Ohio Legislative Service Commission

Bill Analysis

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H.B. 247

128th General Assembly
(As Introduced)

Reps. Moran, Garland, Hagan, B. Williams, Yuko, Pryor, Chandler, Letson, Okey

BILL SUMMARY

- Modifies the calculation of dependents for the purpose of determining unemployment compensation benefits to include any child over which the individual claiming benefits has court-ordered custody.

CONTENT AND OPERATION

Calculating dependents to determine amount of unemployment compensation benefits

Under continuing law, an individual's unemployment compensation benefit amount is determined in part on the number of dependents for which the individual claims. Each individual who receives unemployment compensation benefits is categorized into three dependency classes--no dependents (Class A), one or two dependents (Class B), or three or more dependents (Class C). Current law defines "dependent" with regard to children as any natural child, stepchild, or adopted child of the individual claiming benefits and for whom such individual, at the beginning of the benefit year is supplying, and for at least 90 consecutive days prior to that beginning date (or for the duration of the parental relationship if it existed less than 90 days prior to that beginning date), has supplied more than one-half of the cost of support of the child and the child is under 18 years old or is unable to work due to permanent physical or mental disability.[1] (R.C. 4141.30(E).)

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[1] Continuing law also provides that a dependent means the legally married wife or husband of the individual claiming benefits for whom more than one-half of the cost of support has been supplied by the individual for at least 90 days immediately prior to the beginning of the individual's benefit year (or for the duration of the marital relationship if less than 90 days prior to that beginning date) and the wife or husband was living with the individual and had an average weekly income not exceeding 25% of the

The bill expands the qualifying relationship between the individual claiming benefits and the individual's dependent children by including as a dependent any child that the individual claiming benefits has been granted custody of by court order. The bill further states that if the *custodial* relationship existed less than 90 days prior to the beginning of the individual's benefit year, the individual had to be providing more than one-half of the cost of support of the child for the duration of that custodial relationship.

COMMENT

Unemployment compensation is funded through a federal-state partnership. If an employer pays contributions into an "approved" state system, the employer receives almost a 90% credit on the employer's federal unemployment tax. "Approval" requires adherence to strict federal law and voluminous U.S. Department of Labor regulations.

Federal law requires each state to establish a state unemployment compensation fund that is used to pay unemployment benefits in order for employers in that state to receive the tax credit under the Federal Unemployment Tax Act (FUTA).[2]

It appears that, under the federal-state partnership, a state must find some way to pay unemployment benefits. FUTA generally allows states to determine the amount of unemployment benefits they will pay. However, for a state system to comply with FUTA, it would appear that the state has to be able to pay whatever unemployment benefit amount the state establishes.[3]

If a state's fund is depleted, federal law permits a state's governor, or the governor's designee, to apply to the U.S. Secretary of Labor to receive a three-month "advance" for the payment of unemployment benefits if the amount of funds in a state's account in the federal Unemployment Trust Fund is insufficient to pay those benefits.[4]

If a state has received a federal advance, the state is more restricted than usual when it comes to making changes to its unemployment compensation system.

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individual's average weekly wage. In addition, if both the husband and wife qualify for benefits with overlapping benefit years, only one of them may qualify for a dependency class other than Class A (R.C. 4141.30).

[2] 26 U.S.C. §§ 3302 and 3304.

[3] See 26 U.S.C. § 3304, which requires a state to establish an unemployment compensation fund and to use that fund, with some exceptions, only for the purpose of paying unemployment benefits.

[4] 42 U.S.C. § 1321 and 20 C.F.R. § 606.4. Ohio's Unemployment Compensation Law allows the Director of Job and Family Services to apply for an advance to the Unemployment Compensation Fund and to do all things necessary or required to obtain, and to arrange for the repayment of, an advance (R.C. 4141.43(F)).

Essentially, a state cannot take any action, whether legislative, administrative, or judicial, that results or will result in either (1) a reduction in the state's unemployment tax effort or (2) a decrease in the net solvency of the state's unemployment compensation system. The former actions include, but are not limited to, a reduction in the taxable wage base, the tax rate schedule, tax rates, or taxes payable, including surtaxes. The latter comprises actions that result or will result in an increase in benefits without at least an equal increase in taxes, or a decrease in taxes without at least an equal decrease in benefits.[5] If a state does take such action, the state may not be able to limit or avoid the reduction in FUTA tax credit that is used to repay the advance.

Since Ohio has received an advance from the federal government, and if that advance remains outstanding after specified deadlines have passed, the General Assembly may, in a practical manner, be limited in the unemployment legislation it enacts. Whether the bill will be subject to such a practical limitation will depend upon the Secretary of Labor's determination whether the bill results, or will result, in a net decrease in the solvency of Ohio's Unemployment Compensation Fund. The Secretary's determination is likely to revolve around the specific facts to which the bill applies or may apply.

HISTORY

ACTION	DATE
Introduced	07-01-09

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[5] 20 C.F.R. § 606.21(a).