Ohio Legislative Service Commission

Bill Analysis

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S.B. 374*

131st General Assembly
(As Introduced)

Sen. Peterson

BILL SUMMARY

Minimum safe level

- Changes the calculation of the minimum safe level (MSL), which is used for purposes of Unemployment Compensation Fund (the Fund) solvency measures, to an amount equal to 0.75 of the average high cost multiple, a measure based on the Fund's three highest cost years and used by the U.S. Department of Labor to determine eligibility for interest free advances.

- Makes changes to the formula used to calculate the MSL tax.

Employer contributions

- Raises the taxable wage base from $9,000 to $11,000 on January 1, 2018.

- Eliminates the contribution rate increase for paying principal on federal advances.

Benefit eligibility

- For initial applications filed on or after the bill's effective date, considers an individual to have been discharged for just cause, and thus disqualified from receiving benefits, under a specified circumstance.

Benefit amounts

- Reduces, for individuals whose benefit year begins on or after January 1, 2018, the maximum number of weeks for which an individual may receive unemployment benefits in a benefit year from 26 weeks to a range of 20 to 26 weeks, based on the unemployment rate in Ohio at the time the initial application is filed.

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* This analysis was prepared before the introduction of the bill appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Freezes the maximum weekly benefit amounts at the maximum benefit amount in effect on the bill's effective date until the computation date on which the Fund is at or above the MSL.

- Removes dependency classes for weekly unemployment benefit amount determinations and creates a dependency allowance.

Additional changes

- Extends limitation periods on the collection of overpayments.

- Makes changes related to hearings at either the hearing officer or review level on appeals of determinations of benefit rights.

- Changes the order in which partial payments are applied when contributory employers are subject to the surcharge to pay interest on federal advances.

- Requires members of the Unemployment Compensation Advisory Council, which is charged with recommending changes in Ohio's unemployment compensation laws, to be appointed not later than March 24, 2017, and requires the Council to meet.

- States that it is the intent of the General Assembly to adopt a joint resolution to submit to the electors of Ohio a proposal to allow the state to issue bonds to repay debt incurred by the unemployment compensation system.

TABLE OF CONTENTS

CONTENT AND OPERATION

Minimum safe level

The bill changes the calculation of the minimum safe level (MSL). The MSL is essentially the balance needed in the Ohio Unemployment Compensation Fund (the fund from which unemployment benefits are paid) to fund a moderate recession. Under continuing law, if the Fund, as of July 1 (the "computation date"), is above or below the MSL, the contribution rate schedule specified in statute for the next calendar year (the "contribution period") is adjusted based on the percentage that the balance of the Fund is above or below the MSL. If the rates on the schedule are increased, the increase is known as the MSL tax. The purpose of the MSL tax is to rebuild the Fund to an appropriate level to protect the financial integrity of the Fund.[1]

The bill changes the calculation of the MSL to an amount equal to 0.75 of the average high cost multiple (AHCM). The AHCM is a measure based on the Fund's three highest cost years and is used by the U.S. Department of Labor (the federal department that administers the Federal Unemployment Tax Act) to determine eligibility for interest free advances.[2] Under current law, the MSL is based upon the average unemployment benefit payments made since 1970, rather than the highest cost years.

MSL calculation

The bill makes the MSL an amount equal to 0.75 of the AHCM. The AHCM is calculated as follows:

$$\text{AHCM} = \frac{\text{Reserve ratio}}{\text{Average high cost rate}}$$

The reserve ratio is calculated by dividing the Fund balance as of December 31 by the total remuneration paid to workers in all employment for the most recent 12 months.

The average high cost rate is the average of the three highest calendar year benefit cost ratios in the longer of the last 20 years or the period including the last three

[1] Ohio Department of Job and Family Services, "Contribution Rates," http://jfs.ohio.gov/ouc/uctax/rates.stm (accessed November 27, 2016).

[2] 20 Code of Federal Regulations 606.3 and 606.32.

completed national recessions (for Ohio, 1991, 2009, and 2010). In general terms, the benefit cost ratio for a year is the percentage obtained by dividing the aggregate unemployment benefits paid by the state by the total remuneration paid to all employees in that calendar year.[3]

Example

Ohio data

- Ohio Unemployment Compensation Fund balance at the end of 2017 (projected) = $452,731,875
- Total wages for the end of 2017 (projected) = $208,853,107,696 (in thousands)
- Average high cost rate[4] = 1.37

$$\text{Average High Cost Multiple (AHCM)} = \frac{\text{Reserve ratio}}{\text{Average high cost rate}}$$

To determine the AHCM, it is first necessary to determine the reserve ratio.

$$\text{Reserve ratio} = \frac{\$452{,}731{,}875 \text{ (Fund balance)}}{\$208{,}853{,}107{,}696 \text{ (total wages)}}\ x\ 100 = 0.22$$

Then divide the reserve ratio by the average high cost rate.

$$\text{AHCM for 2017} = \frac{.22 \text{ (reserve ratio)}}{1.37 \text{ (average high cost rate)}} = \ .16\ (rounded)$$

Then the MSL for 2017 will be 0.75 of the AHCM, or $2,070,203,826.

MSL tax

Under continuing law, the MSL tax is calculated by taking a flat-rate percent by which the normal contribution rate for an employer is increased (the amount of the increase varies depending on how far below the MSL the Fund is as of the computation date) and then entering that flat-rate into a formula based on experience. The bill makes

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[3] R.C. 4141.25 and 4141.252.

[4] U.S. Department of Labor, Trust Fund Solvency Report 2016, http://www.oui.doleta.gov/unemploy/docs/trustFundSolvReport2016.pdf (accessed November 28, 2016).

changes to the flat-rate percent used to calculate the MSL tax.[5] The following table compares the flat-rate percent used under the bill and current law:

The Fund as of the computation date	Flat-rate percent under the bill	Flat-rate percent under current law
If the Fund is more than 15% but less than 30% below the MSL	0.125%	0.025%
If the Fund is more than 30% but less than 45% below the MSL	0.175%	0.075%
If the Fund is more than 45% but less than 60% below the MSL	0.225%	0.125%
If the Fund is 60% or more below the MSL	0.3%	0.2%

Employer contributions

Taxable wage base

Ohio's unemployment compensation system consists of two types of employers: contributory employers, who are mostly private sector employers who pay contributions into the Fund, and reimbursing employers, who are mostly public sector employers and certain nonprofits who reimburse the Fund when benefits are paid. With respect to contributory employers, to determine the amount of the employer's contribution, the Director of Job and Family Services (Director) determines the employer's contribution rate and applies it in the following calendar year to the wages of each of the employer's employees.[6] But contributions are payable on employee wages only up to the "taxable wage base," which is currently $9,000. Wages paid by an employer to a particular employee in excess of the taxable wage base are not subject to contribution.

Beginning January 1, 2018, the bill raises the taxable wage base from $9,000 to $11,000.[7]

[5] R.C. 4141.25(B)(6).

[6] R.C. 4141.25 and Ohio Administrative Code 4141-9-02 and 4141-11-02.

[7] R.C. 4141.01(G).

Contribution rate increase to pay principal on federal advances

The bill eliminates a current law contribution rate increase that is imposed for the purpose of paying principal on federal advances (essentially, loans) from the federal government for the payment of unemployment benefits. The eliminated provision requires, if as of the computation date, Ohio has an outstanding balance on federal unemployment advances, all experience rated contributory employers be subject to a contribution rate increase, as determined by the Director, in an amount up to ½ of 1%, for the purpose of eliminating the principal of the outstanding advance balance.[8]

Benefit eligibility

Under continuing law, an individual's base period generally is the first four of the last five completed calendar quarters. But if an individual does not have sufficient qualifying weeks and wages during that period to qualify for unemployment benefits, the individual's base period is the four most recently completed calendar quarters.

Under continuing law, an individual must satisfy both monetary and nonmonetary requirements to receive unemployment benefits. Nonmonetary requirements concern the reason why the individual is unemployed and completing work search requirements as are discussed below. To satisfy the monetary requirements, an individual must do both of the following:

(1) Have worked in employment covered under the Unemployment Compensation Law for at least 20 qualifying weeks within the person's base period;

(2) Have had an average weekly wage of not less than 27½% of the statewide average weekly wage within the base period (for 2016, $243[9]).

A "qualifying week" generally is any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration in employment subject to the Unemployment Compensation Law.[10]

Disqualifications – just cause

Under continuing law an individual is disqualified from serving a waiting week or receiving unemployment benefits for the duration of the individual's unemployment

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[8] R.C. 4141.25(B)(7), repealed.

[9] Ohio Department of Job and Family Services, "Unemployment Compensation FAQs," http://jfs.ohio.gov/unemp_comp_faq/faq_elig_definitions2.stm#average_weekly_wage (accessed November 28, 2016).

[10] R.C. 4141.01(O), (Q), and (R).

if the individual was discharged for just cause in connection with the individual's employment. The bill considers an individual to have been discharged for just cause, and thus disqualified from serving a waiting week or receiving unemployment benefits, if both of the following apply:

- The individual was discharged because the individual was not suitable for the position, as shown by evidence that the individual did not perform the work required of the position;
- The employer did not raise the employer's expectations of the individual during the individual's employment in that position.[11]

The bill's disqualification applies to initial applications filed on or after the bill's effective date.[12]

Locality

The bill requires the Director to adopt rules to define "unreasonable distance" for purposes of continuing law requirements on accepting new work. Under continuing law, an individual who is otherwise eligible to receive unemployment benefits does not lose the right to benefits if the individual refuses to accept new work if both of the following conditions apply:

- The work is an unreasonable distance from the individual's residence, considering the character of the work the individual has been accustomed to do;
- Travel to the place of work involves expense that is substantially greater than that required for the individual's former work, unless the expense is provided for.[13]

The bill also requires the Director to adopt rules to define "locality" for purposes of continuing law work search requirements. Under continuing law, an individual must be actively seeking suitable work either in a locality in which the individual has earned wages during the individual's base period (see "**Benefit eligibility**," above for

[11] R.C. 4141.29(D)(3).

[12] Section 3(C).

[13] R.C. 4141.29(E).

information on determining an individual's base period) or, if the individual leaves that locality, then in a locality where suitable work normally is performed.[14]

Benefit amounts

Maximum benefit amounts

The bill changes the maximum weekly benefit amount any individual may receive. Under current law, weekly benefit amounts are generally 50% of an individual's average weekly wage during the individual's base period up to a statutory maximum. Current law statutory maximums are based on the number of allowable dependents claimed as follows:

- If an individual has no dependents, 50% of the statewide average weekly wage ($435 in 2016).
- If an individual has one or two dependents, 60% of the statewide average weekly wage ($527 in 2016).
- If an individual has three or more dependents, 66 ⅔% of the statewide average weekly wage ($587 in 2016).[15]

Continuing law requires the Director to determine the statewide average weekly wage each year based on the average weekly earnings of all workers in employment subject to Ohio's Unemployment Compensation Law during the preceding 12-month period ending June 30.

For individuals whose benefit year (the one-year period beginning on the first day of the week the individual files a valid application) begins after January 1, 2018, the bill changes the maximum benefit amount an individual may receive by eliminating the dependency classes and generally making the maximum benefit amount 50% of the statewide average weekly wage. However, the bill freezes the maximum benefit amount at the maximum benefit amount in effect on the bill's effective date for a time period beginning on that date and ending on the Saturday of the calendar week in which January 1 occurs immediately following the computation date on which the Fund is at or above the MSL.[16]

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[14] R.C. 4141.29(A) and (M).

[15] R.C. 4141.30 and Ohio Department of Job and Family Services, *Benefits Chart*, http://unemployment.ohio.gov/PDF/Benefits_Estimator.pdf (accessed November 27, 2016).

[16] R.C. 4141.30 and Section 3(B), with conforming changes in R.C. 4141.01(R), 4141.29(G), 4141.43, and 4141.53.

Maximum weeks

The bill reduces, for an individual whose benefit year begins on or after January 1, 2018, the maximum number of weeks for which the individual may receive unemployment benefits in a benefit year from 26 weeks to a range of 20 to 26 weeks, based on Ohio's unemployment rate. The bill requires the Director to determine the maximum number of weeks an individual may receive unemployment benefits based on the adjusted unemployment rate, as stated in the most recently issued monthly report of Ohio's adjusted unemployment rate from the Department of Job and Family Services, at the time the individual's application for benefit rights is filed as follows:

Adjusted unemployment rate	Maximum number of weeks
5.5% or below	20
Greater than 5.5% to 6%	21
Greater than 6% to 6.5%	22
Greater than 6.5% to 7%	23
Greater than 7% to 7.5%	24
Greater than 7.5% to 8%	25
Greater than 8%	26

If the report used to determine an individual's maximum number of benefit weeks is revised with respect to the adjusted unemployment rate reported for that month, the bill requires the Director to use the higher rate to determine the individual's maximum number of benefit weeks.

Under current law, an individual is entitled to receive benefits for 20 weeks for the first 20 qualifying weeks of employment in the individual's base period. One additional benefit week is added for each qualifying week above 20 weeks, up to a maximum of 26 total benefit weeks. Continuing law prohibits the total benefits an individual may receive from exceeding an amount equal to the maximum number of weeks an individual may receive unemployment benefits times the individual's weekly benefit amount.[17]

Dependency allowance

For an individual whose benefit year begins on or after January 1, 2018, the bill provides for a dependency allowance that is in addition to an individual's weekly

[17] R.C. 4141.30(F) and (G) and Section 3(B).

benefit amount. The bill provides each eligible and qualified individual a dependency allowance for each week in which the individual receives benefits in the amount of $5 for one dependent, plus $3 for an additional dependent. The bill caps the total amount an individual may receive in any week at $8. If a married couple qualifies for benefit rights with overlapping benefit years, the bill allows only one of them to qualify for a dependency allowance.

A dependent for purposes of the bill's dependency allowance differs from the definition of dependent for purposes of the dependency classes used to determine maximum benefit amounts under current law. For purposes of the bill's dependency allowance "dependent" means the following:

- Any natural child, stepchild, or adopted child of the individual claiming benefits for whom the individual, at the beginning of the individual's current benefit year, is wholly or chiefly supporting and if the child on the beginning date of the benefit year was under 18, or if unable to work because of permanent physical or mental disability;

- The legally married wife or husband of the individual claiming benefits for whom immediately preceding the beginning of the individual's current benefit year was living with and wholly or chiefly supporting.

Currently, an individual must be providing more than half the dependent's support and the dependency relationship must have existed for a specified time period before the individual first applied for unemployment benefits for a child or spouse to be a dependent.[18]

Overpayments

The bill makes changes to the time by which the Director must recover amounts that were over paid to individuals.

Overpayments due to fraudulent misrepresentation

The bill increases the current law time limit on the Director collecting amounts that were overpaid due to fraudulent misrepresentation to eight years. Under current law, the Director must bring an action to recover those benefits within six years after the Director ordered repayment of those benefits (that time period can be extended under certain circumstances).[19]

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[18] R.C. 4141.30(H) and Section 3(B).

[19] R.C. 4141.35(A).

Overpayments not due to fraudulent misrepresentation

Similarly the bill increases the current law time limit on the Director collecting amounts for overpayments not due to fraudulent misrepresentation from three years after the Director ordered repayment to six years after that date.[20]

Changes related to hearings

With respect to hearings held by the Unemployment Compensation Review Commission, which hears appeals of determinations of benefit rights, at either the hearing officer or review level, the bill makes the following changes:

- Requires, if an interested party elects to have an in-person hearing under continuing law, that the hearing officer allow the other party to elect to participate in the hearing via telephone or other electronic means (currently, hearings are held by telephone unless a party requests an in-person hearing).
- Requires a hearing officer to postpone a hearing for a reasonable amount of time if a claimant presents an allegation at the hearing that was not previously alleged and the employer requested such a postponement to review the new allegation.[21]

Surcharge to pay interest on federal advances

Under continuing law, if interest is paid on federal unemployment advances from the Unemployment Compensation Interest Contingency Fund, each contributory employer is required to pay a surcharge to repay the amount of any interest paid. The bill makes changes to the order in which an employer payment that is insufficient to pay the amount of contributions due and the amount of the surcharge due is applied. The following table compares the order in which a partial payment is applied under the bill and current law:

[20] R.C. 4141.35(B).

[21] R.C. 4141.281 and Ohio Unemployment Compensation Review Commission, *Questions and Answers*, http://www.web.ucrc.state.oh.us/FAQ/Questions.stm (accessed November 28, 2016).

Order in which partial payments are applied[22]		
Order	**Under the bill**	**Under current law**
First	Against any mutualized contributions due	Against the surcharge due
Second	To the credit of the employer's individual account	Against any mutualized contributions due
Third	Against any interest, forfeiture, and fines due	To the credit of the employer's individual account
Fourth	Against the surcharge due	Against any interest, forfeiture, and fines due

Unemployment Compensation Advisory Council

The bill requires that members of the Unemployment Compensation Advisory Council (UCAC), which is charged with recommending changes to Ohio's Unemployment Compensation Law, be appointed as soon as practicable after the bill's effective date but not later than March 24, 2017. Under continuing law, six members of the UCAC are appointed by the Governor with the advice and consent of the Senate, and six legislative members are appointed by the Speaker of the House of Representatives and the President of the Senate. The bill requires the UCAC to meet not later than March 31, 2017, and at least once each calendar quarter thereafter as required under continuing law. Additionally, the bill requires the UCAC to make periodic recommendations, as often as the UCAC determines to be proper, to the General Assembly regarding needed changes in Ohio's Unemployment Compensation System.[23] The UCAC currently has no members and has not met since 2010.[24]

Joint resolution related to issuing bonds

The bill states that it is the intent of the General Assembly to adopt a joint resolution to submit to the electors of Ohio a proposal to allow the state to issue bonds to repay debt incurred by the unemployment compensation system.[25] The Ohio

[22] R.C. 4141.251.

[23] Section 5 and R.C. 4141.08, not in the bill.

[24] Catherine Candisky, *Unemployment Compensation Advisory Council has no members, hasn't met in 4 years* (July 4, 2014), The Columbus Dispatch, available at http://www.dispatch.com/content/stories/local/2014/07/04/panel-has-no-members-hasnt-met.html (accessed November 27, 2016).

[25] Section 4.

Constitution currently prohibits the state from issuing these bonds and a constitutional amendment would be necessary to do so.[26]

Additional changes

The bill also removes outdated provisions from the Unemployment Compensation Law.[27]

HISTORY

ACTION	DATE
Introduced	---

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[26] Ohio Const., art. VIII, sec. 1 and 3, and *State ex rel. Shkurti v. Withrow*, 32 Ohio St.3d 424 (1987).

[27] R.C. 4141.01(G) and 4141.30.