
SERVICE BULLETIN

Florida UI Legislation Benefits Employers

July 15, 2011

On June 27, 2011, Governor Rick Scott signed House Bill 7005 into law. This bill contains temporary UI tax relief for 2012 through 2014 and tightens eligibility for UI benefits.

Change in tax rate calculation for 2012 through 2014

As a benefit-ratio state, Florida assigns employers an unemployment tax rate by comparing an employer's total benefit charges with their total taxable payroll over a rolling three-year period. House Bill 7005 temporarily reduces the total benefit charges used in the tax rate calculation. Specifically, benefit charges for the period from July 1, 2007 through March 31, 2011 are to be reduced by 10% for the purpose of computing the UI tax rate. The greatest impact of this provision will be in the 2012 tax rate calculation and will taper off for 2013 and 2014. The Florida Department of Revenue estimates that the resulting tax rates will save employers on average \$33 per employee in unemployment taxes during 2012.

Initiatives to help UI claimants become reemployed

Getting claimants more engaged in reemployment activities and fulfilling their job search requirements are critical to reducing the duration of UI claims and improving the solvency of the UI trust fund. Two provisions in the amendment address this need. First, claimants will be required to actively seek work to qualify for benefits. The amendment states "this means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed." This can be accomplished by using the state's online job matching system, where jobs are posted and applications can be submitted. If a claimant is not able to make five employer contacts in a week, he/she may report in person to a One-Stop Career Center and meet with a representative to satisfy the requirement.

Secondly, an initial online skills review must be completed when filing a new claim. This review will then be used to match the claimant with job openings that align with the claimant's abilities and experience. Other states which have focused on more in-depth profiling, such as Utah, have reported good results in facilitating reemployment.

New Limitations on UI Benefits

Prior law allowed for regular UI benefits to be paid for 26 weeks (26 times the weekly benefit amount). This has been the standard in most states. House Bill 7005 indexes the maximum duration of benefits to the state's seasonally adjusted unemployment rate, so that the new maximum duration will range from 12 to 23

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weeks. Given the current level of unemployment, we estimate that the maximum duration of benefits in 2012 will be in the range of 21 to 23 weeks (not accounting for any possible federal extended benefits).

This bill also changes the standard for establishing “misconduct,” which disqualifies a claimant. The new provisions specify that misconduct may include activities that did not occur at the workplace or during work hours. This will support employers in situations where the person’s off-duty behavior adversely impacts the company’s reputation.

The definition of misconduct has been changed from “conduct demonstrating willful or wanton disregard of an employer interests” to a “conscious disregard.” The prior wording had its roots in an early Wisconsin precedent case which many states have used thereafter to define misconduct. We think the new wording is intended to lower the bar for establishing misconduct, but whether this will translate into more favorable rulings for employers remains to be seen.

Under the new law misconduct includes “chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.” In our view this is a very significant provision. Many employer policies use a point system for disciplinary action relating to absenteeism and tardiness. Historically, a discharge resulting from exceeding the allowable points has frequently resulted in an approved unemployment claim because the reason for the last absence, while not addressed by the point system, may not establish misconduct under UI law. We expect the new statute to be more supportive of employers using the point system.

Finally, a change relating to severance pay is favorable to employers. The new statute states that “the number of weeks that an individual’s severance pay disqualifies the individual is equal to the amount of the severance pay divided by that individual’s average weekly wage received from the employer that paid the severance pay, rounded down to the nearest whole number, beginning with the week the individual is separated from employment.” Note that severance pay will offset UI benefits whether it is paid in a lump sum or in periodic payments. Severance pay has the effect of delaying the receipt of UI benefits but it generally does not affect the total amount of UI benefits that may be paid. However, when a person receives severance pay and later becomes reemployed before receiving the maximum possible UI benefits, the severance pay has effectively reduced the total benefit payments.

The combined impact of the three-year tax relief and the more stringent benefit eligibility conditions will save Florida employers an estimated \$100 million annually.

As always, if there are any questions, please feel free to contact us at (615) 242-8246.