The Impact of Changes to Florida's Unemployment Compensation Laws on Employers

By Christina Harris Schwinn

The recent economic downturn and corresponding rise in the number of unemployed individuals in Florida has put a strain on the funds available for unemployment compensation for those workers laid off through no fault of their own. Due to the increased unemployment rate, the Unemployment Compensation Trust Fund (the "Fund") has recently been paying out more funds than it has been collecting. Under current law, it is believed the Fund will be unable to recover. It is estimated that the Fund will at a deficit of $3.7 billion by the second quarter of 2014.[1]

In response to the looming deficit, the Florida Legislature just passed new legislation that would significantly boost the revenues collected by the Fund and lessen the amount of any deficit in the fund.[2] As will be discussed below, the new legislation will temporarily increase the amounts employers would be required to contribute to the Fund. There is an increase in the amount of wages subject to the employer's contribution amount that is subject to the tax. There will also be a temporary increase in the tax rates for all contributory employers due to an increase in what are known as adjustment factors. These changes to the current law as they apply to employers are scheduled to take effect on January 1, 2010.

Under Florida's unemployment compensation laws employers are generally subject to a tax on certain wages paid to their employees. Under the current law, any wages paid to employees during the year in excess of $7000 are considered exempt from the unemployment tax. In essence this means that an employer is only taxed for unemployment compensation purposes on the first $7000 of wages paid to each employee. Under the new legislation this amount would be increased to $8500, resulting in employers being subject to tax on an additional $1500 per employee. This law takes effect January 1, 2010 and runs for five years. At the end of the five year period, the exemption goes back down to its original level of any wages over $7000.

The above mentioned increase in the amount of wages subject to the employer's contribution amount is also accompanied by an increase in the amount of tax on those wages. This is through an increase in the adjustment factors, which require a brief explanation. In general, Florida's method for determining the tax rates assigned to employers is called the benefit ratio method of experience rating. The basic premise is that employers who lay off the most workers are charged the highest tax rates. The benefit ratio is essentially comprised of the total compensation charged to the employer's account during the preceding 3 year period over the amount of the employer's payroll over that same period. When an individual receives unemployment compensation based on the wages an employer paid the individual, benefit charges are assigned to the employer's account.

The adjustment factors come into play when there is compensation received by an individual that cannot be charged against an employer's account. They are designed primarily to socialize the cost of the compensation among all employers who had benefit experience over the last 3 years. This way all employers with benefit experience must pick up the slack when the compensation cannot be charged against a specific employer.

The two adjustment factors that are being modified under the new legislation are the positive fund balance adjustment factor and the negative fund balance adjustment factor. In general, the positive adjustment factor increases tax rates for all employers when the fund's balance falls below a certain percentage of the taxable payrolls calculated on June 30 each year. Conversely, the negative adjustment factor decreases tax rates for all employers when the fund's balance is in excess of a certain percentage of taxable payrolls. The modifications to these factors by the new legislation are primarily designed to ensure that the tax rates can only be increased, and not decreased, until 2015.

The increase in the number of unemployed in our state necessitated these changes to the unemployment compensation laws. While it is unclear when the current recession will finally end and unemployment figures will begin to fall, employers, especially those who have laid off a substantial number of employees, should be aware of and be prepared to incur increased costs and pay increased unemployment taxes for the foreseeable future.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice.

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[1] *Revenue Estimating Conference, Unemployment Compensation Tax, Fiscal Impact of Senate Bill 810, April 17, 2009.*

[2] *A covered employer is an employer that employs the requisite number of employees provided for in the law.*

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