



Am. H.B. 503

124th General Assembly

(As Reported by H. Commerce and Labor)

Reps. Williams, Distel, Carano, Patton, Schmidt, Lendrum

BILL SUMMARY

- Adds Indian tribes as covered, reimbursing employers to existing state unemployment compensation laws and makes them liable for regular and extended unemployment benefits generally in the same fashion as state and local government employers are liable.
- Prohibits findings of fact or law, decisions, or orders of a reviewing court from being subject to additional litigation based on the same claim or issue that was decided in the original action by parties to the original action.

CONTENT AND OPERATION

Indian tribes in Ohio

On December 21, 2000, former President Clinton signed the Community Renewal Tax Relief Act of 2000 (hereafter "CAA") into law (P.L. 106-554). 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 (R.C. Chapter 4141.) will have a real effect only if an Indian tribe in Ohio succeeds in receiving recognition in accordance with federal law.

Unemployment compensation

Under current law, covered employers with employees in covered employment are required to make either payments in lieu of contributions (reimbursement) or contributions to the Ohio Unemployment Compensation Trust Fund. The money from that fund is used to pay benefits to unemployed workers. Currently, Indian tribes are not separately identified as employers subject to Ohio's Unemployment Compensation Law and do not have the option of becoming "reimbursing" employers.

Prior to the CAA, states were prohibited from offering the reimbursement option to Indian tribes, and accordingly, 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.¹

Currently, there are two types of "reimbursing employers"--nonprofit organizations and governmental entities. There are differences between what is required of each type. Indian tribes must follow the same requirements set forth in current law that apply to governmental entities. Also, as with governmental entities, the bill allows Indian tribe employers to opt to become reimbursing employers by meeting the requirements to do so as set forth in current law.

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. The Director of Job and Family Services 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 payments required under this section 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).)

The bill specifically adds Indian tribes as covered employers and adds to the definition of "employment," services performed by an individual in the employ of an Indian tribe and allows them the option to become "reimbursing employers"

¹ A "contributory employer" is an employer who is required to make quarterly contributions to the state Unemployment Compensation Fund (UCF) at a calculated rate that applies to total taxable payroll. A contributory employer is contrasted with a "reimbursing employer" in that a reimbursing employer is a public employer or a nonprofit organization that has elected to reimburse the UCF, after the fact, for any benefits paid out to claimants that are properly chargeable to the employer.

by meeting requirements set forth in existing law (sec. 4141.01(A)(1) and (A)(2)(1)). The bill, however, excludes from the definition of "employment," and therefore from coverage under the Unemployment Compensation Law, 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 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 (not in the bill)).

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).)

Appeals process

Under existing law, no finding of fact or law, decision, or order of the Director, hearing officer, or the Commission is to be given collateral estoppel or res judicata effect in any separate or subsequent judicial, administrative, or arbitration proceeding, other than a proceeding that arises under the laws governing unemployment compensation.²

The bill extends this same exclusion to findings of fact or law, decisions, or orders of a reviewing court. The bill does this by reinserting language that was in effect prior to the enactment of Senate Bill 99, which became effective October 31, 2001. (Sec. 4141.281.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-12-02	p. 1382
Reported, H. Commerce & Labor	03-02-02	p. 1591

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² Under *res judicata*, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. Under [collateral estoppel](#), once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.