

STORAGE NAME: h0637a.in

DATE: April 11, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 637

RELATING TO: Unemployment Compensation/Domestic Violence

SPONSOR(S): Representative Turnbull and others

TIED BILL(S):

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

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE YEAS 9 NAYS 0
 - (2) INSURANCE YEAS 13 NAYS 3
 - (3) FAMILY LAW & CHILDREN
 - (4) FINANCE & TAXATION
 - (5)
-

I. SUMMARY:

Currently, an individual can become disqualified for unemployment compensation benefits if he or she voluntarily leaves work. But, if there is "good cause," the individual can voluntarily leave work and not be disqualified. According to Florida law, "good cause" includes only such cause as is attributable to the employer or which is the result of an illness or disability requiring the individual to separate from work.

At least one Florida appellate court has held that voluntarily leaving work to protect oneself from domestic violence does not constitute "good cause," unless there is also evidence of an illness or disability.

Under this bill, separation from work as a result of domestic violence would be considered "good cause" for voluntarily leaving work. As a result, victims of domestic violence could voluntarily leave work and not be disqualified from unemployment compensation benefits.

The bill is expected to have an indeterminate negative fiscal impact on the Unemployment Compensation Trust Fund. See Fiscal Comments.

Amendment:

On March 21, 2000, the Committee on Business Development and International Trade adopted one amendment (which is traveling with the bill) to provide that the federal Temporary Assistance to Needy Families block grant instead of the Unemployment Compensation Trust Fund would be the source of funding for unemployment compensation payments based on separation from work due to domestic violence. The amendment also requires claimants to establish proof of domestic violence, which can be done in a variety of ways. See Amendments or Committee Substitute Changes, Section VI, for more details on the amendment.

Substitute Amendment

On April 10, 2000, the Committee on Insurance adopted a substitute "remove everything" amendment for the amendment adopted by the Committee on Business Development and International Trade. See Amendment Section.

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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Unemployment Compensation Generally

Florida's unemployment compensation system was established to provide benefits for persons unemployed through no fault of their own. This system is part of a national plan to assist in the stabilization of employment conditions. In Florida, it is administered by the Division of Unemployment Compensation of the Department of Labor and Employment Security (Division).

Eligibility for Benefits

To be eligible for unemployment compensation benefits, individuals must meet a series of requirements, each of which are determined for their base period. The base period is defined as "the first four of the last five completed calendar quarters" immediately preceding the claim for benefits.¹

To be eligible, individuals must during the base period:

- have been paid wages in two or more quarters;
- have total wages of at least 1.5 times the wages in the quarter with the highest earnings; and
- have earned at least \$3,400.²

Disqualification for Benefits

In general, individuals can become disqualified for unemployment compensation benefits if they voluntarily leave work or are discharged due to misconduct.

¹ Section 443.036(7), F.S.

² Sections 443.111(2)(a) and 443.091(1)(f), F.S.

But, if there is "good cause," individuals can voluntarily leave work and not be disqualified.³ According to Florida law, "good cause" includes only such cause as is:

attributable to the employing unit or which consists of illness or disability of the individual requiring separation from his or her work.⁴

Florida courts have interpreted the illness or disability prong of the "good cause" exception to include situations where the individual leaves work for medical reasons.⁵ Courts have also extended the "good cause" exception to cases involving family emergencies, which are cases where the individual leaves work to care for a family member who has an illness or disability.⁶

However, in Amy J. Hall v. Florida Unemployment Appeals Commission and Laro, Inc. of Coral Gables, 697 So.2d 541 (Fla. 1st DCA 1997), the First District Court of Appeal determined that "good cause" under Florida law did not include leaving work to protect oneself from domestic violence. In Hall, the claimant, who had resigned her job and left the state to protect herself and her children from an abusive husband, sought unemployment compensation. The Unemployment Appeals Commission denied benefits based on the claimant leaving her employment without good cause. The First District Court of Appeal affirmed the Unemployment Appeals Commission decision and held that: (1) the claimant had voluntarily left her employment without good cause attributable to her employer, and (2) the claimant's safety concerns did not constitute "good cause" on grounds of a family emergency, as a family emergency could serve as "good cause" only when the emergency involved illness or disability.

Treatment of Domestic Violence in Other States' Unemployment Compensation Laws

In approximately 19 states, a victim of domestic violence may voluntarily leave work and not be disqualified for unemployment compensation benefits. These states include Alaska, California, Colorado, Connecticut, Hawaii, Kansas, Maine, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Utah, Wisconsin, and Wyoming.⁷ Some of these states specifically address domestic violence in statute, while in others, the law has been interpreted to cover domestic violence without a specific reference in statute.

³ Section 443.101(1)(a), F.S.

⁴ Section 443.101(1)(a)1., F.S.

⁵ See e.g., Thurston v. Florida Unemployment Appeals Commission, 507 So.2d 728 (Fla. 3d DCA 1987) (employee's resignation to attend to a medical problem was "good cause" since the employer did not grant sufficient leave for the employee's needs).

⁶ See e.g., Lewis v. Lakeland Health Care Center, Inc., 685 So.2d 876 (Fla. 2d DCA 1996) (claimant not disqualified for benefits when she failed to return to work because she had to care for her son who had a stroke).

⁷ These 19 states were compiled from three sources: (1) according to a United States Department of Labor survey, revised July 15, 1999, 12 states pay unemployment compensation benefits to individuals who leave work due to domestic violence -- Alaska, California, Hawaii, Kansas, Maine, Minnesota, Nevada, New York, Oregon, Pennsylvania, Rhode Island, and Utah; (2) according to the National Conference of State Legislatures, Connecticut (1999 Conn. Acts 99-123 (Reg. Sess.)), New Hampshire (N.H. Rev. Stat. Section 282-A (1999)), North Carolina (N.C. Gen. Stat., Section 96-14(1999)), and Wyoming (Wyo. Stat., Section 27-3-311 (1999)) enacted legislation covering victims of domestic violence in 1999; and (3) staff identified three additional states -- Colorado (1999 Colo. Sess. Laws, Ch. 135), New Jersey (1999 N.J. Laws, Ch. 391), and Wisconsin (1999 Wisconsin Act 15) -- that recently revised their unemployment compensation laws to address victims of domestic violence.

In states where domestic violence is addressed in statute, domestic violence either is considered "good cause" for leaving work or is exempted from the definition of "misconduct."

For example, California's law includes domestic violence as part of "good cause." It provides:

An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work. . . . An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence abuse.⁸

Maine addresses domestic violence through the concept of "misconduct." Maine's statute provides:

"Misconduct" means a culpable breach of the employee's duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer.

* * *

B. "Misconduct" may not be found solely on:

* * *

(3) Actions taken by the employee that were necessary to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment.⁹

In addition, some states also specify how individuals may prove they are victims of domestic violence. New Jersey's statute, for example, provides:

no otherwise eligible individual can be denied benefits because he or she left work or was discharged due to circumstances resulting from the individual being a victim of domestic violence¹⁰

New Jersey's law then states that if an individual can show one or more of the following, the individual is considered to be a victim of domestic violence:

(1) A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;

⁸ Cal. Unemp. Ins. Code, Section 1256 (1999).

⁹ Me. Rev. Stat. Ann., tit. 26, section 1043(23)(B)(3)(1999).

¹⁰ 1999 N.J. Laws, Ch. 391 (1999).

- (2) A police record documenting the domestic violence;
- (3) Documentation that the perpetrator of the domestic violence has been convicted of certain offenses enumerated in New Jersey law;
- (4) Medical documentation of the domestic violence;
- (5) Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency that the individual is a victim of domestic violence; or
- (6) Other documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter worker or other professional who has assisted the individual in dealing with the domestic violence.¹¹

C. EFFECT OF PROPOSED CHANGES:

Separation from work as a result of domestic violence would be considered "good cause" for voluntarily leaving work. Thus, victims of domestic violence would not be disqualified for unemployment compensation benefits.

Eligibility for unemployment compensation benefits would be expanded because the "good cause" exception to disqualification would be broadened to cover individuals not currently qualifying for the exception.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The bill could result in an indeterminate negative fiscal impact on state government. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

¹¹ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Since the bill expands the "good cause" exception to disqualification for benefits, more individuals may qualify for unemployment compensation benefits. An increase in the number of individuals receiving unemployment compensation benefits could increase expenditures from the Unemployment Compensation Trust Fund and, possibly, increase unemployment compensation taxes on employers.

D. FISCAL COMMENTS:

The Division of Unemployment Compensation estimates the bill would result in a nonrecurring negative fiscal impact of \$5,000 on the Division, which reflects the administrative costs associated with updating computer systems and manuals and sending informational bulletins.

The Division also estimates that the bill could result in a recurring negative fiscal impact on the Unemployment Compensation Trust Fund of an indeterminate amount due to increased eligibility for unemployment compensation benefits. According to the Division, the amount is indeterminate because there is a lack of information and data on the labor force participation of victims of domestic violence. Thus, it is impossible to know how many more people would be eligible for benefits under the criteria proposed in the bill.

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

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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 21, 2000, the Committee on Business Development and International Trade adopted one amendment, which is traveling with the bill. The amendment provides that an individual who is separated from work due to domestic violence must establish proof of domestic violence, which may include, but is not limited to, one of the following: a restraining order or equitable relief; a police record documenting domestic violence; proof of conviction of the domestic violence perpetrator; medical documentation of domestic violence; certification from a certified domestic violence specialist; or other documentation from a professional who assisted the victim in dealing with domestic violence. Further, the amendment designates the federal Temporary Assistance to Needy Families block grant instead of the Unemployment Compensation Trust Fund as the source of funding for unemployment compensation payments based on domestic violence.

On April 10, 2000, the Committee on Insurance adopted a Substitute Amendment by Reps. Turnbull and Dockery to the "remove-everything" amendment traveling with the bill. It would replace the "remove-everything" amendment adopted in the Committee on Business Development and International Trade. This substitute amendment would:

- expand the definition of "good cause" under the unemployment compensation law to include separation from work due to domestic violence;
- require the victim of domestic violence to relocate to avoid the domestic violence;
- require proof that the individual's separation from work was due to domestic violence, which could be done by showing:
 - (i) a restraining order or equitable relief;
 - (ii) police record documenting domestic violence;
 - (iii) proof of conviction of the domestic violence perpetrator;
 - (iv) medical documentation of domestic violence;
 - (v) certification from a certified domestic violence specialist that the individual is a domestic violence victim; or
 - (vi) other documentation from a social worker; clergy member, shelter worker, or other professional who assisted the victim in dealing with domestic violence;
- require the Division of Unemployment Compensation to refer individuals who leave work because of domestic violence to a certified domestic violence center in a manner as to protect the individual's confidentiality; and
- provide that the payment of unemployment compensation claims based upon domestic violence shall be made only where: (1) the Division of Unemployment Compensation Claims determines that no other qualifying conditions for benefits exist and (2) funding is

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provided in a specific appropriation in this act or the General Appropriations Act specific to this purpose.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

James Marshall Cox

J. Paul Whitfield, Jr.

AS REVISED BY THE COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge