

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0774-01
Bill No.: HB 714
Subject: Employment Security; Disabilities; Boards, Commissions, Committees, Councils;
 Labor and Industrial Relations Department
Type: Original
Date: March 20, 2013

Bill Summary: This proposal modifies the definition of employment as it relates to employment security law.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
UC Administration Fund	\$0 or (\$46,000,000)	\$0 or (\$46,000,000)	\$0 or (\$46,000,000)
Wagner-Peyser Administration Fund	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)	\$0 or (\$13,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$59,000,000)	\$0 or (\$59,000,000)	\$0 or (\$59,000,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume the federal government and state governments are jointly responsible for administering the unemployment insurance (UI) system. State laws must meet certain federal requirements for the state agency to receive the administrative grants needed to operate its UI program and for employers to qualify for certain tax credits.

This bill would not include in-home or community-based services performed by a provider contracted to provide such services for the clients of a county board for developmental disability services in the definition of employment. These services may be required to be covered if they are in an employment relationship under Federal law. Therefore, this bill raises an issue with federal law.

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires, as a condition for employers in a state to receive credit against the Federal tax, that Unemployment Compensation be payable based on certain services. Specifically, Unemployment Compensation must be payable based on services excepted from the Federal definition of employment (1) solely by reason of being performed for state and local governmental entities or federally recognized Indian tribes described in Section 3306(c)(7), FUTA, or (2) solely by reason of being performed for the nonprofit organizations described in Section 3306(c)(8), FUTA.

Whether services are performed in an employer-employee relationship for purposes of this required coverage is governed by Federal law. Specifically, Section 3306(i), FUTA defines "employee" by referring to the common law test found in Section 3121(d) of the Internal Revenue Code. Internal Revenue Service regulations at 26 C.F.R. 31.3306(i)-1 provide that every individual is an employee if the relationship between the individual and the person for whom service is performed has the legal relationship of employer and employee:

The regulations go on to state that "it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so." If an employer-employee relationship exists, then "it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like."

Whether an individual is an employee must be determined under a state law test at least as stringent as the above Federal common law test of direction and control. As a result, the facts must be examined to determine if direction and control exist under a test at least as stringent as the common law test, or whether they could exist. Since nothing in this bills precludes the

ASSUMPTION (continued)

possibility that the persons providing these in-home or community-based services could, in fact, be employees under the common law test, an issue is raised.

Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri could lose approximately \$46 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri could lose the approximately \$13 million in federal funds each year the Department of Economic Development-Division of Workforce Development uses for Wagner-Peyser re-employment services.

The Federal Unemployment Tax Act (FUTA) imposes a 6.0% payroll tax on employers. Most employers never actually pay the total 6.0% due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4% against the FUTA payroll tax if the state UI law is approved by the Secretary of Labor. However, if this bill causes Missouri's program to be out of compliance or out of conformity, Missouri employers could pay the full 6.0%, or approximately an additional \$859 million per year.

In addition to the conformity issue with federal law, this bill could have negative federal tax consequences for the providers covered under this subsection. Conformity issue aside, if the employing unit meets the statutory threshold for coverage under FUTA, the services would be subject to the full FUTA tax of 6.0%. Most employers do not actually pay the total 6.0% due to credits they receive for paying state unemployment taxes timely and in full. If an employer does not pay state unemployment tax on these services as a result of this bill and the IRS determines an employee/employer relationship exists, the employer would be required to pay the full 6.0% FUTA tax.

Officials at the **Department of Health and Senior Services, Department of Mental Health, St. Louis County** and the **Department of Social Services** each assume there is no fiscal impact to their organization from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
UC ADMINISTRATION FUND			
<u>Loss- UC Administration Fund</u>	<u>\$0 or</u>	<u>\$0 or</u>	<u>\$0 or</u>
Loss of federal funds	(\$46,000,000)	(\$46,000,000)	(\$46,000,000)
ESTIMATED NET EFFECT ON UC ADMINISTRATION FUND	<u>(\$46,000,000)</u>	<u>(\$46,000,000)</u>	<u>(\$46,000,000)</u>
WAGNER-PEYSER ADMINISTRATION FUND			
<u>Loss- Wagner-Peyser Admin Fund</u>	<u>\$0 or</u>	<u>\$0 or</u>	<u>\$0 or</u>
Loss of federal funds	(\$13,000,000)	(\$13,000,000)	(\$13,000,000)
ESTIMATED NET EFFECT ON WAGNER-PEYSER ADMINISTRATION FUND	<u>(\$13,000,000)</u>	<u>(\$13,000,000)</u>	<u>(\$13,000,000)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses could be impacted by paying higher FUTA rates.

FISCAL DESCRIPTION

This bill specifies that for the purposes of the employment security laws, the term “employment” will not mean in-home or community-based services performed by a provider contracted to provide the services for the clients of a county board for developmental disability services organized and commonly known as “SB 40 boards”; however, the vendor will be responsible for the payroll and fringe benefits accounting functions for the consumer.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Department of Health and Senior Services
Department of Mental Health
Department of Social Services
St. Louis County



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