

**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.)

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

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BILL: CS/SB 1356

INTRODUCER: Commerce and Tourism Committee and Senator Bean

SUBJECT: Employer Contributions for Reemployment Assistance

DATE: January 29, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Fav/CS
2.			FT	
3.			AP	

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**I. Summary:**

CS/SB 1356 reduces the initial reemployment tax rate of new employers from 2.7 percent to 1 percent for tax rates effective on or after January 1, 2021. However, the initial tax rate may not be adjusted for any year that the balance of the Unemployment Compensation Trust Fund (UC Trust Fund) becomes unstable and requires the computation of a positive adjustment factor.

The bill takes effect July 1, 2020.

**II. Present Situation:**

**Reemployment Assistance Overview**

The Federal Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own and who meet the requirements of state law.<sup>1</sup> The program is administered as a partnership between the federal government and the states.<sup>2</sup> The individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits. Subject to the approval of the United States Department of Labor (USDOL), each state also sets tax rates, benefit levels, and trust fund balances based on the state's needs.<sup>3</sup>

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<sup>1</sup> USDOL, Employment and Training Administration (ETA), *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Jan. 28, 2020).

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

<sup>3</sup> USDOL, Employment and Training Administration (ETA), *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Jan. 28, 2020).

The Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA),<sup>4</sup> which is used to provide grants to the states to fund costs associated with program administration and job service programs.<sup>5</sup>

Florida's unemployment insurance program was created by the Legislature in 1937.<sup>6</sup> The program was rebranded as the "reemployment assistance program" in 2012.<sup>7</sup> The Department of Economic Opportunity (DEO) is responsible for administering the program, and the DEO contracts with the Florida Department of Revenue (DOR), as the tax collection service provider, for the collection of unemployment taxes.<sup>8</sup>

### ***Florida Reemployment Assistance Benefits***

A qualified claimant may receive reemployment assistance (RA) benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.<sup>9</sup> 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, wages earned, and the unemployment rate.<sup>10</sup>

To receive RA 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.<sup>11</sup>

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment.<sup>12</sup> For example, each week an individual is required to contact at least five prospective employers (three prospective employers if the individual resides in a small county) or report to a One-Stop Career Center for reemployment services.<sup>13</sup>

### ***Financing Reemployment Assistance***

In Florida, RA benefits are financed solely through contributions by employers – employers pay taxes on the first \$7,000 of each employee's wages.<sup>14</sup> Employers are required to pay state taxes into

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<sup>4</sup> 26 U.S.C. 3301-3311.

<sup>5</sup> FUTA also 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. See USDOL, Employment and Training Administration, *Unemployment Insurance Tax Topic*, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited Jan. 28, 2020).

<sup>6</sup> Chapter 18402, Laws of Fla.

<sup>7</sup> Chapter 2012-30, Laws of Fla.

<sup>8</sup> Section 443.1316, F.S.

<sup>9</sup> 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.

<sup>10</sup> Section 443.111(3), F.S. 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.

<sup>11</sup> See s. 443.091, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* For the entire list of requirements and exceptions. A "small county" is defined in s. 120.52(19), F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

<sup>14</sup> Section 443.1217, F.S.

Florida's RA program as a cost of doing business.<sup>15</sup> Employers must file quarterly reports and pay taxes within one month of the close of each quarter. New businesses are required to report initial employment information in the month following the calendar quarter in which employment begins.<sup>16</sup> The DOR reviews the reports and any additional required applications to make a determination of whether the business is liable to pay RA taxes.<sup>17</sup>

Businesses are liable for state reemployment tax if they meet any of the following conditions:<sup>18</sup>

- Paid more than \$1,500 in quarterly wages in a calendar year;
- Had at least one employee for any portion of a day during any 20 weeks in a calendar year; or
- Is liable under the FUTA.<sup>19</sup>

Florida law also specifies separate liability requirements for agricultural and domestic employers, nonprofit organizations, governmental agencies, and Indian tribes.<sup>20</sup> Businesses that are otherwise not subject to RA taxation may decide to voluntarily pay into the UC Trust Fund for coverage for their employees.<sup>21</sup>

### ***Reemployment Assistance Tax Rates***

An employer's contributions are equal to a percentage of its wages paid for employment.<sup>22</sup> The standard rate of contributions payable is 5.4 percent,<sup>23</sup> which is also the maximum allowable tax rate under current law.<sup>24</sup> New employers are liable to pay an initial contribution of 2.7 percent, which remains in effect until the employer has made contributions for at least eight consecutive quarters.<sup>25</sup> One exception to the initial rate is when employers who would be liable by succession, choose to accept the tax rate of the previous employer and the responsibility of paying any outstanding amounts due.<sup>26</sup>

An employer with record of at least eight quarters of contributions may be eligible to receive a variable tax rate.<sup>27</sup> Variable tax rates are adjusted annually and are based on the employer's benefit experience,<sup>28</sup> the balance of the UC Trust Fund,<sup>29</sup> and other adjustment factors.<sup>30</sup> The variable rates

<sup>15</sup> DOR, *Employer Guide to Reemployment Tax*, available at [http://floridarevenue.com/Forms\\_library/current/rt800002.pdf](http://floridarevenue.com/Forms_library/current/rt800002.pdf) (last visited Jan. 28, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *See generally* ch. 443, F.S.

<sup>21</sup> If an employer voluntarily provides coverage, the employer must report wages and pay RA taxes for a minimum of one calendar year. Section 443.121(3), F.S.

<sup>22</sup> Employers are required to pay taxes on the first \$7,000 of each employee's wages. Section 443.1217(2), F.S.

<sup>23</sup> Section 443.131(2)(c), F.S.

<sup>24</sup> *See s.* 443.131(2)(e), F.S.

<sup>25</sup> Section 443.131(2)(a), F.S.

<sup>26</sup> *See s.* 443.131(2)(b), F.S.

<sup>27</sup> *See s.* 443.131(3)(d), F.S.

<sup>28</sup> The purpose of using the experience rating to determine RA tax rates is to stabilize the UC Trust Fund at a percentage of the taxable payrolls reported by all employers and to ensure employers are required to pay a fair share.

<sup>29</sup> The UC Trust Fund is an account used to pay unemployment compensation benefits.

<sup>30</sup> *See s.* 443.131(3)(e), F.S.

range from 5.4 percent to the minimum allowable tax rate, which varies annually but can never be less than 0.1 percent.<sup>31</sup>

### ***Employee Leasing Companies***

Employee leasing is an arrangement where a leasing company assigns its employees to a client and allocates the direction and control of the leased employees between the leasing company and client.<sup>32</sup> When a client contracts with an employee leasing company (ELC)<sup>33</sup> to provide it with workers, those workers are considered employees of the ELC.<sup>34</sup> Employees of an ELC must be reported under the ELC's tax identification number and contribution rate for work performed for the ELC.<sup>35</sup> However, ELCs may choose to make a separate one-time election to report and pay contributions under the tax identification number and contribution rate for each client of the ELC.<sup>36</sup> A newly licensed ELC<sup>37</sup> has 30 days from the date of licensure to make an election with the DOR to report and pay reemployment tax using the tax rate for each client.<sup>38</sup> This method is referred to as the "client method," and the tax rate used will be based upon the wage and benefit history the client has earned under the ELC.<sup>39</sup> If the client does not have a wage and benefit history under the ELC, then the client will have the initial rate of 2.7 percent.<sup>40</sup>

### ***Unemployment Compensation Trust Fund***

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. This effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers.<sup>41</sup> Conversely, when

<sup>31</sup> The final adjustment factor spreads costs not included in the variable adjustment factor to all employers whose rates are not at the initial or maximum rate. The final adjustment factor determines the minimum tax rate for the year. *See* s. 443.131(3)(e), F.S.

<sup>32</sup> *See* s. 468.520(4), F.S. The term "client" means a party who has contracted with an employee leasing company to provide a worker, or workers, to perform services for the client. *See* s. 443.036(18).

<sup>33</sup> Employee leasing companies (ELCs) are also referred to as professional employer organizations (PEOs). *See* s. 468.520(4), F.S. Leased employees include employees subsequently placed on the payroll of the employee leasing company on behalf of the client. *See* s. 443.036(18).

<sup>34</sup> *See* s. 443.1216(1)(a), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> An Employee leasing company is responsible for providing quarterly reports concerning the clients of the employee leasing company and the internal staff of the employee leasing company. *See* s. 443.036(18).

<sup>38</sup> DOR, *Reemployment Tax for Professional Employer Organizations*, available at [https://floridarevenue.com/taxes/taxesfees/Pages/rt\\_elc.aspx](https://floridarevenue.com/taxes/taxesfees/Pages/rt_elc.aspx) (last visited Jan. 28, 2020).

<sup>39</sup> *Id.*

<sup>40</sup> If the client company's employment record is chargeable with benefits for less than 8 calendar quarters while being a client of the ELC, the client company must pay contributions at the initial rate. *See* s. 443.1216(1)(a), F.S.

<sup>41</sup> If the balance of the UC Trust Fund is below 4 percent of the taxable payrolls for the year immediately preceding the calendar year for which the contribution rate is being computed, then a positive adjustment factor is computed. The positive adjustment factor remains in effect for subsequent years until the balance of the UC Trust Fund equals or exceeds 4 percent of the taxable payrolls. However, if the balance of the UC Trust Fund is above 5 percent of the taxable payrolls for the year immediately preceding the calendar year for which the contribution rate is being computed, then a negative adjustment factor must be computed. The negative adjustment factor remains in effect for subsequent years until the balance of the UC Trust Fund exceeds 4 percent but is less than 5 percent of the taxable payrolls of that year. *See* s. 443.131(3)(e).

unemployment and benefit charges are low, the negative fund balance adjustment factor is triggered, and tax rates for employers are reduced accordingly.<sup>42</sup>

### III. Effect of Proposed Changes:

The bill amends ss. 443.1216 and 443.131 of the Florida Statutes to reduce the initial reemployment tax rate for new employers from 2.7 percent to 1 percent.

For tax rates effective on or after January 1, 2021, if an ELC chooses to report and pay the reemployment tax using the tax rate for each client, and a client company's record is chargeable with benefits for less than 8 quarters, the client company's initial tax rate is 1 percent. However, the bill provides that the initial tax rate may not be adjusted for any year that the balance of the UC Trust Fund requires the computation of a positive adjustment factor.

For tax rates effective on or after January 1, 2021, the initial reemployment tax rate for new employers whose record is chargeable with benefits for less than 8 quarters is 1 percent. However, the bill provides that the initial tax rate may not be adjusted for any year that the balance of the UC Trust Fund requires the computation of a positive adjustment factor.<sup>43</sup>

The bill takes effect July 1, 2020.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None.

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<sup>42</sup> During the years of 2010-2014, the Legislature made efforts to temporarily increase the tax wage base from \$7,000 to \$8,500, increased the trigger for the positive adjustment factor from 3.7 percent to 4 percent, and reduced the trigger for the negative adjustment factor from 4.7 percent to 5 percent. The Legislature also reduced the tax wage base and the adjustment factor triggers as the economy stabilized. *See* Ch. 2009-99, Laws of Fla., Ch. 2010-1, Laws of Fla., Ch. 2011-235, Laws of Fla., and Ch. 2012-30, Laws of Fla.

<sup>43</sup> *See* s. 443.131(3)(e).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

**B. Private Sector Impact:**

Unless the UC Trust Fund is unstable, new contributory employers will pay a reduced tax rate from 2.7 percent down to 1 percent until their tax rate is adjusted based on their employment record.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 443.1216 and 443.131.

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

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

**CS by Commerce and Tourism on January 28, 2020:**

- Clarifies that the initial tax rate may not be adjusted for any year that the balance of the UC Trust Fund requires the computation of a positive adjustment factor, which applies to ELCs and new employers whose record is chargeable with benefits for less than 8 quarters; and
- Clarifies that the initial tax rate of 1 percent will apply “for tax rates effective on or after January 1, 2021.”

**B. Amendments:**

None.