

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/SB 1440

INTRODUCER: Commerce and Tourism Committee and Senator Braynon and others

SUBJECT: Unemployment Compensation

DATE: February 3, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1440 permits an individual to receive unemployment compensation benefits when an individual voluntarily quits work due to domestic violence. The individual must reasonably believe that continued employment will jeopardize the individual's safety or the safety of a member of his or her immediately family. Good cause for voluntarily leaving work due to domestic violence must be substantiated by evidence that reasonably proves that domestic violence occurred.

This CS amends ss. 443.036, 443.101, 443.1216, and 443.131, F.S.

II. Present Situation:

Unemployment Compensation Overview

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of

state law.¹ The program is administered as a partnership of the federal government and the states.² The individual states collect unemployment compensation (UC) payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).³ FUTA collections go to the states for costs of administering state UC and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.⁴

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937.⁵ The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's UC laws, primarily through its Division of Workforce Services. DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.⁶

State Unemployment Compensation Benefits

A qualified claimant may receive UC benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.⁷ Benefits range from a minimum of \$32 per week to a maximum weekly benefit amount of \$275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned, and the unemployment rate.⁸

To receive UC benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

Determinations and Redeterminations

DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.⁹ Determinations and redeterminations are statements by the department regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account.

¹USDOL, Employment and Training Administration (ETA), State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited 1/20/2012).

² There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

³ FUTA is codified at 26 U.S.C. 3301-3311.

⁴ USDOL, ETA, Unemployment Insurance Tax Topic, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited 1/20/2012).

⁵Chapter 18402, L.O.F.

⁶ Section 443.1316, F.S.

⁷ Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.

⁸ Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent.

⁹ Section 443.151(3), F.S.

Able and Available for Work

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. These include a finding by DEO that the individual:¹⁰

- Has filed a claim for benefits;
- Is registered to work and reports to the One-Stop Career Center;
- Takes and completes the initial skills review;
- Is able to and available for work;¹¹
- Contacts at least 5 prospective employers each week or reports to the One-Stop Career Center for reemployment services;
- Participates in reemployment services;
- Has been unemployed for a waiting period of 1 week;
- Has been paid total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period; and
- Has submitted a valid social security number to DEO.

The law does not distinguish between part-time and full-time work with respect to benefits.

Disqualification for Unemployment Compensation

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving unemployment compensation benefits, to include:

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;
- Failing to apply for available suitable work when directed by DEO or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;¹²
- Making false or fraudulent representations in filing for benefits;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work; and
- Discharge from employment due to drug use or rejection from a job offer for failing a drug test.

The statute specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.

As used in s. 443.101(1), F.S., the term "good cause" includes only that cause attributable to the employer that would compel a reasonable employee to cease working or cause which consists of illness or disability of the individual requiring separation from work.

There are currently two situations which permit individuals to receive unemployment benefits despite the fact that they voluntarily left work:

¹⁰ Section 443.091(1), F.S.

¹¹ "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought. "Available for work" means actively seeking and being ready and willing to accept suitable employment. See s. 443.036(1) and (6), F.S. Additionally, DEO has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work. See Rule 60BB-3.021, F.A.C.

¹² Section 443.101(2), F.S., sets forth the requirements to determine "suitable work."

- An individual is not disqualified for voluntarily leaving temporary work to return immediately when called to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6 calendar months.
- An individual is not disqualified for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.

An individual who voluntarily quits work for a good *personal* cause not related to any of the conditions specified in the statute will be disqualified from receiving benefits.

Domestic Violence¹³

Sometimes victims of domestic violence must leave their jobs due to the impact that the violence has had on their lives. Ninety-six percent report some type of work-related problem due to the violence they suffered in their personal relationships.¹⁴

Section 741.313, F.S., requires employers to “permit an employee to request and take up to 3 working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence.”¹⁵

Except in cases of imminent danger to the health or safety of the employee, or a family or household member, an employee seeking leave from work must provide his or her employer with appropriate advance notice of the leave as required by the employer's policy along with sufficient documentation of the act of domestic violence or sexual violence as required by the employer. An employer must keep all information relating to an employee's leave confidential.¹⁶ Further, an employer may not fire, demote, suspend, retaliate, or otherwise discriminate against an individual for taking leave.

However, these individuals may be disqualified from receiving unemployment benefits if domestic violence is not considered good cause for leaving a job.¹⁷ As of December 2010, 32 states had provisions to provide unemployment benefits to individuals who must leave employment due to domestic violence or stalking.¹⁸

¹³ “‘Domestic violence’ means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” s. 741.28, F.S.

¹⁴ See National Employment Labor Project (NELP), “Implementing the Model Provisions of the Unemployment Insurance Modernization Act in the States” (February 2009), at http://nelp.3cdn.net/dcc61269e71d7220ef_t8m6bpprp.pdf (last visited 1/28/2012).

¹⁵ This section is set to expire on October 2, 2013, unless reenacted by the Legislature.

¹⁶ Additionally, confidential information held by a domestic violence facility review team is confidential and exempt from public records, as is the address of domestic violence victims. ss. 741.3165 and 741.401-741.409, F.S.

¹⁷ See Amy J. Hall v. Florida Unemployment Appeals Commission, 679 So. 2d 541 (1st DCA 1997). The court held that the claimant could not receive benefits because the claimant's safety concerns did not constitute “good cause” on grounds of a family emergency.

¹⁸ Data on other states obtained from NELP, “Question and Answer: Unemployment Insurance Modernization: Filling the Gaps in the Unemployment Safety Net While Stimulating the Economy” (December 2010), available at http://nelp.3cdn.net/d2e0a0eb686ddc0826_v4m6bx17s.pdf (last visited 1/28/2012).

III. Effect of Proposed Changes:

SB 1440 permits an individual to receive unemployment compensation benefits when an individual voluntarily quits work due to domestic violence.

Section 2 amends s. 443.101, F.S., to revise the definition of “good cause” for voluntarily leaving work to mean:

- Cause attributable to an employer;
- An illness or disability that requires separation from work; and
- Domestic violence that causes the individual to reasonably believe that continued employment will jeopardize the individual’s safety or the safety of a member of his or her immediately family.

Good cause for voluntarily leaving work due to domestic violence must be verified by evidence that reasonably proves that domestic violence occurred, such as an injunction, protective order, or other such reasonable and confidential documentation authorized by state law.

The CS also provides grammatical and stylistic changes unrelated to the revision of the definition of “good cause” (**Section 1** amends s. 443.036, F.S.; **Section 3** amends s. 443.1216, F.S.; and **Section 4** amends s. 443.131, F.S.).

Section 5 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Article VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

To the extent this CS requires cities and counties to expend funds to pay benefits for individuals who are affected by domestic violence, the provisions of Section 18(a), Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest and one of the following relevant exceptions:

- a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
- b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- c. The expenditure is required to comply with a law that applies to all persons “similarly situated,” including state and local governments;¹⁹ or
- d. The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

¹⁹ “Similarly situated” refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2012-13), are exempt.

The Revenue Estimating Conference has not yet estimated the impact of this CS. However, DEO has indicated that local governments could realize a small increase in reimbursements to the Unemployment Compensation Trust Fund for benefits paid on claims for which the local governmental entity is a base period employer.²⁰ Consequently, this CS may be exempt from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that this provision increases the amount of funds paid out to claimants from the Unemployment Compensation Trust Fund, it may require employer tax contributions be increased.

DEO estimated that the CS would have a negative recurring impact to the Unemployment Compensation Trust Fund of at least \$400,000.²¹

B. Private Sector Impact:

Individuals who leave work due to domestic violence will be eligible to receive unemployment compensation benefits while unemployed.

Reimbursing employers, such as charities, could be required to reimburse the Unemployment Compensation Trust Fund for benefits paid to eligible individuals under the provisions of this CS.²² See Tax/Fee Issues above.

²⁰ DEO Bill Analysis for SB 1440 (January 13, 2012), on file with the Senate Commerce and Tourism Committee.

²¹ DEO Bill Analysis. The estimate by DEO was based on 100 claims; the average cost of a claim is \$4,207.17; thus the total estimate was \$420,717.00.

²² Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers.

C. Government Sector Impact:

DEO indicated that this CS would have an insignificant impact on its operations that could be accomplished using existing resources.²³ State and local governments could be required to reimburse the Unemployment Compensation Trust Fund for benefits paid to eligible individuals under the CS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DEO provided the following information related to records:

Sections 443.171(5) and 443.1715, F.S., provide that unemployment compensation claim records are confidential and can only be disclosed as specified in law. However, whenever a party is adversely affected by a determination and participates in an appeals hearing, the information relating to the appealed determination becomes public. Because an unemployment compensation hearing is an administrative hearing, it is open to the public pursuant to Chapter 120, F.S. The hearing is not confidential nor is the record created from the hearing. At the conclusion of an appeals hearing records of the decision by the hearing officer are considered public record and available for public inspection.²⁴

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on February 2, 2012:

The committee substitute made the following changes:

- Clarified provisions related to domestic violence. Specifically, the CS identifies documentation that can be used to verify that domestic violence occurred, and clarified that an individual who experienced domestic violence that was suitably documented but did not have any immediate family members in danger would be able to establish good cause for quitting work if the worker feared for his or her own personal safety; and
- Restored current law which states that a disqualification runs from the time a person has left “his or her full-time, part-time, or temporary” work. This language was specifically implemented by the Legislature in 1999 to clarify legislative intent and overturn court decisions to the contrary.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²³ DEO Bill Analysis.

²⁴ DEO Bill Analysis.