

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes – This bill intends to reduce the unemployment tax liability of day labor pools.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Federal-State Unemployment Insurance Compensation Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own. The criteria for establishing eligibility requirements for unemployment compensation benefits are set by Florida law. Currently, s. 443.101(10), F.S., provides the circumstances under which employees of temporary help pools and employee leasing companies can be disqualified from receiving unemployment compensation benefits. Day labor pools have been commonly classified as a temporary help firm for purposes of this section.

When unemployed, a worker is disqualified from receiving unemployment compensation benefits if: (1) the temporary help firm or leasing company advised the worker at the time of hire, and at the conclusion of each assignment, that he or she must report for reassignment upon the conclusion of each assignment and the worker failed to report; and (2) the worker failed, without good cause, to contact the employer for reassignment.

A worker who was properly notified by the employer, yet failed to contact the employer for reassignment without good cause, is disqualified from receiving unemployment compensation benefits. Since there is no statutory provision specifically relating to day labor pools, the Unemployment Appeals Commission (commission) has interpreted the definition of “temporary help firm” in this subsection to include labor pools and the definition of “temporary employee” to include day laborers. Since day laborers perform daily work and are generally paid at the end of each work day, the commission has generally held that each day is a separate period of employment and that the beginning of each work day is the relevant “time of hire” for purposes of determining whether the employer has provided the worker with the requisite notice that he or she must report for reassignment at the conclusion of the assignment. The commission has held that a day laborer is disqualified from receiving unemployment compensation benefits only if the required notification is made at the beginning of each day, and upon conclusion of each assignment.

Ambiguity in the law applicable to day labor pools has resulted in day laborers not reporting for reassignment on the business day following the conclusion of an assignment and later filing for unemployment compensation benefits. The commission, in several cases, has held that under varying circumstances the account of a day labor pool is subject to being charged for the unemployment compensation benefits paid to a day laborer who did not report for reassignment and later filed for unemployment compensation benefits.

Effect of Proposed Changes

The bill creates a specific provision providing for the disqualification of employees of day labor pools from receiving unemployment compensation benefits under certain circumstances. The specific provision would disqualify a day laborer from receiving unemployment compensation benefits if, without good cause, the day laborer fails to report in person on the next business day to obtain a new assignment. The day labor pool is required to provide the day laborer with notice at the time of hire that he or she must report in person for reassignment the next business day following conclusion of each assignment. Unemployment benefits may be denied for failure to report in person.

The proposed changes largely follow the current law applied to day labor pools except that the proposed changes require day laborers to report for reassignment in person, and remove the requirement that day laborers be provided with notice at the end of each assignment that they must report for reassignment the next business day.

C. SECTION DIRECTORY:

Section 1. Amends s. 443.101(10), F.S., to provide specific definitions and requirements for labor pools and day laborers and provides for specific circumstances under which a day laborer is deemed to have voluntarily quit employment and is disqualified from receiving unemployment compensation benefits.

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section below.

2. Expenditures:

See FISCAL COMMENTS section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Industry representatives have indicated that labor pools may experience appreciable savings on account of a reduction in the incidence of day laborers qualifying for unemployment compensation benefits.

Businesses in the private sector pay state unemployment taxes on the first \$7,000 of each employee's wages. New businesses pay tax at an initial rate of 2.7 percent. After 10 calendar quarters of the account being subject to charges arising from unemployment compensation claims, the employer is eligible to be charged an earned rate. The single largest factor that affects the earned rate is the employer's experience with unemployment. Earned rates can vary from as low as 0.1 percent to a maximum rate of 5.4 percent. A reduction in unemployment compensation claims charged against the accounts of day labor pools may result in the labor pool paying a lower earned rate.

D. FISCAL COMMENTS:

The Agency for Workforce Innovation reports it will cost approximately \$5,000 in producing and updating technical guidelines and training materials. The agency has indicated that it will absorb costs associated with implementing the provisions of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As presently drafted, the bill defines a "day laborer" as any individual employed by a labor pool. This definition may be interpreted to include administrative employees of the day labor pool and may be construed as broader than intended.

D. STATEMENT OF THE SPONSOR

No statement was submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, the Committee on Economic Development adopted an amendment that (1) defines a labor pool and a day laborer as defined in s. 448.22, F.S.; (2) defines the time of hire of a day laborer by a labor pool for purpose of providing initial notice of requirement that day laborer report upon conclusion of current assignment for reassignment; and (3) requires specific notice be provided to a temporary employee upon conclusion of the employees current assignment.