

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1084-01
Bill No.: HB 532
Subject: Fees; Attorneys; Courts; Labor and Industrial Relations Department
Type: Original
Date: February 15, 2013

Bill Summary: This proposal allows an employer to receive fees and expenses by Department of Labor and Industrial Relations if an employer prevails in a suit or appeal based on an audit reclassifying a person or entity from an independent contractor to an employee.

FISCAL SUMMARY

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

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 5 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

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 (DOL)** assume per this proposal, DOL's - Division of Employment Security (DES) would pay fees and expenses if the DES determines that an independent contractor is misclassified as an employee and the employer wins an appeal reversing this decision. This bill would create a cost to the DES and would increase the number of appeals heard by the DES.

The bill is ambiguous as to how the DES will pay these fees and expenses. The United State Department of Labor (USDOL) has informally reviewed this bill and determined that if the bill requires these fees and expenses to be paid with monies from the Unemployment Compensation (UC) administrative grant or from the state UC trust fund, this bill will raise issues with federal law.

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.

If this bill requires that the fees and expenses be paid from the UC administrative grant, it will raise an issue with federal law. Section 303(a)(8) of the Social Security Act limits the expenditure of UC grant funds to amounts necessary for "the proper and efficient administration" of the State's UC law. Fees for an employer's attorney for litigation are not considered a necessary expense for the "proper and efficient administration" of the State's UC law; therefore, they are not allowable expenditures from the State's UC grant.

If this bill requires that the fees and expenses be paid from the state unemployment trust fund, it will raise an issue with federal law. Section 3304(a)(4) of the Federal Unemployment Tax Act (FUTA) requires, as a condition for employers in a state to receive credit against the Federal tax, that state law provide that:

"All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund..."

Section 303(a)(5) of the Social Security Act (SSA) provides a similar requirement as a condition for a state to receive administrative grants. These provisions, known as the "withdrawal standard," mean that money may only be withdrawn from the unemployment fund for payment of

ASSUMPTION (continued)

UC and to refund money paid into the fund in error.

Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$46 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would 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 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 would pay the full 6.0%, or approximately an additional \$859 million per year.

Officials at the **Office of Administration** defer to the Department of Labor and Industrial Relations for fiscal impact.

Officials at the **Office of Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Oversight assumes that since this proposal does not identify a fund to make the legal payments, then General Revenue would be responsible for making the payments. Since, it is unclear if any payments would need to be made, Oversight will range the impact as \$0 (no payments made) to Unknown.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE			
<u>Cost - Department of Labor and Industrial Relations - payment of legal fees</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</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 the FUTA rate.

FISCAL DESCRIPTION

This proposal requires an employer to be awarded reasonable fees and expenses, including attorney fees, if the employer prevails in a suit or appeal based on an audit by the Department of Labor and Industrial Relations reclassifying a person or entity from an independent contractor to an employee.

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
Office of Attorney General
Office of Administration



Ross Strope
Acting Director
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