CONFERENCE COMMITTEE REPORT BRIEF
SUBSTITUTE FOR HOUSE BILL NO. 2570

As Agreed to April 3, 2024

Brief*

Sub. for HB 2570 would make various amendments to law related to unemployment compensation.

The bill would:

- Include revisions to the unemployment compensation taxable wage base and tax rates;
- Modify rate contributions for new employers;
- Provide for an annual write-off of a portion of negative unemployment compensation account balances for certain employers;
- Require a reporting and audit process for interview non-participation;
- Provide for the suspension of state unemployment benefits when individuals are receiving certain federal unemployment benefits;
- Provide for minimum qualifications for members of the Employment Security Board of Review;
- Provide for extensions to the unemployment modernization process and the Unemployment Compensation Modernization and Improvement Council;
- Provide for temporary unemployment and extensions thereto;
- Allow certain school bus drivers to participate in work share agreements;
- Abolish the Employment Security Interest Assessment Fund;
- Revise annual Department of Labor reporting requirements; and
- Make other technical changes to the unemployment compensation system and unemployment compensation law.

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*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at http://www.kslegislature.org/klrd

Taxable Wage Base, Tax Rates, and Negative Account Balance Write-off

The taxable wage base for employer contributions to the Employment Security Fund, currently set at $14,000, would be set as a percentage of the statewide average annual wage and progressively increase, as follows:

- 25.0 percent beginning in calendar year 2026;
- 30.0 percent beginning in calendar year 2028;
- 35.0 percent beginning in calendar year 2029; and
- 40.0 percent beginning in calendar year 2030.

Beginning in calendar year 2031, the wage base would remain at 40.0 percent of the statewide average annual wage unless any combination of employer contribution rate schedules G through M are in effect for any five preceding consecutive calendar years occurring after 2031. Should that occur, the bill would increase the taxable wage base to 45.0 percent of the statewide average annual wage regardless of changes to the rate tables. [*Note:* Rate schedules G through M include the standard rate table and the tables providing for solvency adjustments.]

The employer contribution rates provided in the rate schedules would be revised to provide for a 0.0 percent rate group for the most positively rated employers, reduce rates for all positively rated employers, and make changes to solvency and credit rate adjustments in conformity with the adjustments to the wage base described above.

The bill would also decrease rates for new employers not eligible for rate-based contributions from 6.0 percent to 5.55 percent of calendar year wages paid for construction industry employers, and from 2.7 percent to 1.75 percent of calendar year wages paid for all other employers.

The bill would provide, beginning July 1, 2024, for an annual calculated debt forgiveness option for active negative-rated employers with a reserve ratio of -7.150 percent or less. For such employers, a portion of benefit charges would be conditionally forgiven in order to bring the employer to a reserve ratio of -7.150 percent, and the employer would be assigned to the lowest rate group for the next three calendar years. The bill would provide that any such employer could avoid such assignment by foregoing the debt forgiveness option and submitting a voluntary contribution in an amount sufficient to establish their reserve ratio equal to or greater than -7.149 percent for the following calendar year.

The deadline for employers to make voluntary contributions for the purpose of reducing the employer's contribution rate would be extended from 30 to 90 days following the date of mailing of experiences rating notices for the following calendar year.

The bill would require the Secretary of Labor (Secretary) to prepare contribution rate tables showing the cost for rated employers per employee for the previous, current, and ensuing rate year and publish such tables no less than 30 days prior to the end of the calendar year.

Interview Non-participation Audit Process ("Interview Ghosting")

The bill would require the modernized unemployment compensation system to include an audit process permitting employers to submit reports regarding the work search requirement or

My Reemployment Plan and related to applicants accepting interview appointments but not participating or notifying the employer of their inability to participate in the scheduled interview ("interview ghosting").

The Secretary would be required to notify employers of the reporting options in annual summaries of benefit changes and rate notices. The bill would not require the audit system to be implemented until a new unemployment compensation information technology system is completed.

Suspension of State Unemployment Benefits When Receiving Federal Unemployment Benefits

The bill would require, to the extent authorized by federal law, the suspension of state unemployment benefits when an individual is eligible for an equal or greater weekly benefit amount under a federal unemployment program. The suspension of state benefits would terminate upon the exhaustion of the federal benefits and would not apply to any federal unemployment benefit that is paid in addition to the state weekly benefit amount.

Employment Security Board of Review Candidate Qualifications

The bill would provide the minimum qualifications for members of the Employment Security Board of Review, in order of priority, to be:

- At least eight years of direct experience with human resources processes, policies, guidelines, or employee relations;
- At least three years of direct experience with employment security laws and processes; and
- Knowledge of unemployment and labor laws.

The bill would require applications for the Board to be submitted to the Director of Unemployment, who would determine if the applicant meets the required qualifications and submit qualified applicants to the Workers Compensation and Employment Security Boards Nominating Committee.

Unemployment Modernization Project Extensions and Unemployment Compensation Modernization and Improvement Council Sunset Extension

The bill would provide the Legislative Coordinating Council (LCC) the authority to extend the deadline for the full implementation of a new unemployment compensation information technology system as often as the LCC deems appropriate. The Secretary would be required to provide written notice to the LCC and the Unemployment Compensation Modernization and Improvement Council (Council) at least 30 days prior to the expiration of the deadline indicating if an extension of the deadline is being sought and the basis for the extension. The bill would permit the Council chairperson or any member to provide a written statement to the LCC regarding any extension.

The bill would specify that failure to provide written notice or meet any deadline would not affect the LCC's ability to extend the deadline and would permit retroactive extensions of the deadline.

The bill would also extend the sunset for the Council, currently scheduled for June 25, 2024, to December 31, 2026.

Temporary Unemployment

The bill would define "temporary unemployment" to mean an individual has been laid off due to lack of work by an employing unit for which the individual has worked full-time and reasonably expects to resume full-time work at a future date and the individual's employment with the employing unit has been temporarily suspended and not terminated.

Temporary unemployment would generally be limited to eight consecutive weeks. However, an extension of eight additional weeks would be permitted upon the Secretary's approval. The extension would be allowed only upon a determination by the Secretary that the employer has filed all required employment security reports, paid all required contributions, and is primarily engaged in the production and distribution of ready-mixed concrete or the construction of streets, highways, elevated highways, roads, airport runways, public sidewalks, or bridges.

School Bus Driver Work-share

The bill would permit school bus drivers employed by private companies to participate in work-share programs during the period between two successive academic years or a similar period between two successive terms of school.

Employment Security Interest Assessment Fund

The bill would abolish the Employment Security Interest Assessment Fund on July 1, 2024. Any balance of the Employment Security Interest Assessment Fund would be transferred to the Employment Security Fund and any liabilities of the Employment Security Interest Assessment Fund would be transferred to the State General Fund.

[*Note:* The Employment Security Interest Assessment Fund was created in 2011 to repay certain loans associated with the Employment Security Fund during the Great Recession.]

Business Acquisition Changes

The bill would provide that upon the completion of a business acquisition involving two employers, a new account would be established and contribution rate determined as of the first day of the next calendar year, rather than the first day of the calendar quarter as in current law, following the completion of the business acquisition.

Electronic Filing and Payment Requirements

The bill would require all employers with 25 or more employees and all third-party administrators with 25 or more client employees to file all wage reports, contribution returns, payments, and interest assessments electronically.

Benefit Years Begin on Sunday

The bill would modify the definition of “benefit year” to specify that unemployment benefit years always begin on a Sunday.

Employer Charge Notice Modifications

The bill would change the timing of benefit charges for contributing employers and rated governmental employers from annual to quarterly and would eliminate a provision that prohibits the application of charges to such employers when the amount of the charges is $100 or less.

Department of Labor Annual Reporting

The bill would require annual Department of Labor reporting to include a differentiation of data for terminated and inactive accounts; the statewide average annual and weekly wage amounts; and, beginning in 2025, an annual memo submitted to the chairpersons, vice-chairpersons, and ranking minority members of the standing committees of the House and Senate to which employment security legislation is customarily referred, the President of the Senate, the Speaker of the House of Representatives, the Governor, and the LCC.

The memo would be required to include data for contributing negative-rated employers for the current and three most recent years, including:

- An identifying number assigned to each employer other than the employer’s account identification;
- The North American Industry Classification System (NAICS) code of the employer;
- The employer’s account balance by fiscal year;
- The employer’s taxable wages by fiscal year;
- The employer’s calculated reserve ratio by fiscal year;
- The employer’s taxable wage base by fiscal year;
- The benefits charged to the employer by fiscal year; and
- If work share was requested by and approved for the employer.

The bill would also require that, starting in 2028, the annual report shall also include the total numbers of the following data:

- Temporary unemployment weeks requested by the employer;
- Temporary unemployment weeks approved for the employer;
- Claimants who requested temporary unemployment against the employer's account independently from any request for temporary unemployment by the employer; and
- Temporary unemployment weeks charged against the employer's account that were claimed independently from any request for temporary unemployment by the employer.

Conference Committee Action

The Conference Committee agreed to the provisions of HB 2570, as amended by the Senate Committee on Commerce, with the following amendments:

- Delay reporting requirements by the Secretary regarding temporary unemployment usage to 2028 and expand the information required to be reported to include:
  - Temporary unemployment weeks requested by the employer;
  - Temporary unemployment weeks approved by the employer;
  - The number of claimants who requested temporary unemployment against the employer's account independently from any request for temporary unemployment by the employer; and
  - Temporary unemployment weeks charged against the employer's account that were claimed independently from any request for temporary unemployment by the employer; and
- Technical and conforming amendments.

Background

The bill was introduced by the House Committee on Commerce, Labor and Economic Development at the request of Representative Tarwater.

House Committee on Commerce, Labor and Economic Development

In the House Committee hearing, the Department of Labor provided detailed testimony specifying its support, opposition, and neutrality to various provisions of the bill.

Proponent testimony was provided by representatives of the Kansas Society for Human Resource Management, Kansas Chamber, Kansas Contractors Association, and National Federation of Independent Businesses. The proponents generally stated the bill would better balance employer contributions to the unemployment system with their utilization of the system and ensure the integrity of Kansas' unemployment compensation system.

Written-only proponent testimony was provided by representatives of Opportunity Solutions Project and Overland Park Chamber of Commerce.

No other testimony was provided.

The House Committee amended the bill to:

- Revise the temporary unemployment extension provisions;
- Modify the changes to the taxable wage base and employer contribution rates;
- Provide for the write-off of negative account balances;
- Modify the qualifications for applicants to the Employment Security Board of Review;
- Modify certain Department of Labor reporting requirements;
- Increase the amount of time the Department of Labor has to provide annual rate tables to employers;
- Change the fund receiving the liabilities of the Employment Security Interest Assessment Fund from the Employment Security Fund to the State General Fund;
- Modify the provisions suspending state unemployment benefits when individuals receive certain federal unemployment benefits; and
- Provide for certain school bus drivers to participate in work share programs.

Senate Committee on Commerce

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Department of Labor, Kansas Society for Human Resource Management, Kansas Chamber, Kansas Contractors Association, and National Federation of Independent Businesses. The proponent testimony was substantially similar to that provided in the House Committee hearing.

Written-only proponent testimony was provided by representatives of Opportunity Solutions Project and Overland Park Chamber of Commerce.

No other testimony was provided.

The Senate Committee amended the bill to:

- Modify changes to the taxable wage base and employer contribution rates;
- Modify rate contributions for new employers;
- Modify negative account balance write-off provisions; and
- Make various technical changes.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Labor estimates enactment of the bill would require an additional 18.0 FTE (full-time equivalent) positions and additional State General Fund expenditures of $3.5 million in FY 2025 and $1.3 million in FY 2026. Some of these additional costs would be ongoing into future years. The additional positions would be necessary due to additional auditing, reporting, and temporary unemployment review requirements that would be required by the bill.

The agency also indicates that some provisions of the bill could result in less required customization of the modernized unemployment system, resulting in savings of time and money.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Unemployment compensation; modernization; taxable wage base; tax rates; temporary unemployment; interview ghosting; school bus drivers; extension of time

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