



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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132nd General Assembly
(As Introduced)

Rep. Schuring

BILL SUMMARY

Terminology change

- Renames various terms used in the Unemployment Compensation Law.

Funding

- Changes the calculation of the minimum safe level (MSL), which is used for purposes of Unemployment Compensation Insurance Fund (the Fund) solvency measures, to an amount equal to 0.75 of the average high cost multiple, a measure based on the Fund's three highest cost years and used by the U.S. Department of Labor to determine eligibility for interest free advances.
- Increases the flat-rate percent used to calculate the MSL premium when the Fund is 60% or more below the MSL from 0.2% to 0.3%.
- Raises the taxable wage base to \$11,000 on the first day of January occurring after the bill's effective date.
- Requires an employee to pay employee coinsurance payments when the employee satisfies the monetary requirements necessary to receive unemployment benefits.
- Requires an employer to withhold coinsurance payments from an employee's pay and remit them to the Director of Job and Family Services in accordance with rules adopted by the Director.
- Makes an employer liable for any coinsurance payments that the employer failed to deduct and pay to the Director.

- Allows unpaid coinsurance to be collected using the same methods and sources as unpaid unemployment compensation insurance premiums.
- Requires an employer to provide a prospective employee with a notice that contains a reasonable estimate of the prospective employee's coinsurance payment.
- States that it is the intent of the General Assembly to adopt a joint resolution to submit to the electors of Ohio a proposal to allow the state to issue bonds to pay unemployment benefits or finance debt incurred by the unemployment compensation system.

Benefits

- Freezes maximum weekly benefit amounts at the 2017 maximum amounts for ten years after the bill's effective date, extending a current law freeze that applies in 2018 and 2019.
- Reduces the maximum weekly benefit amount payable to an individual who claims allowable dependents if the Director finds that additional sources of household income reduce or eliminate the individual's need to receive up to the maximum weekly benefit amount.
- Reduces, for an individual whose benefit year begins after the bill's effective date, the maximum number of weeks for which the individual may receive unemployment benefits in a benefit year from 26 weeks to 24.
- Allows an individual who was separated from the individual's most recent employment because the individual's ability to perform the work depended on weather conditions to receive up to 26 weeks of unemployment benefits in a benefit year.
- Expressly allows employees and employers to enter agreements for the purpose of securing private, supplemental unemployment benefits.

Unemployment Compensation Advisory Council

- Requires members of the Unemployment Compensation Advisory Council, which is charged with recommending changes in Ohio's unemployment compensation laws, to be appointed not later than 30 days after the bill's effective date, and requires the Council to meet.



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CONTENT AND OPERATION

Terminology change

The bill renames various terms used in the Unemployment Compensation Law.¹ The following table outlines the terminology changes made throughout the bill:

Current law	The bill
Unemployment Compensation Fund	Unemployment Compensation Insurance Fund
Contribution	Premium
Contributory employer	Premium paying employer
Payment in lieu of contribution	Payment in lieu of premium
Taxable wages or taxable wage base	Wages subject to premium
Taxes imposed	Premium imposed
Taxable remuneration	Remuneration subject to premium
Unemployment tax	Unemployment insurance premiums

¹ R.C. 4141.01 and 4141.09, with conforming changes throughout the bill.



Current law	The bill
Minimum safe level tax	Minimum safe level premium
Mutualized tax	Mutualized account premium
Contribution period	Premium period

This analysis uses the bill's new terminology unless the context otherwise requires.

Funding

Minimum safe level

The bill changes the calculation of the minimum safe level (MSL). The MSL is essentially the balance needed in the Ohio Unemployment Compensation Insurance Fund (the fund from which unemployment benefits are paid) to fund a moderate recession. Under continuing law, if the Fund, as of July 1 (the "computation date"), is above or below the MSL, the premium rate schedule specified in statute for the next calendar year (the "premium period") is adjusted based on the percentage that the balance of the Fund is above or below the MSL. If the rates on the schedule are increased, the increase is known as the MSL tax. The purpose of the MSL tax is to rebuild the Fund to an appropriate level to protect the financial integrity of the Fund.²

The bill changes the calculation of the MSL to an amount equal to 0.75 of the average high cost multiple (AHCM). The AHCM is a measure based on the Fund's three highest cost years and is used by the U.S. Department of Labor (the federal department that administers the Federal Unemployment Tax Act) to determine eligibility for interest free advances.³ Under current law, the MSL is based upon the average unemployment benefit payments made since 1970, rather than the highest cost years.

MSL calculation

The bill makes the MSL an amount equal to 0.75 of the AHCM. The AHCM is calculated as follows:

$$\text{AHCM} = \frac{\text{Reserve ratio}}{\text{Average high cost rate}}$$

² Ohio Department of Job and Family Services, "Contribution Rates," <http://jfs.ohio.gov/ouc/uctax/rates.stm> (accessed October 9, 2017).

³ 20 Code of Federal Regulations 606.3 and 606.32.

The reserve ratio is calculated by dividing the Fund balance as of December 31 by the total remuneration paid to workers in all employment for the most recent 12 months.

The average high cost rate is the average of the three highest calendar year benefit cost ratios in the longer of the last 20 years or the period including the last three completed national recessions (for Ohio, 1991, 2009, and 2010). In general terms, the benefit cost ratio for a year is the percentage obtained by dividing the aggregate unemployment benefits paid by the state by the total remuneration paid to all employees in that calendar year.⁴

Example

Ohio data

- Ohio Unemployment Compensation Fund balance at the end of 2017 (projected) = \$482,513,000
- Total wages for the end of 2017 (projected) = \$200,348,306,152 (in thousands)
- Average high cost rate⁵ = 1.37

$$\text{Average High Cost Multiple (AHCM)} = \frac{\text{Reserve ratio}}{\text{Average high cost rate}}$$

To determine the AHCM, it is first necessary to determine the reserve ratio.

$$\text{Reserve ratio} = \frac{\$482,513,000 \text{ (Fund balance)}}{\$200,348,306,152 \text{ (total wages)}} \times 100 = 0.2408$$

Then divide the reserve ratio by the average high cost rate.

$$\text{AHCM for 2017} = \frac{0.2408 \text{ (reserve ratio)}}{1.37 \text{ (average high cost rate)}} = 0.176 \text{ (rounded)}$$

According to the Ohio Department of Job and Family Services, the MSL for 2018 under the bill (0.75 of the AHCM) will be \$2,130,293,820. Under the current law MSL calculation, the MSL for 2018 is projected to be \$3,003,252,819.

⁴ R.C. 4141.01(FF) and (GG), 4141.25, and 4141.253.

⁵ U.S. Department of Labor, Trust Fund Solvency Report 2017, <https://ows.doleta.gov/unemploy/docs/trustFundSolvReport2017.pdf> (accessed October 10, 2017).



MSL tax

Under continuing law, the MSL tax is calculated by taking a flat-rate percent by which the normal premium rate for an employer is increased (the amount of the increase varies depending on how far below the MSL the Fund is as of the computation date) and then entering that flat-rate into a formula based on experience. The bill increases the flat-rate percent used to calculate the MSL premium when the Fund is 60% or more below the MSL from 0.2% to 0.3%.⁶

Wage base

Ohio's unemployment compensation system consists of two types of employers: premium paying employers, who are mostly private sector employers who pay premiums into the Fund, and reimbursing employers, who are mostly public sector employers and certain nonprofits who reimburse the Fund when benefits are paid. With respect to premium paying employers, to determine the amount of the employer's premium, the Director of Job and Family Services (Director) determines the employer's premium rate and applies it in the following calendar year to the wages of each of the employer's employees.⁷ But premiums are payable on employee wages only up to the "premium wage base," which is currently \$9,000 (\$9,500 beginning January 1, 2018). Wages paid by an employer to a particular employee in excess of the premium wage base are not subject to premium.

Beginning on the first day of January immediately following the bill's effective date, the bill raises the premium wage base to \$11,000.⁸

Employee coinsurance

Current law voids any agreement by an employee to pay any portion of an employer's premium and prohibits an employer from deducting any portion of an employer's premium from an employee's pay.⁹ While under the bill an agreement remains invalid and an employer cannot make these deductions, the bill requires an employee to pay employee coinsurance payments when the employee satisfies the monetary requirements necessary to receive unemployment benefits. Under continuing law, an individual must satisfy both monetary and nonmonetary requirements to receive benefits. An individual satisfies the monetary requirements when the individual

⁶ R.C. 4141.25(B)(5).

⁷ R.C. 4141.25 and Ohio Administrative Code 4141-9-02 and 4141-11-02.

⁸ R.C. 4141.01(G).

⁹ R.C. 4141.36.



has worked in employment covered under the Unemployment Compensation Law for at least 20 qualifying weeks within the employee's "base period" and has an average weekly wage of not less than 27½% of the statewide average weekly wage within the base period (for 2017, \$247¹⁰). A base period generally is the first four of the most recent five calendar quarters, though if an individual does not have enough qualifying weeks in that timeframe, it is the most recent four calendar quarters. Nonmonetary requirements concern the reason why the individual is unemployed and completing work search requirements.¹¹ An individual who satisfies the monetary requirements and makes the coinsurance payments required by the bill is not guaranteed benefits because that individual may not satisfy the nonmonetary requirements.

Coinsurance payments are pooled with premiums to pay unemployment benefits.¹²

Coinsurance amounts

The amount of coinsurance an employee owes depends on whether the employer is a premium paying employer or a reimbursing employer. Under the bill, an employee of a premium paying employer pays coinsurance equal to 10% of the portion of the employer's premium that is based on the employee's wages.¹³

A reimbursing employer must divide the reimbursements made by the employer to the Fund during the previous calendar year by the current number of the employer's employees. Each employee pays coinsurance equal to 10% of the quotient. Under the bill, an employee of the Office of Budget and Management (OBM), which is a reimbursing employer under the Law, cannot be charged a coinsurance payment that reflects amounts paid to the Fund by OBM on behalf of a state agency that ceased operations. Continuing law requires OBM to pay any outstanding expenses of a state agency that terminated its operations, which may include money owed to the Fund.¹⁴

¹⁰ Ohio Department of Job and Family Services, "Unemployment Compensation FAQs," http://jfs.ohio.gov/unemp_comp_faq/faq_elig_definitions2.stm#average_weekly_wage (accessed October 16, 2017).

¹¹ R.C. 4141.01(O), (Q), and (R) and 4141.252(A) and 4141.29.

¹² R.C. 4141.24(C).

¹³ R.C. 4141.252(B)(1).

¹⁴ R.C. 4141.252(B)(2) by reference to R.C. 126.29, not in the bill.

Withholding and remitting coinsurance payments

The bill requires an employer to begin withholding coinsurance payments from an employee's pay when the employer determines that the employee has satisfied the monetary requirements with that employer as are necessary to qualify for benefits if separated from employment. An employer must hold coinsurance payments in trust and remit them to the Director in accordance with rules adopted by the Director. The Director deposits coinsurance payments into the Fund to the credit of the Mutualized Account. An employer is liable for any coinsurance payments that the employer failed to deduct and pay to the Director. However, an employer is not responsible for withholding and remitting coinsurance payments arising from an individual's employment with other employers.¹⁵

Under continuing law, an individual can satisfy the monetary requirements to be eligible for benefits by combining hours and wages from multiple employers. If an individual satisfies the monetary requirements of the Law by combining hours and wages, but the individual did not have sufficient qualifying weeks and wages with a single employer to cause the employer to withhold coinsurance payment from the individual's pay, the bill requires the Director to calculate the coinsurance payment owed by the individual when the individual files an initial application for benefits. The Director must reduce any weekly benefits paid to the individual during the individual's benefit year until the Director recovers the full amount of coinsurance owed (see **COMMENT**).¹⁶

Unpaid coinsurance

The bill grants the Director the authority to collect unpaid coinsurance payments using the same procedures that continuing law provides for collecting unpaid employer premiums. Under those procedures, the Director must assess the amount owed within four years after the date on which the amount became payable. A lawsuit to recover assessed amounts must be filed within six years after the assessment, and a lawsuit to recover unassessed amounts must be filed within five years of the date the amounts became payable. Where there is a false or fraudulent report or a willful attempt to evade coinsurance payments, the Director may assess the amount owed or file a lawsuit at any time.¹⁷

¹⁵ R.C. 4141.252(C) to (E), 4141.09, 4141.13, 4141.24, 4141.25, 4141.27, and 4141.38.

¹⁶ R.C. 4141.252(C)(2).

¹⁷ R.C. 4141.23(F).



If an employer makes a payment of premiums and coinsurance payments that is less than the full amount owed, the amount is first applied to mutualized premiums and then to coinsurance payments. Any remaining amount is credited to the employer's account. Under current law the amount is first credited to the mutualized tax then the employer's account. Similarly, under continuing law if the employer owes an interest surcharge, the payment is credited in the following order:

- Against the surcharge owed;
- Against any mutualized premiums owed;
- Against any coinsurance owed, as added by the bill;
- To the employer's account;
- Against any interest, forfeiture, and fines owed.¹⁸

Any interested party may sue for an injunction stopping the operations of an employer who has failed to make the employee coinsurance payments. The suit and injunction are governed by the same laws as suits and injunctions against employers who fail to pay premiums.¹⁹

A construction contractor or subcontractor who has failed to pay employee coinsurance payments for nine or more consecutive months as of the date of entering into a construction contract is barred from filing a lawsuit to enforce rights arising from the contract.²⁰

Similar to unpaid employer premiums, unpaid coinsurance payments bear interest at the annual rate of 14% compounded monthly, subject to the Director's continuing law authority to waive interest if an employer requests a waiver, makes the payments in full, and provides certain documentation. The Director deposits any interest collected on unpaid coinsurance to the Unemployment Compensation Special Administrative Fund (similar to interest paid on unpaid premiums under continuing law).²¹

¹⁸ R.C. 4141.25 and 4141.251.

¹⁹ R.C. 4141.39(A).

²⁰ R.C. 4141.39(B)(1).

²¹ R.C. 4141.11 and 4141.23(B) and (C).

Unpaid coinsurance payments become a lien on an employer's real and personal property, which can be foreclosed in a lawsuit. The Director may withhold unpaid coinsurance from amounts owed on state contracts if certain conditions are satisfied. Unpaid coinsurance payments also can be deducted from tax returns or lottery winnings.²²

In the event of a court ordered distribution of an employer's assets, unpaid coinsurance payments have the same priority as unpaid taxes owed to the state and are paid out in the same manner.²³

Notice to prospective employees

The bill requires a premium paying employer to provide a prospective employee with a notice that discloses the employer's most recent premium rate and contains a reasonable estimate of the prospective employee's coinsurance payment. Similarly, a reimbursing employer must provide a prospective employee with a notice that discloses the amount of reimbursements made to the Fund during the previous calendar year by the employer and contains a reasonable estimate of the prospective employee's coinsurance payment.²⁴

Joint resolution

The bill states that it is the General Assembly's intent to adopt a joint resolution to submit to the electors of Ohio a proposal to allow the state to issue bonds for either of the following purposes:

- Paying unemployment benefits when the Fund is or will be depleted;
- Financing debt incurred by the unemployment compensation system.²⁵

The Ohio Constitution currently appears to prohibit the state from issuing these bonds and a constitutional amendment may be necessary to do so.²⁶

²² R.C. 3770.073, 4141.23(D), 4141.231, 4141.41, 4141.42, 5726.31, 5733.121, 5736.081, 5747.12, 5751.081, and 5753.061.

²³ R.C. 4141.23(G).

²⁴ R.C. 4141.252(F).

²⁵ Section 3.

²⁶ Ohio Const., art. VIII, sec. 1 and 3, and *State ex rel. Shkurti v. Withrow*, 32 Ohio St.3d 424 (1987).



Benefits

Maximum benefit amounts

Under continuing law, weekly benefit amounts are generally 50% of an individual's average weekly wage during the individual's base period, up to a statutory maximum. The statutory maximums are based on the number of allowable dependents claimed, as follows:

- If an individual has no dependents, 50% of the statewide average weekly wage (\$443 in 2017).
- If an individual has one or two dependents, 60% of the statewide average weekly wage (\$537 in 2017).
- If an individual has three or more dependents, 66 $\frac{2}{3}$ % of the statewide average weekly wage (\$598 in 2017).²⁷

Continuing law requires the Director to determine the statewide average weekly wage each year based on the average weekly earnings of all workers in employment subject to Ohio's Unemployment Compensation Law during the preceding 12-month period ending June 30.²⁸

Example

For example, suppose Joe has an average weekly wage of \$1,000. If Joe does not have any dependents, Joe's weekly benefit amount equals \$443, because 50% of Joe's average weekly wage (\$500) exceeds the statutory maximum. However, if Joe has one or two dependents or three or more dependents, Joe's weekly benefit amount is \$500, because 50% of Joe's average weekly wage falls below the statutory maximums for those dependency classifications.

Benefit freeze

The bill freezes maximum weekly benefit amounts at the 2017 maximum amounts until Sunday of the calendar week in which January 1 occurs ten years after the bill's effective date. This extends a current law freeze on the maximum weekly benefit amounts for calendar years 2018 and 2019 at the 2017 amounts.²⁹

²⁷ R.C. 4141.30 and Ohio Department of Job and Family Services, *Benefits Chart – 2017*, http://unemployment.ohio.gov/PDF/Benefits_Estimator.pdf (accessed October 15, 2017).

²⁸ R.C. 4141.02, 4141.01(R)(3), 4141.29, and 4141.30.

²⁹ R.C. 4141.30(D)(2).



Reduction in dependent benefits

For individuals whose benefit year (the one-year period beginning on the first day of the week the individual files a valid application) begins after the bill's effective date, the bill allows the Director to reduce the maximum weekly benefit amount payable to an individual who claims allowable dependents if the Director finds that additional sources of household income reduce or eliminate the individual's need to receive up to the maximum weekly benefit amount applicable to the individual. The bill prohibits the Director from reducing the maximum weekly benefit amount of an individual who claims allowable dependents below the maximum weekly benefit amount applicable to an individual with no dependents.³⁰

Continuing law defines a dependent for purposes of the Unemployment Compensation Law as follows:

- The natural child, stepchild, or adopted child of an individual claiming benefits to whom both of the following apply:
 - The child is under 18 or is unable to work due to permanent physical or mental disability;
 - The individual claiming benefits has paid more than half the cost of the child's support for the 90 days before the beginning of the individual's benefit year or for the duration of the parental relationship if it existed less than 90 days before that beginning date.
- The legally married spouse of an individual claiming benefits to whom all of the following apply:
 - The individual claiming benefits has paid more than half the cost of the spouse's support for the 90 days before the beginning of the individual's benefit year or for the duration of the marital relationship if it existed less than 90 days before that beginning date;
 - The spouse was living with the individual during this time period;
 - The spouse had an average weekly income in this time period not in excess of 25% of the individual's average weekly wage.

³⁰ R.C. 4141.30(E) and Section 5.

If both spouses qualify for benefits with overlapping benefits years, only one spouse may claim dependents.³¹

Under continuing law, if an individual receives any of the following types of payments, the individual's unemployment benefits for a week are reduced by the amount of the payment the individual receives for that week:

- Remuneration in lieu of notice;
- Compensation for wage loss under workers' compensation laws;
- Specified retirement or pension allowances (excluding Social Security);
- Separation or termination pay paid at the time of separation from employment;
- Vacation pay or allowance allocated to designated weeks;
- The determinable value of cost savings days (any unpaid day off from work in which an employee continues to accrue employee benefits that have a determinable value (also known as "furlough days"));
- Remuneration for involuntary partial employment in excess of 20% of the individual's weekly benefit amount.³²

Maximum weeks

The bill reduces, for an individual whose benefit year begins after the bill's effective date, the maximum number of weeks for which the individual may receive unemployment benefits in a benefit year from 26 weeks to 24. Under continuing law, an individual is entitled to receive benefits for 20 weeks for the first 20 qualifying weeks of employment in the individual's base period. One additional benefit week is added for each qualifying week above 20 weeks, up to the statutory maximum. Continuing law prohibits the total benefits an individual may receive from exceeding an amount equal to the maximum number of weeks an individual may receive unemployment benefits times the individual's weekly benefit amount.

However, the bill allows an individual to be eligible for two additional benefit weeks in a benefit year beyond the 24-week maximum set by the bill if all of the following apply:

³¹ R.C. 4141.30(H).

³² R.C. 4141.31 and 4141.30(F).



- The individual has been employed by an employer or employers subject to the Unemployment Compensation Law in at least 26 qualifying weeks during the individual's base period;
- The individual has received 24 times the individual's weekly benefit amount in the benefit year;
- The individual was separated from the individual's most recent employment because the individual's ability to perform the work depended on weather conditions.

The bill requires the Director to adopt rules establishing guidelines for determining whether an individual's ability to perform work depended on the weather conditions.³³

Supplemental benefit programs

Current law appears to allow private, supplemental unemployment benefit plans. An employee may agree to have the cost of securing private benefits deducted from the employee's paycheck. Private benefits are not considered part of an employee's remuneration for purposes of the Unemployment Compensation Law. And any benefits payable under the Law cannot be denied or reduced because a person receives private benefits.³⁴

The bill expressly authorizes employees – individually or through collective bargaining – and employers to agree to a private, supplemental unemployment benefit program. The program can be paid for by the employees, the employer, or both. A program also may be a group program that includes multiple employers and their employees.³⁵

A private benefit program agreed to after the bill's effective date must be actuarially sound. The parties to the agreement creating the program must submit a copy of the agreement to the Director.³⁶

Unemployment Compensation Advisory Council

The bill requires that members of the Unemployment Compensation Advisory Council (UCAC), which is charged with recommending changes to Ohio's

³³ R.C. 4141.30(G), 4141.53, and Section 5.

³⁴ R.C. 4141.36.

³⁵ R.C. 4141.361(A) and (C).

³⁶ R.C. 4141.361(B).



Unemployment Compensation Law, be appointed not later than 30 days after the bill's effective date. Under continuing law, six members of the UCAC are appointed by the Governor with the advice and consent of the Senate, and six legislative members are appointed by the Speaker of the House of Representatives and the President of the Senate. The bill requires the UCAC to meet not later than 30 days after all of the appointments have been made, and at least once each calendar quarter thereafter as required under continuing law.³⁷ The UCAC currently has no members and has not met since 2010.³⁸

COMMENT

Unemployment compensation is a federal-state partnership in which a state must comply with federal laws and regulations for the state to have an approved state system. Employers who pay into an approved state system receive almost a 90% credit on their federal unemployment taxes. Federal law generally does not allow unemployment benefits to be reduced for the purpose of satisfying debts or other obligations.³⁹ According to the U.S. Department of Labor (the agency that administers the federal unemployment law), benefits can be reduced to recover benefit overpayments, child support, over issuance of food stamps, income tax, and healthcare coverage.⁴⁰ Although this list is not necessarily exhaustive, it is not clear whether the provision in the bill that allows the Director to recover employee coinsurance payments by reducing weekly benefits complies with federal law.

HISTORY

ACTION	DATE
Introduced	10-11-17

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³⁷ Section 4 and R.C. 4141.08, not in the bill.

³⁸ Catherine Candisky, *Unemployment Compensation Advisory Council has no members, hasn't met in 4 years* (July 4, 2014), The Columbus Dispatch, available at <http://www.dispatch.com/content/stories/local/2014/07/04/panel-has-no-members-hasnt-met.html> (accessed October 10, 2017).

³⁹ 26 United States Code 3304(a).

⁴⁰ U.S. Department of Labor, *Comparison of State Unemployment Insurance Laws 3-27 (2017)*, available at <https://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2017/complete.pdf> (accessed October 10, 2017).

