

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 563 Unemployment Compensation
SPONSOR(S): Commerce Committee, Joseph and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 990

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|----------|--|
| 1) Workforce Development & Tourism Subcommittee | 15 Y, 0 N | Pirrello | Cooper |
| 2) Transportation & Tourism Appropriations Subcommittee | 11 Y, 0 N | Cobb | Davis |
| 3) Commerce Committee | 22 Y, 0 N, As CS | Pirrello | Hamon |

SUMMARY ANALYSIS

Florida's reemployment assistance program offers temporary, partial wage replacement to qualified individuals who lose their jobs through no fault of their own. Employers fund the state's reemployment assistance program through taxes on their businesses. Tax rates are impacted by the employment record of the individual business and amount of money available in the fund, among other factors.

In a nationwide survey, the Centers for Disease Control, using a broader definition than Florida's definition of domestic violence, determined that 1 in 4 women and 1 in 9 men were victims of sexual violence, physical violence and/or stalking by an intimate partner which resulted in negative impacts such as injury, fear, concern for safety, or the need for other services. In another survey, survivors of domestic violence reported that some incidents continued at work and domestic violence caused them to miss days of work. Some survivors of domestic violence reported that the violence caused them to quit work.

Forty-one states currently allow victims who leave work due to domestic violence to collect unemployment assistance benefits. They have reported low participation and costs relative to general unemployment claims.

The bill provides that an individual may not be disqualified from receiving reemployment assistance if he/she voluntarily leaves work and is able to prove that the discontinuation of employment is a direct result of circumstances related to domestic violence.

The bill may have an indeterminate, though likely insignificant fiscal impact on the state and local governments. The fiscal impact to the private sector is indeterminate. See Fiscal Comments.

The bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Reemployment Assistance

Under Chapter 443, the Florida Department of Economic Opportunity operates the Reemployment Assistance program, formerly known as unemployment compensation.¹ The program provides eligible workers who are unemployed through no fault of their own, temporary, partial wage replacement.² Qualified workers may receive between \$32-275 per week for a maximum of 12 weeks.³ The amount each claimant receives is based on their previous income.⁴

A qualified worker is one who is able, available and actively searching for work, who lost their job through no fault of their own, or who had good cause to leave, and who earned at least \$3,400 during their base period.⁵ The base period is the 12 month period which covers the first four of the last five quarters prior to the date of the claim.⁶ Employees who quit their jobs voluntarily may still be eligible for reemployment assistance if they were required to work in an unsafe or hostile environment.⁷ Military spouses who voluntarily leave work to relocate as a result of their spouse's military-connected change of station orders, activation orders or unit deployment orders are also considered to have good cause and are eligible for reemployment assistance.⁸ In order to remain eligible for benefits, claimants must actively seek employment by making at least five verifiable job contacts or activities each week.⁹ Claimants will lose their eligibility if the Department finds that they have failed to accept suitable work.¹⁰

Reemployment assistance is funded entirely by employers.¹¹ Private employers are known as contributory employers and fund the program through a tax on their businesses.¹² Public employers such as the military, counties, state and federal agencies are considered reimbursable employers, meaning they pay back the exact amount of benefits received by claimants.¹³ A public employer may elect to become a contributory employer.¹⁴ Non-profits are contributory employers by default, but may elect to become reimbursable employers.¹⁵ Employers must submit quarterly tax and wage reports

¹ Florida Department of Economic Opportunity, *Apply for Benefits*, <http://www.floridajobs.org/Reemployment-Assistance-Service-Center/reemployment-assistance/claimants/apply-for-benefits> (last visited Jan. 22, 2019).

² Florida Department of Economic Opportunity, *Reemployment Assistance Handbook*, http://www.floridajobs.org/docs/default-source/reemployment-assistance-center/unemployment/bri/bri_english.pdf?sfvrsn=2 (last visited Jan. 22, 2019).

³ S. 443.111(2-5), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ S. 443.036(7), F.S.

⁷ *Spangler v. Unemployment Appeals Com'n*, 632 So. 2d 98, (Fla. 5th DCA 1994). (holding that quitting because employer failed to remedy an unsanitary workplace is good cause).; *Rivera v. Florida Unemployment Appeals Com'n*, 99 So. 3d 505, (Fla. 3d DCA 2011). (holding that quitting because of sexual harassment by a co-worker is good cause); *Grossman v. Jewish Community Center of Greater Fort Lauderdale Inc.*, 704 So. 2d 714, (Fla. 4th DCA 1998). (holding that quitting because of verbal abuse by ones employer is good cause).

⁸ S. 443.101(1)(a)1., F.S.

⁹ S. 443.091(1)(d), F.S.

¹⁰ S. 443.101(2), F.S.

¹¹ Florida Department of Economic Opportunity, *Claimant FAQs*, <http://www.floridajobs.org/Reemployment-Assistance-Service-Center/reemployment-assistance/claimants/claimant-faqs> (last visited Jan. 22, 2019).

¹² Florida Department of Economic Opportunity, *Employer Reemployment Assistance FAQ*, <http://www.floridajobs.org/frequently-asked-questions-directory/faqs> (last visited Jan. 22, 2019).

¹³ *Id.*

¹⁴ S. 443.1313, F.S.

¹⁵ S. 443.1312, F.S.

regardless of employment activity or whether any taxes are due.¹⁶ Employers are taxed on the first \$7,000 that they pay to each employee.¹⁷ Tax rates differ by employer and are calculated based on several factors. Effective January 1, 2019, the minimum annual rate is 0.1% or \$7 per employee and the maximum rate is 5.4% or \$378 per employee.¹⁸ New employers receive an initial rate of 2.7% which remains in place for their first 10 quarters of operation and will be recalculated over time in accordance with the factors below.¹⁹

The individual benefit ratio has the greatest impact on a contributory employer's future tax rate.²⁰ "The ratio is calculated by dividing the previous 3 years of benefit charges for former employees by the taxable payroll for that same three-year period."^{21, 22} The second factor is the variable adjustment factor which is made up of three ratios that spread the costs among employers that have had benefit charges in the three previous years.²³ The most important of these is the fund size factor which raises or lowers the tax rate based on the amount remaining in the trust fund. If the amount in the trust fund falls below 4% of the previous year's taxable payroll, there will be an increase in the tax rate until the fund reaches or exceeds 4% of the previous year's taxable payroll.²⁴ If the amount in the trust fund is above 5% of the previous year's taxable payroll, employers will see a decrease in tax rates until the fund balance is less than 5% of the previous year's taxable payroll.²⁵ The third adjustment factor spreads costs which are not included in the second factor to all employers whose rates are not at the initial or maximum rate.²⁶

Current law prohibits charging the employment record of an employer for benefits paid to employees under certain circumstances. The employer may not be charged for the benefits received if the employee:

- Leaves his or her work without good cause attributable to the employer or is discharged by the employer for misconduct connected with his or her work;
- Is discharged by the employer for unsatisfactory performance during an initial employment probationary period;
- Refuses without good cause to accept suitable work;
- Is separated from work as a direct result of a natural disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (RSDREAA); or
- Is separated from work as a direct result of an oil spill, terrorist attack, or other similar disaster of national significance not subject to a declaration under RSDREAA.²⁷

Funds collected for reemployment assistance are deposited into the State of Florida's trust fund which is maintained by the U.S. Treasury.²⁸ Within the trust fund, there is a separate account for reimbursable employers.²⁹ The latest report from the U.S. Department of Labor indicates that Florida's trust fund is fiscally solvent.³⁰

¹⁶ Florida Department of Revenue, *Employer's Quarterly Report*, http://floridarevenue.com/Forms_library/current/rt6.pdf (last visited Jan. 25, 2019).

¹⁷ Florida Department of Revenue, *Reemployment Tax Rate Information*, http://floridarevenue.com/taxes/taxesfees/Pages/rt_rate.aspx (last visited Jan. 22, 2019).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² The information contained in this calculation is contained in an "employment record." Under current law, a reimbursable employer does not maintain an employment record.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ S. 443.131(3), F.S.

²⁸ U.S. Department of Labor, *State Unemployment Insurance Trust Fund Solvency Report 2018*, <https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2018.pdf> (last visited Jan. 22, 2019).

²⁹ S. 443.1313(4), F.S.

³⁰ *Id.*

Domestic Violence

In 2017, the Centers for Disease Control (CDC) published the results of the National Intimate Partner and Sexual Violence Survey which was conducted between 2010 and 2012.³¹ The survey, using a definition of domestic violence broader than Florida's definition, determined that 1 in 4 women and 1 in 9 men were victims of sexual violence, physical violence and/or stalking by an intimate partner which resulted in negative impacts such as injury, fear, concern for safety, or the need for other services.³² Data showed that over half of women who were victims of intimate partner violence reported feeling fearful, being concerned for their safety and exhibiting symptoms of post-traumatic stress disorder.³³

Other surveys of survivors of domestic violence have found that survivors were harassed at work by an abusive partner and missed work as a result of domestic violence.³⁴ In some cases, victims missed work in order to deal with health or medical issues and accommodation issues related to domestic violence (e.g. moving).³⁵ Additionally, victims reported missing work to attend family or criminal court.³⁶

The Florida Department of Law Enforcement uniform crime report shows that there were a total of 106,979 acts of domestic violence³⁷ reported in 2017.³⁸ The Department made 64,781 arrests based on these acts.³⁹ Currently, Florida has 42 certified domestic violence shelters.⁴⁰ In fiscal year 2016-2017, the Florida Department of Children and Families reported that a total of 14,412 people were admitted to domestic violence shelters for the first time, while over 37,000 people received non-residential services from a certified shelter.⁴¹

Existing Laws

As of 2019, 41 states, the District of Columbia and the U.S. Virgin Islands allow victims of domestic violence to collect unemployment benefits.⁴² The proof required to collect benefits varies but states have reported consistently low participation in the program. Massachusetts reported a total of 189

³¹ Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey 2010-2012 State Report*, <https://www.cdc.gov/violenceprevention/pdf/NISVS-infographic-2016.pdf> (last visited Jan. 22, 2019).

³² *Id.*; The CDC defined "intimate partner" as a sexual or romantic partner and includes spouses, boyfriends, girlfriends, people with whom they dated, were seeing, or "hooked up." Florida defines "domestic violence" in s. 741.28, F.S., as 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.
³³ *Id.*

³⁴ C. Nadine Wathen, *The Impact of Domestic Violence in the Workplace*, *Journal of Occupational and Environmental Medicine* (Jul. 29, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4676385/> (last visited Mar. 1, 2019); The survey asked about various behaviors like abusive phone calls or text messages, abusive emails, abuser coming to the workplace, abuser stalking or harassing victim at workplace, abuser contacting coworkers/employer about victim and other.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Florida Department of Law Enforcement includes murder, manslaughter, rape, fondling, aggravated assault, aggravated stalking, simple assault, threat/intimidation, and stalking in their domestic violence statistics.

³⁸ Florida Department of Law Enforcement, *Crime in Florida, Florida uniform crime report (2017)*, http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_OFF_JUR17.aspx (last visited Jan. 25, 2019).

³⁹ Florida Department of Law Enforcement, *Crime in Florida, Florida uniform crime report (2017)*, http://www.fdle.state.fl.us/FSAC/Documents/PDF/DV_ARR_JUR17.aspx (last visited Jan. 25, 2019).

⁴⁰ Florida Coalition Against Domestic Violence, *2016-2017 Annual Report to the Florida Legislature: 40th Anniversary Edition*, <http://www.dcf.state.fl.us/programs/domesticviolence/publications/docs/2017AnnualReport%2021%20DEC%2017.pdf> (last visited Jan. 25, 2019).

⁴¹ Department of Children and Families, *Domestic Violence Annual Report*, <http://www.dcf.state.fl.us/programs/domesticviolence/publications/docs/2016-2017%20Annual%20Statistics.pdf> (last visited Jan. 25, 2019).

⁴² Legal Momentum, *Unemployment Insurance Benefits for Victims of Domestic Violence and Sexual Violence*, <https://www.legalmomentum.org/sites/default/files/reports/State%20Law%20Guide-Unemp%20Ins%20for%20Victims%20of%20DV%20%26%20SA-7-14.pdf> (last visited Jan. 25, 2019).

domestic violence claims in 2003, compared to over 320,000 traditional unemployment claims.⁴³ North Carolina had 63 claims over six months in 2002 for a total cost of \$101,088, compared to nearly \$962 million spent on total claims in the previous year.⁴⁴ Many states also include a non-charging provision, meaning that the individual employer's record will not be impacted by a claim from a victim of domestic violence. In Texas, a total of 193 unemployment claims based on domestic violence resulted in 63 claimants receiving benefits under their state law.⁴⁵ The total number of claims submitted under the domestic violence provision was out of 736,574 overall claims submitted in 2018.⁴⁶ The Texas law also includes a non-charging provision. Because these benefits are non-charged to a specific employer, the cost is absorbed by all Texas employers through the replenishment component of employers' unemployment assistance tax rates.⁴⁷ However, the Texas Workforce Commission reported that the amount of benefits paid was "miniscule" and resulted in an impact to employers' tax rates that was "imperceptible."⁴⁸

Effect of the Bill

The bill provides that an individual may not be disqualified from receiving reemployment assistance if he/she voluntarily leaves work and is able to prove that the discontinuation of employment is a direct result of circumstances related to domestic violence. The bill defines "domestic violence" as found in s. 741.28, F.S.⁴⁹

An individual who leaves work as a result of domestic violence must make reasonable efforts to preserve employment; unless the individual establishes that such remedies are likely to be futile or increase risk of future incidents of domestic violence. Such efforts may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment. If those attempts to mitigate the situation are unsuccessful and the employee still feels threatened, the employee must provide evidence such as an injunction, a protective order or other documentation authorized by state law which reasonably proves that domestic violence has occurred. The employee must have a reasonable belief that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment. Individuals who are otherwise eligible for reemployment assistance are ineligible for each week that he or she no longer meets such criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.

For contributory employers, the employment record of an employing unit may not be charged for the payment of benefits to an individual who has voluntarily left work under the bill.⁵⁰ This means that a domestic violence victim's receipt of benefits will not directly adversely impact the employer's future tax rate.

The bill has an effective date of July 1, 2019.

⁴³ National Employment Law Project, *Unemployment Benefits for Domestic Violence Survivors: What Are Its Costs?*, <https://s27147.pcdn.co/wp-content/uploads/2015/03/dvucicost2005.pdf> (last visited Jan. 25, 2019).

⁴⁴ *Id.*

⁴⁵ Email from Chuck Ross, Deputy Director Regulatory Integrity Division, Texas Workforce Commission, Unemployment Compensation for Victims of Domestic Violence (Feb. 20, 2019).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*; In 2018, Texas had a population of 28.7 million people (according to US Census Bureau estimates), with 736,574 claims and \$2,044,093,559 paid in benefits. In comparison, Florida had a population of 21.2 million people, with 337,730 claims and \$354 million paid in benefits.

⁴⁹ Florida defines "domestic violence" in s. 741.28, F.S., as 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.

⁵⁰ Sections 443.101, F.S. and 443.131, F.S. are amended to reflect this provision.

B. SECTION DIRECTORY:

- Section 1 Amends s. 443.101, F.S., relating to disqualification for benefits.
- Section 2 Amends s. 443.131, F.S., relating to contributions and exceptions to an employer's employment record being negatively impacted.
- Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
Indeterminate, minimal. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
Indeterminate, minimal. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate, minimal. See Fiscal Comments.

D. FISCAL COMMENTS:

While the impact to employers and private sector tax rates cannot accurately be predicted, data from other states could be a reasonable indicator of possible impacts.

In Texas, where a similar provision is in place, the Texas Workforce Commission reported that 63 unemployment claimants received benefits in 2018 as a result of job separation relating to domestic violence. In Florida, the average time frame that an individual receives benefits is 9 weeks and the average amount received is \$247.⁵¹ Using the average benefit amount and time period for which benefits were paid in Florida, the fiscal impact of 63 claimants in Florida would be approximately \$140,049. This impact covers both the private and public sectors. Because the public sector workforce, specifically the state government workforce, is a small percentage of the total workforce, the fiscal impact to the state should be minimal, and the fiscal impact to the private sector would also be minimal as it would be shared among all private businesses.

⁵¹ Data based on information obtained in a phone call with DEO's Bureau of Reemployment Assistance Programs on Feb. 27, 2019.
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III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires local governments to pay reemployment assistance benefits to a new class of persons; however, an exemption may apply. The bill appears to have an insignificant fiscal impact on local governments.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 10, 2019, the Commerce Committee considered the bill, adopted three amendments and reported the bill favorably as a committee substitute. The committee substitute made the following changes to the bill:

- Restored current statute by removing a non-substantive language change;
- Clarified that the non-charging provision for employers will only apply to claims related to domestic violence and not other claims related to voluntarily leaving work; and
- Added the provisions of the bill to the current list of circumstances under which the employment record of an employing unit may not be charged.

The staff analysis has been updated to reflect the committee substitute.