

**STORAGE NAME:** h1473.bdt

**DATE:** March 8, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS DEVELOPMENT & INTERNATIONAL TRADE  
ANALYSIS**

**BILL #:** HB 1473

**RELATING TO:** Unemployment Compensation/Birth & Adoption

**SPONSOR(S):** Representative Wasserman Schultz

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
  - (2) JUDICIARY
  - (3) FINANCE & TAXATION
  - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
  - (5)
- 

**I. SUMMARY:**

The bill would prohibit denying unemployment compensation benefits for leaves of absence relating to adopting or giving birth to a baby. It provides for reductions in the amount of unemployment compensation benefits, while requiring employers to post notices of program availability. Further, it specifies payments of unemployment compensation for births and adoptions as not chargeable against employers. It requires the Secretary of the Department of Labor and Employment Security to provide a report to the Governor and Legislature regarding program effectiveness.

According to the Department of Labor and Employment Security, the fiscal impact of the bill is (\$140,000,000) for FY 2000-01 and in subsequent years.

The bill does not address the issue of rulemaking.

The bill would become effective upon becoming law but cannot be implemented until the proposed United States Department of Labor rule 20 CFR 604 has become final.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Family and Medical Leave**

The Family Medical Leave Act (FMLA), Public Law 103-3, was enacted by Congress on February 5, 1993. The law provides that individuals who are employed at a work site at which the employer employs at least 50 individuals within 75 miles of the work site, are entitled to receive up to twelve weeks of unpaid, job-protected leave. Further, the leave must be provided for one of three reasons: an employee's serious health condition, the need to care for an immediate family member who has a serious illness, or as the result of the birth/care of the employee's child or placement for adoption of a child with the employee. While the FMLA does provide leave with full job protection, it does not require employers to replace any of the wages lost by an individual who takes leave.

According to a 1996 study by the Commission on Family and Medical Leave, entitled A Workable Balance, the loss of wages is the most significant barrier to parents taking advantage of unpaid leave following the birth or adoption of a child. Of the employees surveyed in the Commission's report, 64 percent were unable to take leave because they could not afford the associated loss of wages. The lowest response rate of the reasons individuals expressed for needing leave was recorded for reasons associated with maternity and caring for a newborn or a newly adopted child. The study found that men and women in equal proportions take parental leave, however, having at least partial wage replacement plays a significant role for low-income women to take leave at all and to take longer periods of leave.

**Birth and Adoption Unemployment Compensation**

On May 24, 1999, the President, through an executive memorandum, directed the Secretary of Labor to develop methods of using the Unemployment Insurance system to support parents on leave following the birth or adoption of a child. Further, he directed the department to develop model legislation that states could use in following the regulations.

On December 3, 1999, the proposed rule by the Employment and Training Administration of the U.S. Department of Labor (USDOL), 20 CFR Part 604 was published in the Federal Register. A 45-day comment period was provided with the rule's publication, but the period was extended by 15 days on January 7, 2000 and the comment period expired on February

2, 2000. At this time the final rule has not been published. Under the proposed rule the USDOL has exercised its authority to interpret Federal unemployment compensation (UC) statutes, and, in particular the statutes' "able and available" requirements by implementing an experimental program to examine the use of the UC program as a means for providing partial wage replacement to employees who desire to take approved leave or otherwise leave their employment following the birth or placement for adoption of a child.

The Federal-State UC program is administered as a partnership of the Federal government and the states. States collect state UC taxes used to pay compensation while the Federal government collects taxes, used for grants for state UC administration, under the Federal Unemployment Tax Act (FUTA), codified at 26 United States Code 3301-3311. The USDOL had broad oversight responsibility for the Federal-State UC program, including determining whether a state law conforms and complies with the requirements of Federal UC law. If a state's law conforms and complies with the requirements of the FUTA, then the Secretary of Labor issues certifications enabling employers in the state to receive credit against the Federal unemployment tax as provided under section 3302, FUTA. If a state and its law are certified under the FUTA, and the state's law conforms and its practices substantially comply with the requirements of Title III of the Social Security Act (SSA), codified at 42 U.S.C. 501-504, then the state receives grants for the administration of its UC program. The USDOL enforces Federal UC law requirements through the FUTA credit and grant certification process.

The USDOL has the authority and responsibility to interpret the provisions of Federal UC law such as the "able and available" requirements. Although no explicit able and available requirements are stated in Federal law, the USDOL interpreted four provisions of Federal UC law as requiring that claimants be able to and available for work. Two of these provisions at section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a state's unemployment fund to the payment of "compensation." Section 3306(h), FUTA, defines "compensation" as "cash benefits payable to individuals with respect to their employment." The able and available requirements provide a test of a claimant's "unemployment."

The other two provisions found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation "be paid through public employment offices." The requirement that UC is to be paid through the public employment system ties the payment of UC to an individual's search for employment and to his or her ability to work and availability for work. Agencies administering the Federal-State UC program have for over 60 years interpreted these four statutory provisions to require a participating state to have able and available requirements.

In response to practical economic and societal concerns, the USDOL has previously exercised its authority to interpret Federal UC statutes regarding the able and available requirements to address several specific areas: training, illness, jury duty, and temporary layoffs. Under its authority to interpret Federal UC law and consistent with its broad oversight responsibility, the USDOL interprets the Federal able and available requirements to include a voluntary experimental program for examining the use of the UC program to provide partial wage replacement to employees who take approved leave or otherwise leave employment to be with their newborns or newly adopted children. This experiment recognizes the impact of women in the workforce and responds to the dramatic societal and economic changes resulting from the large number of families where both parents work. It should allow parents of newborns and newly adopted children to strengthen their availability for work by providing them with the time and financial support to address several vital needs that accompany the introduction of a new child into the family. The

program would allow such parents to provide the initial care that the child will need, to form a strong emotional bond with the child, and to establish a secure system of child care that, once in place, will promote the parents' long-term attachment to the workforce.

The experimental program outlined in the proposed rule is referred to as Birth and Adoption Unemployment Compensation (BAA-UC) and is designed to test whether providing parents with BAA-UC at a point during the first year of a newborn's life, or after placement for adoption, will help employees maintain or even promote their connection to the workforce by allowing them time to bond with their children and to develop stable child care systems while adjusting to the accompanying changes in lifestyle before returning to work. This expanded interpretation of the able and available requirements applies only to experimental BAA-UC and does not extend to any other facet of the UC program.

### **Unemployment Compensation Eligibility in Florida**

Chapter 443, Florida Statutes delineates the state's unemployment compensation law. The law specifies the conditions whereby a worker can be determined eligible for benefits. Section 443.036(1), F.S., defines the term "able to work" to mean physically and mentally capable of performing the duties of the occupation in which work is being sought, while s. 443.023(6), F.S., defines the term "available for work" as actively seeking employment, as well as being ready and willing to accept that employment. These two terms are implemented primarily at s.443.091(1)(c)1, F.S., which provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the division finds that the individual is able to work and is available to work.

Section 443.101, F.S., provides the conditions under which an individual will be disqualified for benefits. When an individual voluntarily quits work, he or she is subject to disqualification unless it is found that the employee left with good cause. Pursuant to s.443.101(1)(a)1, F.S., the term "good cause" means only such cause as is attributable to the employing unit or which consists of illness or disability of the individual requiring separation from employment. Further, s. 443.101(1)(c), F.S., provides for disqualification for benefits for any week with respect to which the division finds that his or her unemployment is due to a leave of absence, if such leave was voluntarily initiated by the individual.

### **Financing Florida's System of Unemployment Compensation**

Section 443.131, F.S., provides three methods of financing unemployment compensation. Benefits paid to employees in the private sector are financed through the contributory method as provided in s. 443.131(3), F.S., and benefits paid to employees of the public sector are financed through the reimbursement method as provided in s. 443.131(5), F.S., or through the Public Employers Unemployment Compensation Benefit Account created by s. 443.131(6), F.S. Not-for-profit employers may elect to finance benefits either through the contributory method or reimbursement.

The reimbursement method of financing benefits is a self-insurance system that requires payments to the Unemployment Compensation Trust Fund only when benefits have been paid based on an individual's service for such an employer. If benefits are never paid based on such service, the employer will not be required to make payments to the fund. Reimbursable employers are exempt from the Federal Unemployment Tax.

Under the contributory method, employers quarterly pay tax on the first \$7,000 of each employees annual wages. The rate at which the taxes are paid is determined according to

the employer's experience with unemployment during the three year period preceding the effective date of the tax rate. Except as otherwise provided by Chapters 97-29 and 99-131, Laws of Florida, an employer's initial tax rate is 2.7 percent. After an employer has been subject to benefit charges for eight calendar quarters, the tax rate may be adjusted to a low of 0.1 percent or a high of 5.4 percent. The rate is determined by computing several different factors. The benefit ratio is the factor that plays the largest role in determining the rate and is the factor over which an employer has control. It is defined as the cost of benefit charges as a percent of the employers taxable wages and is computed by dividing the total benefits charged to the account over the preceding three years by the amount of the employer's payroll upon which taxes were paid timely during the same three year period.

Benefit charges result from compensation payments to individuals that are based on wages that the employer paid the worker during the base period of the individual's claim. The account of each employer who paid an individual \$100 or more during the base period of a claim is subject to being charged proportionate share of the benefits in relation to the amount of wages each employer paid to the total wages paid during the individual's base period. However, the employer can gain relief from benefit charges by responding to a notification of the claim with information concerning the reason for the individual's separation from work or refusal of work pursuant to s. 443.131(3)(a), F.S. In general, an employer can earn a low tax rate by limiting the amount of benefit charges to the account.

The cost of benefits that cannot be allocated are recovered through adjustment factors that socialize the costs of these benefits among contributory employers who during the previous three years have had benefit experience. The noncharge adjustment factor, the excess payments factor, and the trust fund factor are viewed in relation to the total taxable payrolls of the state's employers. The sums of these three ratios when added to the individual employer's benefit ratio yield the employer's annual tax rate. Benefits that are paid to former employees of reimbursable employers are not included in these calculations, inasmuch as the reimbursable employers replace those costs in the fund on a dollar-for-dollar basis.

#### C. EFFECT OF PROPOSED CHANGES:

The bill would implement Birth and Adoption Unemployment Compensation in Florida at such time as 20 CFR Part 604 became final. It would create a new section of the unemployment compensation law, s. 443.232, F.S., that would be applied consistent with rules adopted by the USDOL.

Under the bill an individual who takes a leave of absence or who otherwise leaves work to be with a child during the first year of life or during the first year following adoption is not subject to being denied benefits based on the current statutory provisions relating to voluntarily leaving work, and the availability for and ability to actively seek work. Payments the individual may receive from an employer relating to leaving work for the birth or adoption of a child would be disqualifying income and deductible from the benefits that would otherwise be payable under this section. Unemployment benefits would be payable for a maximum of 12 weeks although the benefits would not be chargeable to the account of the individual's employer. Employers would be required to post at each worksite, in a conspicuous location, information relating to the availability of benefits under this section.

The Secretary of the Department of Labor and Employment Security is required to report to the Governor, the President of the Senate, and the Speaker of the House of

Representatives subsequent to the second year the bill has become law, on the effectiveness of Birth and Adoption Unemployment Compensation.

**D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

N/A

2. Expenditures:

N/A

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

N/A

2. Expenditures:

N/A

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

According to the Department of Labor and Employment Security, if the intent of subsection (5) is to noncharge only the base period from whom the individual left employment to be with their newborn or newly adopted child, other base period employers would be subject to the noncharging provisions currently provided in s.443.131(3)(a), F.S. The department contends that this could expose their accounts to benefit charges for claims by individuals that would not otherwise be eligible for benefits.

**D. FISCAL COMMENTS:**

The Department of Labor and Employment Security estimates the fiscal impact on the Unemployment Compensation Trust Fund to be (\$104,000,000) in FY 2000-01 and in subsequent years.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

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A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The bill would be effective upon becoming law but cannot be implemented until the proposed United States Department of Labor rule 20 CFR 604 has become final.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

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James Marshall Cox

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