



COLORADO FISCAL
POLICY INSTITUTE

Legislative Issue Brief: Unemployment Insurance

May 2009

The 2009 General Assembly adopted a number of bills that made both small and major changes to the unemployment insurance (UI) system. Taken together, these bills will allow Colorado to climb out of the recession faster, help unemployed workers and their families survive these tough times and better prepare to compete in the future, and lay a stronger foundation for the unemployment insurance system and state budget going forward.

A number of bills made small changes that bring the Colorado's UI system in-line with the current labor force. Originally designed when most families were supported by one (usually male) breadwinner, who spent a career in a single job or single industry before retiring at 65, yesterday's unemployment system often fails to serve the diversity of workers today. The Colorado legislature took steps to change that by passing a bill (HB 1076) that will allow seniors who return to work for economic reasons to receive the same unemployment benefits as younger workers if they're laid off. Another, SB 247, made modest changes that will allow recent entrants to the workforce, such as women returning to work after the birth or care of a child, and very low-wage workers to receive unemployment insurance benefits just as any other worker when they are laid off through no fault of their own. SB 247 also makes modest, but critical, changes that will allow workers who are separated from a job for compelling family reasons, like illness or disability to receive benefits.

Other bills, like HB 1310 and HB 1170, help ensure that businesses comply with current law and treat workers fairly in contract negotiations.

Finally, bills such as HB 1363, which designates the Division of Unemployment Insurance in the Colorado Department of Labor as an enterprise under TABOR, will ensure greater future stability of the UI trust fund, which will benefit the workers, businesses and the state's economy.

On balance, the Colorado General Assembly receives an A- this year for their work on improving the unemployment insurance system.

BILL HB09-1054

Short Title: UI Award Military Death Surviving Spouse

Sponsors: LOOPER / MORSE

Allows the surviving spouse of an active duty member of the United States military, who has been stationed in Colorado and who is killed in combat to claim a full award of unemployment insurance benefits if the surviving spouse relocates to a new place of residence after the death of his or her active duty military spouse from which it is unreasonable to commute to his or her current employment from the

new place of residence; and is available and looking for suitable work upon arrival at the new place of residence. Benefits paid to these workers are considered non-effective charges, meaning employers are not experience rated based on these claims and the benefits are charged to the fund.

Further requires the division of employment and training in the Department of Labor and Employment to track the number of claims made and the amounts awarded to surviving spouses and to submit an annual report to the Business Affairs and Labor Committee of the House of Representatives and the Business, Labor, and Technology Committee of the Senate, or their successor committees, detailing the number of claimants and amounts awarded. Repeals the eligibility for benefits, effective July 1, 2019.

The bill is anticipated to affect less than 20 people per year and have a minimal impact on the UI trust fund and no effect on employer tax rates.

Status

03/25/2009 Governor Action - Signed

BILL [HB09-1076](#)

Short Title: Remuneration From Employment Separation

Sponsors: PACE / TOCHTROP

Treats all remuneration paid to a person due to separation from employment the same for the purpose of calculating the postponement of unemployment insurance benefits. Benefit payments to unemployed workers are typically delayed by the number of weeks of severance that they are awarded. However, in some cases the remuneration paid at separation is classified in such a way that the payment reduces the benefit, rather than delaying the benefit. This change treats all remunerations the same.

Most importantly, this bill eliminates the requirement to reduce UI benefit payments by 50 percent of a worker's Social Security benefit. In tough times, we know that many retirees return to the workforce for economic reasons. When they lose their jobs through no fault of their own, they need and should receive the same benefit as any other worker. This is a basic issue of fairness. Reducing the unemployment payment by 50 percent of the Social Security retirement benefit that the worker receives, as Colorado did before the passage of HB 1076, is not required by federal law and is unnecessarily punitive to older workers. Over the last few years, 17 states have acted to repeal this offset and fortunately Colorado did the same this year. Only 5 states continue this discriminatory practice.

This bill is anticipated to see an overall increase in revenue payments by \$1.2 million in FY2010 and FY2011. The treatment of severance pay will reduce UI benefits by roughly \$3.7 million annually and the elimination of the requirement to reduce benefits when a worker receives Social Security benefits is estimated to increase UI payments by roughly \$5 million per year.

Status

05/11/2009 Sent to the Governor

BILL [HB09-1170](#)

Short Title: Unemployment Insurance Benefits During and Employee Lockout

Sponsors: CASSO / TOCHTROP

Allows an employee who is subject to a lockout initiated by an employer to receive unemployment insurance benefits. Prior to 1999, employees who were forced out of work by their employer during contract negotiations were eligible to receive unemployment benefits since they were deemed to have lost

their job through no fault of their own. This bill partially restores the pre-1999 law by allowing workers who are locked out to remain eligible for benefits if the employer is using the lockout to force some concession on wages, benefits or other “advantage that the employees already possess.” Employees who strike or initiate a work stoppage are not eligible for unemployment benefits.

Unemployment benefits do not replace lost wages, but rather provide limited support for workers who have lost their job through no fault of their own. The threat of losing even this modest support grants employers an unfair advantage in contract negotiations. HB 1170 helps protect working families from unfair and unequal treatment at the bargaining table.

According to Legislative Council staff, labor disputes rarely “escalate to the level of an employer locking out employees” and thus the bill is assessed at having conditional and minimal fiscal impact.

Status

05/11/2009 Sent to the Governor

BILL [HB09-1310](#)

Short Title: Employee Misclassification

Sponsors: LEVY / HEATH

This bill will help enhance compliance with current unemployment laws by creating the Office of Employee Misclassification (office) in the Division of Employment and Training (division) in the Colorado Department of Labor and Employment (CDLE). The Office will investigate complaints of employers misclassifying employees as independent contractors in order to avoid the payment of unemployment premiums on the wages for those employees. The bill authorizes the director of the division to issue orders upon a finding that an employer has misclassified employees. The director may also collect back premiums and interest from an employer who misclassified employees or impose additional fines and penalties when the he or she finds that the employer, with reckless disregard, misclassified employees.

The bill also requires that CDLE conduct a statewide study to determine the scope of the problem of employee misclassification, including whether the problem is widespread, whether particular industries are more inclined to engage in the practice, estimates of state revenues lost or not collected due to employee misclassifications, and whether a uniform definition of "employment relationship" is needed. The Executive Director of CDLE must submit the report to the General Assembly within two years.

This bill is anticipated to increase revenue to the unemployment insurance fund as employers that violate the law are required to pay premiums on the wages of misclassified employees and should reduce misclassification in the future.

Status

05/11/2009 Sent to the Governor

BILL [HB09-1363](#)

Short Title: Designate UI Division as an Enterprise Under TABOR

Sponsors: FERRANDINO / VEIGA

HB 1363 designates the unemployment compensation section of the Division of Employment and Training in the Department of Labor and Employment as an enterprise for purposes of section 20 of article X of the state constitution (TABOR), as long as the section retains the authority to issue revenue bonds and receives less than 10% of its total annual revenues in grants from state and local governments as required by TABOR. The division will continue its functions consistent with current law. The bill further requires employers to pay premiums, premium surcharges, and a solvency surcharge, when applicable, instead of taxes, in order to provide for unemployment compensation benefits for workers who become unemployed and eligible for such benefits.

HB 1363 is a smart move to detangle the volatile unemployment insurance (UI) trust fund from the state's general fund. In most states, UI taxes are separate from the overall state budget and general revenue appropriations. In Colorado, as in other states, UI trust funds are restricted for UI benefits and UI administration. However, in Colorado, TABOR creates an odd intermingling of the State's budget with the UI system. Even though UI funds are restricted cash funds, they count against the State's total allowable revenue limit (fiscal year spending) under TABOR. This means that every dollar brought into the UI trust fund that sends the State over the allowable TABOR revenue limit a dollar is refunded out of the General Fund. This discourages, rather than encourages, the growth of the trust fund during economic booms, and therefore reduces the effectiveness of the UI program overall. It forces CDLE and the Legislature to try to strike a balance between what's good for the trust fund and what's good for the general fund, which prevents either from operating as effectively or as efficiently as they could.

While it is a complicated issue, this simple fact is that this bill will allow the UI system to work more effectively as a counter-cyclical program and automatic economic stabilizer. It should help prevent the danger of increasing UI revenues forcing a general fund TABOR refund during or shortly after an economic downturn when demand for general fund services are at their highest. Altogether, detangling the UI system from the general budget process is good for employers, good for workers and good fiscal policy for Colorado.

Status

05/06/2009 Senate Third Reading Passed

BILL [SB09-178](#)

Short Title: Unemployment Insurance for Workers Attached To Regular Jobs

Sponsors: HEATH / LISTON

This bill recommended out of the Joint Select Committee on Job Creation and Economic Growth specifies that during a recession, the director of the Division of Employment and Training shall waive a requirements for employees attached to regular jobs to register for work and report to an employment office as a condition of being eligible to receive UI benefits after 16 weeks, but before 26 weeks of unemployment. Typically, unemployed workers who receive unemployment insurance must register with and report to an employment office every week that they receive a UI benefit. This bill applies to workers who are laid off due to a temporary lack of work from their current or most recent employer, but who anticipate returning to work with that employer. Under current law, these workers are typically granted a

maximum 16 week waiver of the requirement and this bill will extend that waiver to 26 weeks (the maximum length of time any worker can collect regular UI benefits).

Legislative council staff projects that the bill will affect roughly 500 claimants and increase UI benefit payments out of the UI trust fund by roughly \$850,000.

Status

05/06/2009 Sent to the Governor

BILL [SB09-247](#)

Short Title: Expand UI Benefits for Federal Stimulus Moneys

Sponsors: TOCHTROP / PACE

The American Recovery and Reinvestment Act included a total of \$7 billion in financial incentives to states to close major gaps in the unemployment insurance system. There are a limited number of modernizations that are needed to Colorado's unemployment insurance system in order for the state to collect more than \$127.5 million in these incentives. SB 247 makes these changes.

In order to qualify for one-third of its unemployment modernization funding or \$42.5 million and be eligible to receive any incentive funds, Colorado needed to adopt an "alternative base period" which counts a worker's recent earnings when needed in order to qualify that worker for unemployment insurance (UI) benefits.

When a worker loses a job through no fault of their own and files an unemployment claim, all states use a base period, or "look-back" period, to determine eligibility and benefits. The ABP provides an option for some unemployed Coloradans, mostly low-wage workers and recent entrants to the workforce, to shift the look back period to include more of their recent earnings when determining UI eligibility.

Over 40% of workers who fail to qualify for benefits because of insufficient earnings (whose earnings average just \$9.00/hour) are able to collect benefits with the help of the alternative base period. Nineteen other states have already adopted this alternative. In Colorado, the number of workers who did not meet the monetary eligibility requirement of \$2,500 was estimated in 2008 to be 1,500 of our state's most vulnerable wage-earners. The ABP is used only if the worker does not earn the \$2,500 in the regular base period.

After enacting the ABP, states could receive additional federal funding by implementing additional "modernizing" reforms. Colorado law ALREADY covers most of the required reforms. However, with small changes to these provisions, made by SB 247, Colorado is set to receive \$84.9 million in additional funds to help our economy and struggling, unemployed workers.

The reforms made by SB 247 included changes to Colorado's current provisions that allows workers who are separated from a job due to compelling family reasons to be eligible for UI benefits. Those compelling family reasons are domestic violence, illness or disability of themselves or a family member and forced relocation because a spouse is transferred or finds employment in a new location.

SB 247 also temporarily allows unemployed workers who are involved in approved training programs to receive an additional 50% of their regular weekly benefit amount for a period of up to 20 weeks. Approved training programs are those that are targeted to locally determined high-demand occupations, stable employment or employment in the renewable energy sector AND that are likely to enhance the

worker's marketable skills and earning power. (This section is capped at \$15 million over 3 years and sunsets in 3 years).

Finally, SB 247 implemented a new economic trigger which will allow unemployed workers who have exhausted regular and emergency UI benefits and are still unemployed to receive an additional 13-20 weeks of federally funded benefits during times of high unemployment. Adopting this trigger was necessary to help those workers most affected by the recession receive additional support fully paid for by the federal government as part of the economic stimulus bill. This money goes directly to unemployed Coloradans and is not included in the \$127 million awarded to the state for the above reforms.

SB 247 helps Colorado draw down \$127.5 million in federal incentive payments and reap the economic benefit of additional federal money going directly to families. According to Mark Zandi, Chief Economist of Moody's Economy.com, every \$1.00 of unemployment insurance generates \$1.64 in local economic benefit. That \$127.5 million will go a long way toward jumpstarting rural and urban economies across the state and moving Colorado out of the recession faster. More over, SB 247 will boost the solvency of the UI Trust fund and, most importantly, help workers hit hard by the recession survive today and put them on a better path to compete tomorrow.

Status

05/06/2009 Sent to the Governor

BILL [SB09-258](#)

Short Title: Employee Leasing Company Acts By CDLE

Sponsors: VEIGA / SCANLAN

Repeals the provision that makes an employee leasing company the only employing unit for covered employees for the purpose of calculating unemployment taxes. Allows employee leasing companies to make a one-time election to report payroll under a single account for each work-site employer, with the right to make a one-time change from reporting as a single account to reporting as the employing unit. Makes the employee leasing company liable for the payment of all unemployment taxes regardless of the election made.

Assessed at having no fiscal impact to the state.

Status

05/06/2009 Sent to the Governor

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