

## **Revisions to Unemployment Insurance (UI) Contributions, Benefits, and Administration of the UI Trust Fund; Sub. for HB 2105**

**Sub. for HB 2105** revises provisions of employment security laws, commonly referred to as Unemployment Insurance (UI), pertaining to contributions paid by employers, eligibility for UI benefits, and the administration of the UI System by the Department of Labor (Department). The bill also adds a statement regarding neutral interpretation of employment security law.

### ***Contributions Paid by Employers***

The bill increases the taxable wage base, starting in calendar year 2015, from the current \$8,000 to \$12,000, and in calendar year 2016, from \$12,000 to \$14,000.

The contribution rate for new non-construction employers, employers with less than 24 months of payroll experience, decreases from 4.0 percent of wages paid to 2.7 percent, provided the employer files all reports and pays all contributions by January 31. The reduced rate does not become effective until the Unemployment Insurance Trust Fund's average high cost multiple falls below 1.0, as of the computation date. The contribution rate for new construction employers remains at 6.0 percent of wages paid.

Non-negative balance employers are eligible to receive a rate discount of 25.0 percent if all reports are filed and all contributions are made by January 31. This discount does not apply if other discounts provided by current law are in effect or if the average high cost multiple for the Unemployment Insurance Trust Fund is less than 1.0.

The bill revises the surcharge rates for the 20 negative balance employer groups. The surcharge rate for the first group is 0.1 percent, and the surcharge for each subsequent group increases by 0.1 percent. The surcharge for the twentieth group is 2.0 percent. The surcharge ceases to apply after calendar year 2014.

If an employer exhibits a "pattern of failure," which the bill defines to mean the number of failures to respond to fewer than two times or less than 2.0 percent of prior requests made by the Department for information, whichever is greater, the Department may not relieve an employer's account of charges relating to a payment made erroneously.

The deadline for the Secretary of Department of Labor to notify employers of their UI contribution rates for the subsequent rate year is November 30. Previously, no deadline was specified in statute.

### ***Eligibility for Unemployment Insurance Benefits***

The bill repeals the alternative means for calculating an individual's wage base period, due to the expiration of federal funding under the American Recovery and Reinvestment Act (ARRA) of 2009. The bill also revises the definition of "part-time employment" by deleting reference to "two or more employers."

When calculating the weekly benefit payable, the bill re-classifies holiday pay as wages attributable to a week the individual claimed benefits, deleting reference to vacation pay attributable to a week while work was temporarily interrupted. If an individual received severance pay, the person's weekly UI benefit is reduced by the amount of severance paid, adjusted to a weekly amount, until the total severance amount is exhausted.

Under law previously enacted, an individual who voluntarily leaves employment without good cause is disqualified for benefits. The bill defines "good cause" to mean a cause of such gravity that a reasonable, non-supersensitive person, exercising ordinary common sense, would leave employment. Good cause also requires a showing of good faith of the individual leaving work. Twelve exceptions in the law prevent a person from being disqualified for benefits, however. The seventh exception, pertaining to harassment, specifies the harassment would impel the average worker to give up employment. The tenth exception, pertaining to violation of the work agreement by the employer, requires the violation to be substantial, and demotion based on performance does not constitute a violation of a work agreement.

The definition of "misconduct" is revised to include violation of a company rule if the employee knew or had reason to know the rule, the rule was lawful and reasonably related to the job, and the rule was fairly and consistently enforced. Misconduct also includes tardiness and leaving work early without prior permission. The definition of "gross misconduct" is revised to include theft, fraud, intentional damage to property, intentional infliction of personal injury, or conduct that results in a felony. Misconduct, under KSA 44-706 (b), disqualifies an individual from UI benefits until the person is reemployed and has earnings equal to three times the weekly UI benefit amount. Gross misconduct disqualifies the individual until the person is reemployed and has earnings equal to eight times the weekly UI benefit amount.

Under existing law, an employee's discharge for misconduct is grounds for disqualification of UI benefits. The bill also includes an employee's suspension for misconduct as grounds for disqualification for the duration of the separation from employment.

The bill reorganizes the existing provisions pertaining to alcohol and drug use on the job and includes four substantive changes:

- The reason for testing changes from probable cause on the part of the employer to reasonable suspicion;
- Alcohol or drug use is reclassified from misconduct to gross misconduct;
- An individual tampering with a chemical test is conclusive evidence of gross misconduct; and
- An alternative definition for "positive breath test" includes reference to test levels listed in 49 C.F.R. 40, if applicable.

If a person makes a false statement or misrepresentation, the bill lengthens the disqualification period from one year to five years.

Starting in benefit year 2014, a person ineligible for a maximum of 16 weeks of benefits if the unemployment rate for Kansas is less than 4.5 percent. If the unemployment rate is equal to or greater than 4.5 percent but less than 6.0 percent, a person is eligible for a maximum of 20 weeks of benefits. If the unemployment rate is equal to or greater than 6.0 percent, a person is eligible for a maximum of 26 weeks of benefits. For purposes of this provision, the bill calculates the unemployment rate at the beginning of a benefit year, using a three-month, seasonally adjusted average. Under previous law, persons were eligible for a maximum of 26 weeks of benefits regardless of the unemployment rate.

### ***Administration of the Unemployment Insurance System***

The bill adds an exception to the time limit for appeal, allowing the referee or the Board of Review to waive or extend the time limit of 16 days if an appeal was impossible because of excusable neglect. The Department may collect for overpayments by passing federal offset costs on to claimants who have an overpayment gained through fraud. A penalty equal to 25 percent of any benefits unlawfully received shall be charged.

The State Employment Security Advisory Council (Council) is abolished. The Council was appointed by the Secretary to provide advice on the administration of the UI System. The Secretary reports annually to the Legislative Coordinating Council on the condition of the state's account in the Federal Employment Security Trust Fund. Previously, the Secretary made the report to the Governor and the Council.

The Secretary may hire special investigators with law enforcement capabilities to investigate UI fraud, tax evasion, and identity theft.