HB 1257

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1257 (Delegate Adams)
Economic Matters

Labor and Employment - Workplace Fraud Provisions - Repeal

This bill repeals specified provisions of the Workplace Fraud Act of 2009 and makes conforming changes. Generally, the provisions that are repealed relate to the enforcement of the Act through the Worker Classification and Protection Unit (WCPU) in the Department of Labor, Licensing, and Regulation (DLLR). A related funding mechanism is repealed. Other provisions established by the Act that apply to unemployment insurance (UI) and workers' compensation insurance are left unchanged.

Fiscal Summary

State Effect: Special fund revenues and expenditures for DLLR decrease by $728,700 in FY 2017, escalating to $1.1 million by FY 2021, which reflects the dissolution of WCPU in DLLR, including its funding source through the Workers' Compensation Commission (WCC). State expenditures (all funds) decrease minimally due to a lesser assessment charged by WCC to all employers, including the State. General fund revenues decrease by $112,500 in FY 2017 and by $150,000 annually thereafter from forgone fine revenues. General fund revenues further decrease beginning in FY 2017, to the extent that the bill leads to reduced employer compliance with income tax withholding rules and reduced workers' compensation premiums. The amounts cannot be reliably estimated at this time.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	($112,500)	($150,000)	($150,000)	($150,000)	($150,000)
SF Revenue	($728,700)	($1,000,700)	($1,030,700)	($1,061,600)	($1,093,500)
SF Expenditure	($728,700)	($1,000,700)	($1,030,700)	($1,061,600)	($1,093,500)
GF/SF/FF Exp.	(-)	(-)	(-)	(-)	(-)
Net Effect	($112,500)	($150,000)	($150,000)	($150,000)	($150,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Unemployment Insurance Trust Fund (UITF) Effect: To the extent that the bill leads to more individuals classified as independent contractors rather than as employees, UITF revenues decrease from reduced employer taxes and UITF expenditures potentially decrease from reduced benefits paid beginning in FY 2017. The amounts cannot be reliably estimated at this time.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: To the extent that the bill leads to more individuals classified as independent contractors rather than as employees, Chesapeake's revenues from workers' compensation insurance premiums decrease and claims costs potentially decrease beginning in FY 2017. The amounts cannot be reliably estimated at this time.

Local Effect: Local expenditures decrease minimally due to a lesser assessment charged by WCC to all employers, including local governments. Revenues are not materially affected.

Small Business Effect: Meaningful. Small businesses in landscaping and construction industries are no longer subject to enforcement of worker classification laws by WCPU. To the extent that the bill leads to more individuals classified as independent contractors rather than as employees, UI costs, workers' compensation insurance costs, and other costs of directly employing individuals decrease.

Analysis

Current Law/Background: Chapter 188 of 2009 (the Workplace Fraud Act) established, for the purpose of enforcement only, a presumption that work performed by an individual paid by an employer creates an employer-employee relationship, subject to specified exemptions. It prohibits construction companies and landscaping businesses from failing to properly classify an individual as an employee and establishes investigation procedures and penalties for noncompliance.

The "ABC test" incorporated in the Workplace Fraud Act is used by DLLR to establish whether an employer-employee relationship exists for the purpose of determining whether an employee has been misclassified under the Act. While only used to detect workplace fraud in the specified industries, DLLR is required to use the ABC test in determining whether an individual is an employee in any industry for the purpose of determining whether the employer should pay UI for the individual. The ABC test has three components, all of which must be met to establish that an individual is an independent contractor and not an employee:

A. the individual is free from control and direction over his or her performance both in fact and under the contract (Alone);

B. the individual customarily is engaged in an independent business or occupation (Business); and

C. the work performed is outside the usual course of business, or outside the place of business, of the person for whom work is performed (Control).

The provisions repealed by the bill are enforced by WCPU within DLLR. Although the unit is a subprogram of the general funded Employment Standards and Classification program, the unit utilizes special funds from WCC to cover its expenditures, as required by law. The Governor's proposed fiscal 2017 budget includes $972,000 for the unit and 10.5 positions.

In calendar 2015, WCPU received 106 complaints related to misclassification of employees and opened 518 cases, including those initiated by the Commissioner of Labor and Industry. The unit issued 145 citations for misclassification and another 65 for nonresponse by employers.

State Fiscal Effect: Special fund revenues and expenditures for DLLR decrease by $728,700 in fiscal 2017, escalating to $1.1 million by fiscal 2021, which reflects the dissolution of WCPU in DLLR, including its funding source through WCC. Fiscal 2017 reflects the bill's October 1, 2016 effective date; future years reflect annualization and inflation. As WCC is no longer required to fund WCPU, State expenditures (all funds) decrease minimally due to a lesser assessment charged by WCC to all employers, including the State.

Based on recent averages of fines collected from WCPU enforcement activities, general fund revenues decrease by $112,500 in fiscal 2017 and by $150,000 annually thereafter from forgone fine revenues. General fund revenues further decrease beginning in fiscal 2017 to the extent that the bill leads to reduced employer compliance with income tax withholding rules for individuals classified as independent contractors rather than employees. The amount cannot be reliably estimated at this time.

There is a 2% tax issued on all insurance premiums in the State; therefore, general fund revenues decrease beginning in fiscal 2017 to the extent that the bill leads to reduced workers' compensation premiums. The amount cannot be reliably estimated at this time.

UITF Effect: To the extent that the bill leads to more individuals classified as independent contractors rather than as employees, UITF revenues decrease from reduced employer taxes beginning in fiscal 2017. The amount cannot be reliably estimated at this time.

The number of UI claims may also decrease beginning in fiscal 2017 under the bill; however, any such decrease is not expected to be significant. Under both current law and the bill, a misclassified employee who files a claim may receive UI benefits provided that DLLR finds that the employer improperly classified the employee. In such cases, the employer is then responsible for unpaid UI taxes. The amount cannot be reliably estimated at this time.

Chesapeake Effect: As the insurer of last resort for workers' compensation for the State, Chesapeake must provide insurance coverage for those who cannot otherwise obtain or afford private-sector workers' compensation plans. Therefore, to the extent that the bill leads to more individuals classified as independent contractors rather than as employees, Chesapeake's revenues from workers' compensation insurance premiums decrease beginning in fiscal 2017. The amount cannot be reliably estimated at this time.

Although workers' compensation claims may decrease beginning in fiscal 2017 under the bill, any such decrease is not expected to be significant. Under both current law and the bill, a misclassified employee who files a claim due to injury on the job may receive workers' compensation benefits provided that WCC finds that the employer improperly classified the employee. In such cases, the employer is then responsible for the workers' compensation benefits owed to the employee. The amount cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510