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Explanation of Committee Substitute for SB 246
Amending the Unemployment Compensation Act

Executive Summary

Governor Manchin's bill to address possible shortfalls in the State's unemployment compensation fund was introduced as SB 246 on February 12, 2009. It was double-referenced, first to the Senate Judiciary Committee and then to the Senate Finance Committee. On March 25, 2009, the Judiciary Committee reported a committee substitute, which was read a first time, before the bill was send to Senate Finance. Salient features of the committee substitute include:

No employer who owes delinquent unemployment taxes would be allowed to obtain a license, certificate of permit from a state agency, until such time as the delinquent amount is paid or payments are being made under a payment plan. The significant change is that "employer violator" would be defined to include any individual or entity that owns, controls or has a 10% or greater ownership interest in a delinquent employer.

Individuals would have a "base period," as defined in current law, as well as an "alternative base period" for purposes of computing unemployment benefits. They could also have an "alternative base period employer" in addition to a base period employer. Unemployment compensation benefits would be computed using either "based period wages," as currently defined, or "alternative base period wages."

For period beginning after the effective date of the bill, wages, for purposes of the unemployment tax, would mean "threshold wage" paid to an employee. This amount would be $12,000 until the February 15th of any year in which the unemployment fund balance is $220 million or more. Then the threshold wage reduces to $10,000. Thereafter, threshold wage is increased or decreased by the same percentage that the State's average wage increases or decreases. "Threshold wage" and "average wage" are defined in the bill.

If on or after July 1, 2009, the balance of the unemployment fund is less than $180 million at the end of a calendar quarter, the Commissioner of Workforce Development must impose a temporary solvency assessment on both employers and employees at the following rates:

Solvency assessment on employees - 0.075% of gross wages
Solvency assessment on employers - 0.25% of wages paid to employees

Employers would be given written notice of when they would begin collecting a solvency assessment from their employees and of when no further collection is required. Employers would not be liable for over collection of the employee solvency assessment during the period during which the assessment is imposed and for 30 days thereafter.

The rules on disqualification for receipt of benefits would be changed in four areas:

1. An individual would not be deemed to have left his or her work without good cause when the leaving is for health-related reasons and the individual provides the employer with the proper notification, as defined in the bill.

2. An individual would be disqualified for gross misconduct, which would be defined to include taking a controlled substance without having a valid prescription and while at work adulterating or otherwise manipulating a sample or specimen to thwart a required drug or alcohol test; or refusing to submit to random testing for alcohol or illegal controlled substances and the employee is in a safety sensitive position.

3. An individual would not be disqualified if the employer locks out the employee and the affected employee offered to continue working under the terms and conditions of employment that existed before the lockout. "Lockout" and "strike" are defined terms.

4. Under certain circumstances, an individual who accepts early retirement would not be disqualified.

The commissioner would not be allowed to increase or decrease the maximum weekly unemployment benefit rate while the temporary solvency assessment on employers and employees is in place.

The benefits table would be revised by adding 86 additional classes and increasing the maximum benefit to $11,400 for individuals whose base period wages were $40,150.00 or more.

More Detailed Explanation

Section 21A-1-4 would be amended to require the executive director of Workforce West Virginia to establish an employer violator system to identify individuals and employers who are in default on any assessment, surcharge, tax or penalty owed to the unemployment compensation fund.

The employer violator system would prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the executive director, in any company from obtaining or maintaining any license, certificate or permit issued by the State until the violator has paid all moneys owed to the fund or has entered into and remains in compliance with a repayment agreement.

The employer violator system would work cooperatively with all state agencies to maintain an accurate up-to-date list of violators and would be available in electronic format and online for agencies and the public. Before an employer is added to the violator list, he or she would be given notice and an opportunity for an expedited administrative hearing. The executive director would be authorized to propose for promulgation emergency and legislative rules to effectuate new subsection (d).

In addition to the "base period," as defined in current law, there would be an "alternative base period," which means the "last four completed calendar quarters preceding the first day of the individual's benefit year." *See* bill §21A-1A-5. An individual would have a "base period employer" or an "alternative base period employer." *See* bill §21A-1A-6. The individual would have "base period wages" or "alternative base period wages." *See* bill §21A-1A-7.

The definition of "wages" would be amended to mean "threshold wages" paid after the amendment to section 21A-1A-7 during the 2009 legislative session.

> "Threshold wage" would be defined to mean "the wage amount the employer pays unemployment taxes on for each person in his or her employ during a calendar year." On and after the effective date of Com. Sub for SB 246 in 2009, the threshold wage will be $12,000. However, when the moneys in the unemployment fund reach $220 million on February 15 of any year, the threshold wage thereafter will be reduced to $10,000. Each year thereafter, the threshold wage would be increased or decreased by the same percentage that the State's average wage increases or decreases.
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> "Average annual wage" would be defined to mean the "State's average annual wage which is computed on or before the thirtieth day of September of the year immediately preceding the rate year and is the total remuneration paid by employers as reported on contribution reports on or before that date with respect to all employment during the four consecutive calendar quarters ending on the thirtieth day of June of that year divided by the average monthly number of individuals performing services in employment during the same four calendar quarters as reported on the contribution reports. *See* bill §21A-1A-7(d).

Temporary solvency assessments could be imposed after June 30, 2009, if the commissioner determines that the balance of the unemployment compensation trust fund is less than $180 million at the end of any calendar quarter. The commissioner would be required to impose a temporary solvency assessment on employees and employers in accordance with the provisions of section 21A-5-10a.

Following imposition of a temporary solvency assessment, every employer, contributing and reimbursable, subject to chapter 21A of the Code, would be required to withhold from all

persons in his or her employment a temporary solvency assessment of seventy-five one thousandths (.075) of one percent of an employee's gross wages, which amount, together with a solvency assessment contributed by the employer, except for reimbursable employers who would not be assessed, would be paid to Workforce West Virginia on a form prescribed by the commissioner. Payment would be due at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section 21A-5-5 of the Code.

After determining the level of assessment on the gross wages of employees, the commissioner would be required to impose an assessment upon employers, except reimbursable employers, of twenty-five one hundredths (.25) of one percent of wages paid to their employees.

The commissioner would be required to give employers written notice when the balance of the unemployment trust fund is at the level which requires the collection of the solvency assessment from their employees. The commissioner would also be required to give written notice to employers when no further collection of the employee assessments is necessary. Employers would not be liable for over collection of the employee assessments as a result of the failure to receive adequate notice from the commissioner during the time period that the employee assessments are imposed and for thirty days thereafter.

The solvency assessments on employers and employees would terminate when the balance of the unemployment compensation trust fund is greater than $220 million on February 15 of any year.

The commissioner would have the right to collect any delinquent solvency assessments in the same manner as provided for in section 21A-5-16. Any delinquency would bear interest and penalties as provided in section 21A-5-17.

Employees would be eligible for benefits under current law rules, except that if an employee is ineligible for benefits because he or she was paid less than $2,200 during his or her base wage period, he or she will be eligible for benefits if he or she earned not less than $2,200 during more than one quarter of his or her alternative base period. *See* bill §21A-6-1.

An individual is disqualified from receiving benefits as provided in current law, except that for purposes of subdivision 21A-6-3(1) an individual would not be deemed to have left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if such individual was compelled to leave his or her work for his or her own health-related reasons and notifies the employer prior to leaving the job or within two business days after leaving the job or as soon as practicable and presents written certification from a licensed physician within thirty days of leaving the job that his or her work aggravated, worsened, or will worsen the individual's health problem.

An individual would be disqualified from receiving benefits for gross misconduct. "Gross misconduct" would be defined to mean conduct consisting of willful destruction of his or her employer's property; assault upon the person of his or her employer or any employee of his or her employer; if such assault is committed at such individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, as defined in chapter 60A of the Code without a valid prescription, or being under the influence of any controlled substance, as defined in chapter 60A of the Code without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to random testing for alcohol or illegal controlled substances for employees in safety sensitive positions as defined in section 21-1D-2 of the Code; arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross misconduct; he or she shall be and remain disqualified for benefits until he or she has thereafter worked for at least thirty days in covered employment. The words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from such act or acts. *See* bill §21A-6-3(2).

No disqualification would be imposed if the employer locks out its employees and the affected employees offered to continue working under the terms and conditions of employment which existed immediately prior to the lockout. For purposes of this sentence, a lockout occurs when an employer discontinues all or a portion of its operations or refuses to permit employees to work for the purpose of gaining a concession from the employees during a labor dispute. The term "strike" includes any strike or other concerted stoppage of work by employees, including a stoppage by reason of the expiration of a collective bargaining agreement, and any concerted slowdown or other concerted interruption of operations by employees. *See* bill §21A-6-3(4).

Additionally, no disqualification from benefits would occur in the case of an individual who accepts an early retirement incentive package unless he or she (i) establishes a well-grounded fear of imminent layoff supported by definitive objective facts involving fault on the part of the employer, and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package. *See* bill §21A-6-3(11).

Section 21A-6-10, relating to benefit rate, would be amended to prohibit the commissioner from increasing or decreasing the maximum weekly benefit rate during the pendency of a temporary solvency assessment on employers and employees in accordance with section 21A-5-10a of the Code.

Additionally, the current benefit table would be replaced with a new benefit table that would have 254 wage classes rather than 169 wage classes. The change benefits individuals whose base period wages exceed $27,400. Under current law, individuals whose base period

wages were $27,400 would receive a maximum benefit of $7,540. Under the new benefits chart, 86 additional classes would be added and the maximum benefit would be $11,400 for individuals whose base period wages were $40,150.00 or more.