

PROGRAM BILL # 312

GOVERNOR'S PROGRAM BILL

2010

MEMO

AN ACT to amend the labor law, in relation to unemployment insurance benefits, contributions, and partial unemployment; and to repeal subdivision 4 of section 575-a of such law relating to penalties relating to wage information

PURPOSE:

This bill would amend the Labor Law to enact significant reform of the State's system for unemployment insurance (UI). Specifically, the bill would: (1) increase and index the maximum benefit available to beneficiaries of the UI program; (2) establish a minimum benefit, and increases unemployment insurance benefits for low-wage earners; (3) take steps to stabilize the solvency of the UI Trust Fund by increasing the taxable wage base on which UI contributions are calculated and by eliminating the lowest tax brackets for employers with positive experience ratings; (4) increase and index the wage thresholds that trigger employer obligation to pay UI contributions; (5) allow for non-charging to employer accounts for charges associated with UI benefits resulting from loss of employment for compelling family reasons; (6) increase requalification requirements for certain individuals; (7) increase penalties associated with willful false statements and misrepresentation for the purpose of obtaining benefits; (8) establish penalties for employers who fail to keep or furnish required employment-related records for UI purposes; and (9) repeal Labor Law § 575-a(4).

SUMMARY OF PROVISIONS:

Section 1 of the bill would amend Labor Law § 518(1)(a) to increase the taxable wage base on which unemployment insurance contributions will be measured. The maximum taxable wage will increase in annual incremental steps starting on January 1, 2011 and ultimately be indexed to 18% of average annual wage on January 1, 2019. The bill includes provisions for increasing the taxable wage base if the UI Trust Fund falls below 1.25% of aggregate taxable wages on December 31 of the prior year and reducing the taxable wage base if the UI Trust Fund exceeds 1.7% of aggregate taxable wages on December 31 of two consecutive years.

Section 2 of the bill would define "average weekly wage" and "average annual wage."

Section 3 of the bill would amend Labor Law § 560(1) to change the amount of remuneration an employer must pay in any calendar quarter to all non-domestic employees to be liable for UI contributions, from \$300 to 1% of the State's average weekly wage rounded upwards to the nearest ten dollars, which at present would be just

under \$600. It would increase the remuneration floor for an employer of domestic workers from \$500 to 1½ % of the average weekly wage rounded up to the nearest ten dollars, which at present would be just under \$900.

Section 4 of the bill would amend Labor Law § 581(e)(3) to provide that charges associated with receipt of UI benefits for individuals who voluntarily quit employment for compelling family reasons (domestic violence, illness of a family member, or to follow a spouse to new employment) would not be charged to the employer's account, but would instead be charged to the UI General Account.

Section 5 of the bill would amend Labor Law § 581(2) to eliminate the six lowest tax rates for employers with a positive employer account percentage.

Section 6 of the bill would amend Labor Law § 590(5) to establish a minimum UI benefit rate of \$75 weekly, and to establish a new maximum benefit rate as follows: beginning on the first Monday of January 2011 to \$475; beginning on the first Monday of July 2012 to 43% of the average weekly wage; beginning on the first Monday of July 2013 to 45% of the average weekly wage; beginning on the first Monday of July 2017 to 47% of the average weekly wage; and beginning on the first Monday of July 2018, and each year thereafter, to 50% of the average weekly wage.

Section 7 of the bill would amend Labor Law § 593(1)(a) to increase the requalification requirements for claimants to receive UI benefits after 1) voluntary separation from employment without good cause; 2) termination for misconduct; and 3) refusal of employment, from having to earn five times the weekly benefit rate (generally, the equivalent of 2½ weeks of pay at the rate prior to unemployment) to having to earn ten times the benefit rate (generally, the equivalent of five weeks of pay at the rate prior to unemployment).

Section 8 of the bill would amend Labor Law § 594 to extend the date on which a penalty for willful filing of a false claim or misrepresentation can be assessed until two years from the date on which a final determination that the fraudulent activity has occurred is made. This period will be extended during the pendency of an appeal of such determination by the claimant. The statute also establishes a civil penalty of up to 25% of the amount of benefits fraudulently collected, allows for the collection of such penalty through a judgment filed with the county clerk of the county where the claimant resides, and provides that all such penalties will be deposited in the UI Control Fund.

Section 9 of the bill would amend Labor Law § 596 to correct an outdated reference that requires claim filing with the local state employment office, rather than with the Department of Labor's UI Division.

Section 10 of the bill would add a new Labor Law § 575(2) to establish penalties for employers who fail to keep relevant records or to provide them to the Commissioner upon request.

Section 11 of the bill would amend Labor Law § 575(4) to provide that certain penalties be deposited in the UI Control Fund.

Section 12 of the bill would repeal Labor Law § 575-a(4), relating to deposit of penalties into a special fund .

Section 13 of the bill would amend Labor Law § 630 to increase the maximum monetary criminal penalties associated with prosecution of fraudulent receipt of benefits from \$500 to \$1,000.

Section 14 of the bill would lower the number of employees an employer must have to be eligible for the Shared Work Program from 5 to 2.

Section 15 of the bill would provide a severability clause.

Section 16 of the bill provides for the effective date.

EXISTING LAW:

Labor Law § 518 establishes the state's taxable wage base as \$8,500.

Labor Law § 581(e)(3) provides for various circumstances under which charges associated with receipt of UI benefits would not be charged to the employer account but would instead be charged to the UI General Account.

Labor Law § 581(2) contains a table of tax rates payable by employers with either a negative or a positive Employer Account Percentage.

Labor Law § 590(5) establishes a maximum UI benefit rate which is currently \$405 per week.

Labor Law § 593(1)(a) contains requalification requirements for claimants to receive UI benefits after 1) voluntary separation from employment; 2) misconduct; 3) refusal of employment; and 4) making a claim between benefit years. The requalification requirements for all four circumstances require the claimant to have earned five times the benefit rate (generally 2 ½ weeks).

PRIOR LEGISLATIVE HISTORY:

None. This is a new proposal.

JUSTIFICATION:

In times of economic distress like those at present, UI benefits provide a crucial safety net for out-of-work employees, as well as an engine of economic stimulus. Yet as the citizens of this State face the current recession, its UI system is desperately in need of

systemic reform. Maximum benefits have not been raised since 2000, and are among the lowest in the country. The State's UI Trust Fund is insolvent, and will need to borrow from its federal counterpart for years to come. Such borrowing must be paid back through employer assessments with interest. Those costs will mount if the State does not dig its UI system out of its present financial hole.

This bill would address these problems by raising maximum benefits for the first time in a decade, and, after a gradual increase over an extended period of eight years, ultimately index them to 50% of the average weekly wage, so that the real value of UI benefits will not shrink in the future. This will not only allow unemployed workers to better cope with economic hardship, it will increase federal aid to New York, as a current federally-funded UI extended benefit program provides benefits at the rate set by State law.

The bill would also, through gradual steps, allow the State to reverse the fiscal difficulties of the Trust Fund. At present, New York's UI system is structurally built for insolvency. Numerous employers make very limited UI contributions, and the current tax system limits employer contributions by assessing them only on the first \$8,500 of salary, a taxable wage base that is among the lowest in the nation. This bill would expand the taxable wage base, and eliminate the lowest contribution rates, so as to put this system back on the road to fiscal solvency.

The bill also contains numerous specific and beneficial reforms for New York's UI program. It would increase and index the amount of total quarterly wages that must be paid by employers in order to trigger liability for unemployment insurance contributions to reflect more realistic, current wage levels. It would close loopholes in the system for penalizing fraudulent claims which at present severely limit the consequences of such misconduct. At the same time, it would subject to financial penalties employers who fail to keep adequate records or to furnish them to the Department of Labor upon request. Further, the bill would expand eligibility for the Shared Work program, a very successful program which allows employers to avoid laying off trained staff by adopting partial work schedules and having their employees receive UI benefits as a partial replacement for their lost wages. Finally, the bill would provide for employer savings by expanding the time an employee must work before requalifying for benefits after certain disqualifying circumstances, and by allowing certain UI charges (associated with claims following voluntary quits related to domestic violence, family illness, or following a spouse) to be charged to the UI General Account rather than employer accounts.

In sum, the bill would provide a comprehensive reform that would address the serious problems of New York's UI system, and place it on firm financial footing.

BUDGET IMPLICATIONS:

The Governor's proposal would bring the Trust Fund into solvency in 2015, three years earlier than current provisions of law, and save nearly \$3.3 billion in additional

FUTA taxes and \$634 million in UI loan interest that would otherwise be paid by the State's employers from 2011-2018. The Department of Labor estimates that under the provisions of this bill, which include increases in both the Unemployment Insurance (UI) taxable wage base and the maximum weekly benefit level, average annual UI benefit payments would increase by \$442 million (11%) and average annual UI taxes paid by business would increase by approximately \$1 billion (34%) compared to current provisions of law over the period 2011-2018. As a result of indexed maximum benefit levels, the average annual State cost over the same period would increase by \$3.2 million (12.4%). The average annual total impact to all local governments, including school districts, is expected to be \$18.9 million (13%) over the 2011-18 period. These estimates reflect 2009 UI utilization rates. Actual utilization will determine the ultimate costs or savings to businesses, the State and local governments.

EFFECTIVE DATE:

This proposal would take effect immediately upon enactment, except that:

- a. Sections 1, 3 and 5 of this bill would take effect on January 1, 2011 and apply to all wages payable in the taxable year beginning with such date;
- b. Section 4 of this bill would take effect ninety days after its enactment into law and apply to charges related to all full weeks of benefits paid on or after such effective date;
- c. Section 7 of this bill would take effect one hundred twenty days after its enactment into law and apply only to valid original claims filed on or after such date;
- d. Section 6 of this bill would take effect on the first Monday of January 2011 and apply to all persons receiving regular unemployment insurance benefits on such date and to new benefit claims payable after such date;
- e. Section 8 of this bill would take effect sixty days after its enactment into law and apply to all willful false statements or misrepresentations made on or after such date and determinations and penalties arising therefrom; and
- f. Sections 10 and 11 of the bill would take effect sixty days after its enactment into law and apply to all violations committed on or after such date.