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BILL ANALYSIS

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Senate Bill 1019 (as introduced 7-16-14)
Sponsor: Senator Jack Brandenburg
Committee: Reforms, Restructuring and Reinventing

Date Completed: 9-29-14

CONTENT

The bill would amend the Michigan Employment Security Act to revise the rate calculation for client employers of a professional employer organization (PEO) for 2014, by changing what is called the look-back period from eight calendar quarters to 12. The bill contains language requiring the amendments to be applied retroactively.

The Act requires a PEO that is a liable employer to use a specified method for reporting wages and paying unemployment contributions. This method requires the PEO to file a quarterly wage report and unemployment contribution report and pay contributions of its client employers based on the account information of each client employer (each business to which the PEO supplies employees).

For a PEO's client employer that is a contributing employer and that was a client employer of the PEO on the date that the PEO changed to the required reporting method, the following apply:

-- The client employer's unemployment tax rate will be the new employer rate if the client employer reported no employees or no payroll to the Unemployment Insurance Agency (UIA) for eight or more calendar quarters or, beginning January 1, 2014, for 12 or more calendar quarters.
-- The client employer's tax rate will be based on the client employer's prior account and experience if the employer was a client employer of the PEO for less than eight full calendar quarters or, beginning January 1, 2014, for less than 12 calendar quarters.

Under the bill, instead, for a client employer that is a contributing employer and that was a client employer of a PEO on or before January 1, 2014, its unemployment tax rate for 2014 would be the new employer tax rate, and any prior unemployment tax rate for the client employer would not be resumed, if the client employer reported no payroll, or reported payroll with zero dollars, under its unemployment account number to the UIA for the eight calendar quarters ending December 31, 2013.

Currently, a client employer also must be assigned the new employer tax rate if its account has been terminated for more than one year or if the client employer never previously registered with the UIA.

Under the bill, if a client employer did not qualify for the new employer rate based on that provision or on the provision proposed by the bill (the eight-month look-back period), the client employer's unemployment tax rate for 2014 would have to be as provided in Section

19 of the Act (which requires the UIA to determine the contribution rate of each contributing employer based on its history of lay-offs, wages paid, and other factors).

The bill states, "This amendatory act is curative and shall be applied retroactively. The amendatory act expresses the original intent of the legislature as to the method for calculating the unemployment tax rate for a client employer of a PEO for the 2014 tax year."

MCL 421.13m

BACKGROUND

A professional employer organization is a business that supplies employees to its clients (client employers). This arrangement enables the PEO's clients to outsource such administrative functions as payroll, workers' compensation, human resources, and employee benefits. The PEO industry began to grow rapidly approximately five years ago, and a number of states took steps to regulate the industry, in part to address a practice called "SUTA dumping". (This occurs when an employer shifts personnel to another company in order to avoid responsibility for the full amount of the employer's unemployment insurance rate; "SUTA" refers to the state unemployment tax act.)

In this State, Public Act 370 of 2010 enacted the Michigan Professional Employer Organization Regulatory Act to require the licensure of PEOs and regulate their operations, including their relationship with client employers. Public Act 383 of 2010 amended the Michigan Employment Security Act to require PEOs to file a report with the Unemployment Insurance Agency for a determination of their status as a liable employing unit and employer; and establish a method for a PEO to report wages and pay unemployment taxes.

Originally, under Public Act 383, the rate calculations for a client employer depended in part on whether it reported no employees or no payroll for eight or more quarters (in which case the new employer rate applied), or was a client employer for less than eight full quarters (in which case the tax rate was based on the client's prior account and experience). Public Act 269 of 2011 changed the periods to 12 or more quarters, or less than 12 full quarters, as applicable (in addition to making many other changes to the Employment Security Act).

Public Act 219 of 2012 again amended the statute to require an eight-month look-back period until December 31, 2013, and a 12-month look-back period beginning January 1, 2014.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a very small, but negative, fiscal impact on the Unemployment Trust Fund (UTF), a small, but negative fiscal impact on the operations of the Unemployment Insurance Agency (UIA), and no fiscal impact on local units of government. The bill would adjust the State Unemployment Tax Act (SUTA) rates that some client employers of PEOs pay. Employers in Michigan pay two unemployment-related taxes: the SUTA tax, which is a variable rate between 0.06% and 10.3% levied on the first $9,500 of an employee's annual wages, and the Federal Unemployment Tax Act (FUTA) tax, which is a flat 6.0% with a credit of up to 5.4% for states with no outstanding Federal Unemployment Trust Fund loans (including Michigan) levied on the first $7,000 of an employee's annual wages. The SUTA tax is variable depending on how many unemployment insurance (UI) benefit claims the employer has had and the industry in which the employer does business. Revenue from the SUTA tax is used to pay UI benefit claims, whereas FUTA tax revenue is collected by the

U.S. Department of Labor and then redistributed to state UI agencies by formula to pay for program administration.

The Department of Licensing and Regulatory Affairs has identified 230 employers that would be affected by the bill; approximately 48% would see an increase in their rates, 17% would see no change, and 34% would receive a rate decrease. In total, it is estimated that the proposed changes would result in a net loss of approximately $1.0 million in SUTA tax revenue annually. This lost revenue would represent approximately 0.05% of total SUTA tax collections that were received in FY 2012-13, so the bill would be unlikely to materially affect the solvency of the UTF. Since the bill would affect only SUTA tax collections, the lost revenue would have no effect on the operations of the UIA. However, the bill would result in some small administrative costs for the UIA to adjust SUTA rates for the 230 affected employers, which would include mailing notices, fielding inquiries from affected employers, and implementing the rate adjustments in the UIA's computer systems.

Finally, the changes in the bill would reduce collections of the Obligation Assessment, which is charged to employers for the service of bonds that were issued to repay Federal Unemployment Trust Fund loans of $3.4 billion that were accrued from 2006 through 2012. Statute allows, however, for the Department of Treasury to adjust the Obligation Assessment rates to ensure the bonds are serviced, so revenue lost under the bill (estimated by UIA at approximately $159,000, annually) would essentially be recouped when the Assessment is recalculated for the tax year following implementation of the bill. Since the impact would be so small relative to total Assessment collections, it is likely that any effect of the bill on the Assessment rates would be greatly exceeded by other factors such as employment rates and interest rates.

Fiscal Analyst: Josh Sefton

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