of that week with respect to which the individual first files a valid application for a grant under the program, and thereafter the 52-week period beginning with the first day of that week with respect to which the individual next files a valid application after the termination of the individual's last preceding grant year, except that the application is not considered valid unless the individual has had employment in six weeks and has, since the beginning of the individual's previous grant year, in the

²⁴ R.C. 4143.03(B) and (C), by reference to R.C. 4141.43, not in the bill.

²⁵ R.C. 4143.08.

employment earned three times the average weekly wage determined for the previous grant year.

- “Qualifying week” means any calendar week in an individual’s base period with respect to which the individual earns or is paid remuneration as a contract worker.²⁶

Leave

Quarantine or isolation pay

During the period of emergency declared by Executive Order 2020-01D, issued March 9, 2020, the bill requires every employer to provide 14 days of quarantine or isolation pay to an employee. Quarantine or isolation pay is paid at an amount equal to an employee’s normal rate of pay for every hour during which the employee would normally be scheduled to work. An employee may use quarantine or isolation pay for any of the following reasons:

- The employee is experiencing an illness, injury, impairment, or other condition resulting from COVID-19 that involves continuing treatment or continuing supervision by another individual (a “serious health condition”) and is being quarantined or isolated because the employee’s presence in the community may jeopardize the health of others;
- The employee is obtaining professional medical diagnosis or care or preventive medical care;
- The employee is being quarantined or isolated because the employee’s presence in the community may jeopardize the health of others due to the employee’s exposure to COVID-19, regardless of whether the employee has contracted COVID-19;
- The employee is caring for an individual who is experiencing a serious health condition and is being quarantined or isolated because the employee’s presence in the community may jeopardize the health of others;
- The employee’s place of employment has been closed because of the state of emergency due to COVID-19, including at the employer’s discretion;
- The child care provider or school that a child of the employee attends has been closed because of the state of emergency due to COVID-19, and the employee must remain home to care for the child;
- The employee must remain home to care for a family member who has a physical or mental disability because the family member’s normal care provider is closed or unavailable because of the state of emergency due to COVID-19;
- The employee is seeking assistance because of domestic violence, sexual assault, or stalking.²⁷

²⁶ R.C. 4143.01 and 4143.03(A)(3).

²⁷ Sections 4 and 5(A) and (B).

An employee forfeits any quarantine or isolation pay that the employee does not use by the 91st day after the emergency declared by the Order ends.²⁸

Paid sick leave for private sector employees

The bill also requires every private sector employer to provide each of the employer's employees one hour of paid sick leave for each completed 30 hours of service performed by the employee during the one-year period before the bill's effective date. This leave is paid at the same rate as quarantine or isolation pay. An employer is not required to provide an employee with more than 56 hours of sick leave under the bill and is not required to provide the employee with sick leave on or after the date that is 91 days after the period of emergency declared by Executive Order 2020-01D ends. Nothing in the bill prohibits an employer from providing an employee with more than the required sick leave. An employee may use the paid sick leave provided under the bill for the same reasons listed above. Similar to the quarantine or isolation pay provided under the bill, an employee forfeits any sick leave provided under the bill that is not used by the 91st day after the emergency declared by the Order ends.²⁹

Prohibitions

The bill prohibits an employer from doing any of the following:

- Failing to provide quarantine or isolation pay and, in the case of a private sector employer, the paid sick leave required under the bill;
- Taking an adverse employment action against an employee because the employee has failed to report to work for a reason listed in the bill's leave provisions or requesting the quarantine or isolation pay or the sick leave provided by the bill;
- Requiring an employee to use paid sick leave, paid vacation leave, paid personal leave, or other paid time off until the employee has received quarantine or isolation pay and, in the case of a private sector employee, the sick leave provided by the bill.³⁰

Remedies

An employee who believes that the employee has been injured by a violation of the bill's prohibitions related to leave may file a complaint with the JFS Director within one year after the alleged violation occurred. On receiving a complaint, the Director may conduct an investigation to determine whether it is probable that the employer has violated the prohibitions. If, after the investigation, the Director has reasonable cause to believe that a violation has occurred, the Director must notify the employer and employee and hold a hearing in accordance with the Administrative Procedure Act to determine whether a violation occurred. If the Director determines that the employer has violated a prohibition, the Director may order appropriate relief from the employer, including all of the following:

²⁸ Section 5(D).

²⁹ Sections 4(A)(4) and 6.

³⁰ Sections 5(C), 6(D), and 7.

- Rehiring or reinstatement of the employee to the employee’s previous position;
- Payment of back wages;
- Reestablishment of employee benefits to which the employee otherwise would have been entitled.

Any party may appeal the Director’s order to the court of common pleas of the county in which the violation allegedly occurred.

The bill also allows an employee to file a lawsuit in the court of common pleas of the county in which the violation allegedly occurred within one year after the alleged violation. If the court finds that a violation occurred, the court may order any appropriate relief including damages, injunctive relief, or a civil penalty in an amount fixed by the court. An employee is not required to file a complaint with the Director or otherwise exhaust the employee’s administrative remedies before filing a lawsuit.³¹

Emergency

The bill declares it to be an emergency law, meaning that it will take immediate effect once signed by the Governor.³²

HISTORY

Action	Date
Introduced	03-25-20

H0593-I-133/ar

³¹ Sections 8 and 9.

³² Section 10.