

SB 105

REVISE UNEMPLOYMENT INSURANCE LAWS

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

SPONSOR - SEN. ELSIE ARNTZEN SD 26

EXHIBIT 3
DATE 2/10/2015
SB 105
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SUMMARY OF CHANGES OR ACTUAL AMENDMENT LANGUAGE

Sections 1 and 3: Change the "Board of Labor Appeals" to the "Unemployment Insurance Appeals Board" to more accurately reflect the type of appeals over which the board has jurisdiction. [Page 1, lines 18-20; page 4, line 13]

Section 2: Corrects a cross reference in 15-31-150 to the right subsection in 39-51-201. [Page 3, line 11]

Section 4: Clarifies that the exclusion of certain services from the definition of employment applies only to state and local government and non-profit employers (i.e., religious, charitable, scientific, literary, or educational), by moving language from subsection (1) to subsection (2) of 39-51-204. [Page 10, line 28 to page 11, line 11; page 12, line 24-25; page 12, line 29 to page 13, line 1-15]

Section 5: Clarifies that the Department will not adjust wages or issue a credit or refund if the wages were used to establish benefit eligibility and more than two years (three, in case of a false claim or failure to disclose a material fact) have passed since the original benefit claim determination was issued. [Page 14, lines 5-7]

Section 6: Clarifies that an employer may not challenge tax rate schedules and the method of calculation established by statute in an appeal from a determination or redetermination of experience factors or major industrial classification. [Page 14, line 5-7]

Section 7: Changes the trigger for rate change on governmental accounts from two years to one year when benefit charges exceed contributions paid. [Page 15, line 13]

~~**Section 8:** Prevents application of the 50% penalty rate against an employer's account if unpaid taxes, penalties, and interest are \$50 or less as of the cutoff date for the assignment of an employer's contribution rate for the next tax year. [Page 17, line 4-5]~~

Sections 9-13 and Section 6 (1): Changes "mailed" to "sent" as applied to providing a party with notice of a transfer of experience rating [page 17, line 24]; determination or redetermination of a claim [page 14, lines 20-21 & page 20, lines 23-25]; or a hearings decision [page 21, line 9-10] and determining finality of a board decision or timeliness of request for judicial review. [Page 21, lines 24-30 & page 22, lines 1-5]

Sections 14-15: *Senator Arntzen will propose an amendment to strike sections 14-15 from the bill. The Department supports that amendment.*

OVERVIEW OF DEPARTMENT'S POSITION

SB 105 is the Unemployment Insurance Division's general revision bill. It includes two policy proposals, several administrative process changes, and two technical corrections. The Division seeks to withdraw the policy change offered in **Section 14**.

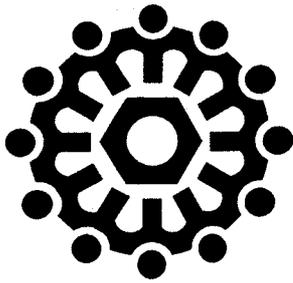
POLICY PROPOSALS

Section 7 of SB 105 brings the rate adjustment cycle for governmental accounts in line with that of experienced rated private employers: annual adjustment. Governmental entities are intended to be "self-funded" - having a small reserve, though one that is large enough to pay for its own benefit costs throughout the year without going deficit. Under current law, there is two year lag between benefit charges exceeding the contributions paid and an increase in governmental rates.

The proposed change will trigger an increase in the government rate schedule when benefit charges exceed contributions paid in the past completed state fiscal year. This will minimize the possibility of governmental employers being subsidized by private employers in terms of relative contributions paid and benefits awarded. Depending on the UI Trust Fund balance, this disparity could impact rate schedules for experience rated employers.



Montana Department of
LABOR & INDUSTRY



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OVERVIEW OF DEPARTMENT'S POSITION *CONTINUED...*

~~Section 8 eliminates the penalty rate for employers who owe \$50 or less in unpaid taxes, penalties, and interest to the UI Division as of the cutoff date for next year's rate determination. Each December, employers are notified of their UI contribution rate for the following tax year; if an employer has a delinquent wage report or tax due, the employer is advised that an penalty rate of an additional 50% assessment on their assigned rate will be applied unless the delinquent report(s) and tax due is paid in full within 30 days.~~

~~Often, employers will submit the missing report(s) and pay the tax due but not include the \$25 late filing penalty or the accrued interest (1.5%/month), provided for 39-51-1301. As a result, there is still a balance due on the account and the penalty assessment kicks in. This proposal will keep employers who owe a relatively small amount due to earlier inaction from being penalized into the next year. Based on 2015 contribution penalty rate information, 263 employers would have avoided a penalty rate if this proposal was in effect, including 240 small employers (< 10 employees), 21 employers with more than 10 but less than 50 employees and 2 employers with \pm 50 employees.~~

ADMINISTRATIVE PROCESS CHANGES

Sections 1 and 3 of SB 105 propose that the name of the "Board of Labor Appeals" be changed to the "Unemployment Insurance Appeals Board." This change will more accurately describe the Board's jurisdiction and help eliminate confusion.

Section 5 clarifies that a credit or refund will not be made or wages adjusted if the wages were used to establish benefits eligibility and more than two years (three years, in the case of a false claim or failure to disclose a material fact) has elapsed since issuance of a determination on the original benefit claim. This change promotes finality in administrative decision-making processes.

Currently, when an employer amends wages previously reported for an employee and those wages are reduced or eliminated, the employer receives a credit for the tax paid on those wages. If the now-adjusted wages relate to a UI benefit claim determination and that determination was made more than two years ago, the benefit determination cannot be revised pursuant to 39-51-2402. The same standard should apply to wage adjustments and benefit revisions. Otherwise, the UI Trust Fund is adversely impacted when an employer is afforded a credit long after a benefit determination using the original wage report has been settled.

Section 6 clarifies that the administrative hearing process is not the proper forum for challenges to statutorily established tax rate schedules and the methods of calculations. Those types of challenges should be brought in the district court.

Changes proposed in **sections 9-13** will allow the department to move to electronic transmission of documents to claimants and employers when technologically feasible.

TECHNICAL CORRECTIONS

Section 2 corrects an internal reference to another statute.

Section 4 aligns Montana exceptions with the Federal Unemployment Tax Act (FUTA). When legislation was passed in 1997 to partially harmonize employment exemptions for state workers' compensation and unemployment insurance, exemptions that should apply specifically to governmental and non-profit settings were placed elsewhere. Recently, questions were raised as to the application of these exemptions to other types of employment. The Department researched the legislative history and discovered the error. The realignment of the exemptions comports with the original intent of the law.