

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB BCAS 12-02 Unemployment Compensation

**SPONSOR(S):** Business & Consumer Affairs Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee		Tecler	Creamer

### SUMMARY ANALYSIS

The proposed committee bill rebrands the state's unemployment compensation (UC) system as a "Reemployment Assistance Program." The bill addresses aspects of the state's UC system related to the initial skills assessment test and the operational efficiency of the program.

Related to the initial skills assessment test, the bill:

- Requires the Department of Economic Opportunity (DEO) to establish a numeric score on the initial skills review which demonstrates a minimum proficiency in workforce skills.
- Provides a claimant with the option to undergo workforce skills training if he or she scores below this standard.
- Stipulates that workforce skills training will be provided at no cost to individuals in order to improve their minimum proficiency level.

Related to improving efficiency in the UC program, the bill:

- Reduces the number of weekly employer contacts from five to three for individuals that reside in a small county as defined by s. 120.52(19), F.S.
- Clarifies that a disqualification for making a fraudulent claim begins when the fraudulent claim was made. Further, this disqualification may continue up to one year from the date DEO discovers the fraudulent claim and until any fraudulent overpayments are repaid in full.
- Amends the statute of limitations related to the collection of overpayments by providing that the commencement of collections must be initiated within 7 years after the redetermination or decision.
- Authorizes the DEO to noncharge the accounts of employers that are forced to lay off workers due to a man-made disaster of national significance.
- Incorporates federal provisions relating to the release of confidential information.

The bill does not have a fiscal impact on state funds.

The bill has an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

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. The program is administered as a partnership of the federal government and the states.

The individual states collect 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).<sup>1</sup> States are permitted to set eligibility conditions for UC benefit recipients, the amount and duration of benefits, and the state tax structure so long as the state provisions are not in conflict with FUTA or Social Security Act requirements. Florida's UC system is funded solely by employers who pay federal and state UC taxes, and is provided at no cost to the workers who receive the benefits.

#### **Program Administration**

The Department of Economic Opportunity (DEO) is the agency responsible for administering Florida's UC laws.<sup>2</sup> DEO contracts with the Department of Revenue to provide unemployment tax collection services.

The United States Department of Labor (USDOL) provides DEO with administrative resource grants from the taxes collected from employers pursuant to FUTA. These funds finance the processing of claims for benefits by DEO, state unemployment tax collections performed by the Department of Revenue, appeals conducted by DEO and the Unemployment Appeals Commission, and related administrative functions.

DEO administers Florida's UC laws through its Office of Unemployment Compensation. The Office of Unemployment Compensation consists of the Unemployment Compensation Benefits Section, the Benefits Payment Control Section, and the Office of Appeals. The Unemployment Compensation Benefits Section handles initial claims, questions about unemployment benefits, and other related issues. The Benefits Payment Control Section monitors the payment of unemployment benefits in an effort to detect and deter overpayment and to prevent fraud. The Office of Appeals holds hearings and issues decisions to resolve disputed issues related to eligibility and claims for unemployment compensation and the payment and collection of unemployment compensation taxes.

#### **Benefit Structure**

State UC taxes are deposited into the UC Trust Fund to pay benefits. Qualified claimants may receive state UC benefits equal to 25 percent of their wages, not to exceed \$6,325 in a benefit year.<sup>3</sup> Benefits range from a minimum of \$32 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.<sup>4</sup>

The number of benefit weeks and total benefit amount is subject to the "Florida average unemployment rate," which is calculated by looking at the most recent or previous year's third quarter and averaging the statewide unemployment rate for those three months. This unemployment rate calculation is then used to determine how many benefit weeks a claimant could receive, depending on the unemployment rate. If the Florida average unemployment rate is 10.5% or higher, a claimant is eligible for up to a maximum of 23 weeks. If the Florida average unemployment rate is 5% or below, the maximum

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<sup>1</sup> FUTA is codified at 26 U.S.C. 3301-3311.

<sup>2</sup> Sections 20.50 and 443.171, F.S.

<sup>3</sup> Section 443.111(5), F.S.

<sup>4</sup> Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday.

number of available weeks is 12. Each 0.5% increment in the unemployment rate above 5% adds an additional week of benefits.

To receive UC benefits, claimants must meet certain monetary and non-monetary eligibility requirements.<sup>5</sup> 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.

#### Monetary Eligibility

Pursuant to s. 443.111(2), F.S., in order to establish a benefit year from which UC benefits can be paid, an individual must:

- Have been paid wages in two or more calendar quarters in the base period; and
- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period.

The base period is the first four of the last five completed calendar quarters immediately before the individual filed a valid claim for benefits.<sup>6</sup> The most recent quarter of work (or fifth completed calendar quarter) is not used to determine monetary eligibility and cannot be credited toward the two-quarter requirement or the \$3,400 requirement.

#### Non-Monetary Determinations

The state's UC laws contemplate that a claimant was employed in the capacity of an employee, and not an independent contractor. A claimant must be unemployed due to layoffs or otherwise through no fault of their own to be eligible for benefit payments. An individual may be disqualified from receiving UC benefits for voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct. The term "good cause" means only that cause attributable to the employer which would compel a reasonable employee to cease work or which consists of illness or disability of the individual requiring separation from work. An individual who voluntarily quits work for a good cause not related to any of the conditions specified in statute will be disqualified from receiving benefits.<sup>7</sup>

Other circumstances under which an individual would be disqualified from receiving unemployment compensation benefits include:<sup>8</sup>

- Failing to apply for available suitable work when directed by DEO, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;
- Receiving remuneration in the form of wages, severance pay, or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception;<sup>9</sup>
- Receiving benefits from a retirement, pension, or annuity program with certain exceptions;
- Receiving unemployment compensation from another state;
- Terminated for any crime committed in connection with work for which the employee was convicted or entered a plea of guilty or nolo contendere, or any dishonest act in connection with his or her work;
- Making false or fraudulent representations in filing for benefits;
- Discharge from employment due to drug use or rejected for offered employment due to a positive confirmed drug test;
- Involvement in an active labor dispute which is responsible for the individual's unemployment;
- Illegal immigration status; or
- Unavailable for work due to incarceration or imprisonment.

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<sup>5</sup> Section 443.091(1), F.S.,

<sup>6</sup> Section 443.036(7), F.S.

<sup>7</sup> Section 443.101, F.S.

<sup>8</sup> Section 443.101, F.S. The statute specifies the duration of the disqualification depending on the reason for the disqualification.

<sup>9</sup> Wages in lieu of notice is income deemed to have been earned in connection with employment. If the employee has received severance pay from an employer, an employee is disqualified from benefits in an amount based on the formula provided in s. 443.101(3)(b), F.S.

### Determination of Eligibility

Based upon information provided with filed claims for benefits, DEO makes an initial determination on entitlement to benefits. A determination becomes final after 20 days have expired.

### Collection of Overpayments

Current law provides several options for the state to recoup overpaid unemployment benefits, including, but not limited to, wage garnishment, deducting any outstanding balance from future unemployment benefits or lottery winnings, and forwarding any unpaid balance to a contracted debt collection agency. However, DEO must obtain a final judgment through the civil court system before it may utilize the wage garnishment process provided for in ch. 77, F.S.<sup>10</sup> Any recovery or recoupment of benefits must be effected within five years of a redetermination or decision for cases involving fraud, and within three years for all other cases of overpayments.

### **Initial Skills Review**

After UC benefits eligibility has been established, a claimant must complete an initial skills review as a reporting requirement under s. 443.091(1)(c), F.S. As established by the DEO, the online initial skills review assessment contains three required sections: applied mathematics, reading for information, and locating information. Test scores measure skill level by dividing each section into three proficiency levels, ranging from a minimum of 3 to a maximum of 5.<sup>11</sup>

The initial skills review administrator reports the results of the review to DEO and the appropriate workforce board or one-stop career center. The workforce board must develop a plan for referring individuals to training and employment opportunities. However, current law does not require a claimant to meet a minimum proficiency standard nor does it obligate a claimant to complete the recommended course of training.

### **Reemployment**

To maintain eligibility for benefits, an individual must also be ready, willing, and able to work and actively seeking work.<sup>12</sup> Claimants are required to contact at least 5 prospective employers for each week of unemployment claimed. DEO may require the claimant to provide proof of such efforts to the one-stop center and may conduct random audits of work search information provided by claimants. As an alternative to contacting at least 5 prospective employers each week, a claimant may report once-a-week in person to a one-stop center to meet with a representative and access reemployment services.

Claimants are automatically registered with their local One-Stop Career Center when their claims are filed. The One-Stop Career Centers provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from the Employ Florida Marketplace with information about employment services or available jobs.<sup>13</sup> Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).<sup>14</sup>

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<sup>10</sup> Section 443.151(6)(e), F.S.

<sup>11</sup> Scoring a "5," indicates foundational career readiness skills for on average 90 percent of jobs. Conversely, scoring a "3," indicates foundational career readiness skills for on average 30 percent of jobs.

<sup>12</sup> Section 443.036(1) and (6), F.S., provide the meaning of the phrases "able to work" and "available for work" as:

- "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.
- Additionally, DEO has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work in Rule 60BB-3.021, F.A.C.

<sup>13</sup> Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and DEO. It provides job-matching and workforce resources. <https://www.employflorida.com>

<sup>14</sup> REAs are in-person interviews with selected UC claimants to review the claimants' adherence to state UC eligibility criteria, determine if reemployment services are needed for the claimant to secure future employment, refer individuals to reemployment services, as appropriate, and provide labor market information which addresses the claimant's specific needs. Florida administers the REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., further sets forth information on reemployment services and requirements for participation.

## **Effect of Proposed Changes**

The bill rebrands the state UC system as a “reemployment assistance program. In order to encourage reemployment, the bill requires a minimum proficiency standard for the initial skills review and provides a training program for claimants that fall short of this standard. The bill also takes additional steps to improve efficiency in the state UC system by revising provisions related to work search requirements, fraudulent claims, recoupment of overpayments, disaster relief, and confidential information.

### **Rebranding of Unemployment Compensation**

The bill rebrands the Unemployment Compensation Law as the Reemployment Assistance Program and makes technical changes to conform ch. 443, F.S., to the new brand. The bill also renames the Unemployment Appeals Commission as the Reemployment Assistance Appeals Commission.

### **Initial Skills Review**

The bill requires DEO to establish a numeric score on the initial skills review which demonstrates a minimum proficiency in workforce skills. If a claimant fails to meet this standard he or she will have the option to undergo skills training as directed by the regional workforce board or one-stop career center. Workforce skills training will be provided at no cost to the individual and will focus on improving a claimant’s workforce skills to the minimum proficiency level. This change may incentivize claimants to proactively improve their workforce skills. The bill also requires the department to submit a program evaluation to the Governor and the Legislature on January 1st, 2013.

### **Improved Efficiency**

The bill makes the following changes to improve the efficiency of the state’s reemployment assistance program:

#### **Work Search Requirements**

The bill reduces the number of weekly employer contacts from five to three for individuals that reside in a small county as defined by s. 120.52(19), F.S.<sup>15</sup>

#### **Fraudulent Claims**

The bill clarifies that a disqualification for making a fraudulent claim begins when the fraudulent claim was made. Further, this disqualification may continue up to one year from the date DEO discovers the fraudulent claim and until any fraudulent overpayments are repaid in full. Under current law, a claimant may be disqualified for a fraudulent claim for up to one year from the date of discovery.

#### **Collection of Overpayments**

The bill amends the statute of limitations related to the collection of reemployment assistance overpayments by providing that the commencement of collections must be initiated within 7 years after the redetermination or decision. This change will impose a single limitations period for both fraudulent and non-fraudulent cases of overpayments.

#### **Disaster Relief**

Related to the charging of employers, the bill authorizes the DEO to noncharge the accounts of employers that are forced to lay off workers due to a disaster of national significance that is not a declared natural disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.<sup>16</sup> Under current law, employer accounts are only noncharged for disasters declared under the Stafford Act. However, this provision does not apply retroactively to previous disasters.

#### **Confidential Information**

The bill provides that the release of confidential information, as it relates to ch. 443, F.S., must conform to certain federal regulations.<sup>17</sup>

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<sup>15</sup> “Small county” means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

<sup>16</sup> The Stafford Act is codified at 42 U.S.C. 5121-5207.

<sup>17</sup> 20 C.F.R. 603

The bill has an effective date of July 1, 2012.

**B. SECTION DIRECTORY:**

Section 1:

Amends s. 443.011, F.S., renaming the Unemployment Compensation Law as the Reemployment Assistance Program.

Section 2:

Amends s. 443.012, F.S., renaming the Unemployment Appeals Commission as the Reemployment Assistance Appeals Commission.

Sections 3-5:

Amend ss. 443.036, 443.051 and 443.071, F.S., defining "reemployment assistance" and conforming references.

Section 6:

Revises s. 443.091, F.S., requiring a minimal proficiency standard for the initial skills review; providing workforce training to certain eligible claimants; revising work search requirements for claimants in small counties; providing for a report to the Governor and the Legislature.

Section 7:

Revises s. 443.101, F.S., clarifying how a disqualification for fraud is imposed.

Sections 8-12:

Amend ss. 443.111, 443.1113, 443.1116, 443.1215, 443.1216, F.S., to conform references.

Section 13:

Revises s. 443.131, F.S., authorizing the Unemployment Compensation Program to noncharge accounts of employers that are forced to lay off workers as a result of a man-made disaster of national significance.

Sections 14-18:

Amend ss. 443.1312, 443.1313, 443.1316, 443.1317, 443.141, F.S., to conform references.

Section 19:

Amends s. 443.151, F.S., revising the statute of limitations related to the collection of unemployment compensation benefits overpayments.

Section 20:

Amends s. 443.163, F.S., to conform references.

Sections 21-22:

Revise ss. 443.171 and 443.1715, F.S., incorporating federal provisions relating to the release of confidential information related to the unemployment compensation program.

Sections 23-83:

In order to update references, the following sections are amended: ss. 443.17161, 443.181, 443.221, 20.60, 27.52, 40.24, 45.031, 55.204, 57.082, 61.046, 61.1824, 61.30, 69.041, 77.041, 110.205, 110.502, 120.80, 125.9502, 212.096, 213.053, 216.292, 220.181, 220.191, 220.194, 222.15, 222.16, 255.20, 288.075, 288.1045, 288.106, 288.1081, 288.1089, 334.30, 408.809, 409.2563, 409.2576, 414.295, 435.06, 440.12, 440.15, 440.381, 440.42, 445.009, 445.016, 446.50, 448.110, 450.31, 450.33, 468.529, 553.791, 624.509, 679.4061, 679.4081, 895.02, 896.101, 921.0022, 946.513, 946.523, 985.618, 1003.496, 1008.39, and 1008.41, F.S.

Section 84:

Provides for an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.