



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 421

PRINTERS NO. 2415

PRIME SPONSOR: C. Harris

### COST / (SAVINGS)

FUND	FY 2013/14	FY 2014/15
Administration Fund	\$0	\$0
General Fund	(\$616,603)	(\$924,905)
Political Subdivision Funds	\$0	See "Fiscal Impact"
Special Administration Fund	\$0	\$0
Unemployment Compensation Trust Fund	(\$3,892,083)	(\$5,815,000)

**SUMMARY:** Makes reforms to the Unemployment Compensation (UC) Law regarding "triple dipping", exempting summer camps from UC coverage, and making changes to the UC Law ensuring compliance with federal law. The sections relating to definitions, shared-work application/plan requirements will take effect in 90 days. The remainder of this legislation will take effect immediately.

**ANALYSIS:** This legislation would prohibit annuitants from collecting UC benefits after leaving work to preserve pension eligibility; exempt work performed by full-time students employed by children's overnight camps or summer day camps; ensure compliance with federal laws by increasing penalties for violations by claimants and employers, establish reciprocal agreements to recover overpayments, and make necessary changes to the state Shared-Work Program

**Overnight & Summer Day Camp Exemption:** This legislation amends the definition of "employment" [Section 4(l)(4)(21)] to exempt services provided by full-time students working for children's overnight camps or summer day camps from any kind of coverage under the UC Law.

Camps will be eligible for the exemption if:

- They operate for less than 7 months of the year.
- In the previous year, their sales in any six-month period were less than one-third of the average sales for the other six months of that year.

The exemption will be applicable to employees who do not work for the camp for more than 13 weeks each year and who are considered full-time students as follows:

- They are currently enrolled full-time at any secondary, higher educational, professional or vocational educational training school; OR
- They are between academic terms, if they were enrolled full-time during the immediately preceding term or year and if there is reasonable assurance that they will be enrolled full-time during the immediately succeeding term or year.

This change will apply to services performed on or after the effective date of the legislation.

**Federal Compliance - Charging Employers for UC Overpayments- "Failure to Respond":** In accordance with federal law, Section 302(a) and Section 302.1 are amended to charge employers for UC overpayments which are attributable to the employer's untimely response, inadequate response, or failure to respond to L&I's request for necessary employee eligibility information.

A request from L&I must:

- Indicate the name and SSN of the individual
- Contain specific inquiries and/or indicate the type of information sought
- Be mailed to the employer's last known address or be sent to the employer's e-mail address
- Indicate the date the request is mailed or sent by e-mail
- Indicate a mailing address or e-mail address where a response can be filed.

A response is considered untimely if it is filed more than 14 days after L&I's request is mailed or e-mailed.

A response is considered inadequate if it misrepresents or omits facts that, if represented accurately or disclosed, would have been a basis for L&I to disqualify the employee from receiving UC benefits.

Similar to current law, charges to an employer under this section will be assigned proportionally to the employee's wage credits from the employer. Assigned charges may be appealed.

Overpayments may be established after L&I receives late information. The legislation amends Section 804 to provide that the dollar amount charged to the employer's account will be credited to the employee's overpayment.

This change will apply to overpayments established on or after October 21, 2013.

**Federal Compliance- Interstate Reciprocal Overpayment Recovery Agreement (IRORA):** In accordance with federal law, Section 312 is amended by adding a subsection (g). L&I is now permitted to enter into reciprocal agreements with other states and with the federal government to recover UC benefit overpayments.

This change will take effect immediately.

**“Triple Dipping”**: This legislation adds a new subsection, 402(k), under which UC claimants will be ineligible for benefits if their separation from work (and by extension, their “unemployment”) is caused by either the claimant or their employer in order to preserve:

- Existing entitlement to a pension (including a governmental or other pension);
- Retirement or retired pay;
- An annuity; or
- Any other similar periodic payments

In accordance with federal law, Section 401(f) of the law is also amended to allow the aforementioned ineligible claimants to re-qualify for benefit eligibility.

This change will apply to benefit years beginning on or after the effective date of the legislation.

**Federal Compliance- 15% Claimant Fraud Penalty**: In accordance with federal law, claimants who knowingly make false statements or fail to disclose material facts in order to receive compensation to which they are not entitled must pay a financial penalty. The penalty is 15% of the benefits the claimant fraudulently received, payable to the state UC Fund.

There is a 10-year statute of limitations on the institution of administrative or legal proceedings to collect the 15% financial penalty.

This change will apply to overpayments established on or after October 21, 2013.

**Federal Compliance- Shared Work Programs**: In accordance with federal law, numerous changes are made to Article XIII (“Shared-Work Program”) of the UC Law, as follows:

- Deletes the definition for “fringe benefit” under Section 1301 and references under Section 1303
- Requires under Section 1302(b) that employers:
  - Provide written work-share plans to L&I along with applications.
  - Attest that the plan is consistent with federal and state obligations.
  - Certify that any health or retirement benefits will continue to be provided to employees under the same terms and conditions.
- Adds an exemption under Section 1303(a)(2) that shared-work plans may not apply to seasonal, temporary, or intermittent employees.
- Deletes the five-year expiration date of the program.

**FISCAL IMPACT**: This legislation would save the Commonwealth, as a reimbursable employer, \$924,905 in Fiscal Year 2014-15 and the fiscal years thereafter utilizing data supplied by the Department of Labor & Industry. It is presumed that approximately \$539,528 will be saved in the General Fund for Fiscal Year 2013-14 assuming 8 months of savings. This number is calculated by averaging the benefits collected by annuitants in 2010 (220 annuitants and \$942,695 in benefits), 2011 (239 annuitants and \$1,119,925 in benefits), and 2012 (179 annuitants and \$712,095 in benefits).

This legislation would save political subdivisions, as reimbursable employers, some funds due to the fact that annuitants, who are terminated to preserve pension, retirement, or annuity benefits, would no longer be able to collect UC benefits. The legislation would also provide some savings to the Unemployment Compensation Trust Fund due to the fact that annuitants, who are terminated to preserve pension, retirement, or annuity benefits, would no longer be able to collect UC benefits in the private sector. According to the Department, it is impossible to identify the savings to political subdivisions as well as the Unemployment Compensation Trust Fund.

According to the Department of Labor and Industry, exempting summer camps from UC taxation would result in the loss of about \$185,000 to the Unemployment Compensation Trust Fund annually. That number is derived from the loss in UC tax revenues from approximately 240 employers and 3,460 workers who would fall within the scope of this legislation. It is presumed that the loss of revenue to the UC Trust Fund would be \$107,917 in 2013-14, assuming that 7 months of UC tax collections would go away.

The Department cannot estimate how much revenue will be collected from or charged to employers who do not respond to their information requests in a timely manner and thus cause the state to erroneously pay UC to a claimant.

The Department believes the fiscal impact of entering into reciprocity agreements with other states and the federal program will net to about zero.

The Department estimates that once an overpayment has occurred and it has been determined that the claimant committed fraud, the imposition of the 15% penalty on the overpayment to the claimant will generate about \$6 million annually for the UC Trust Fund as delineated by law. It is presumed that the revenue from the penalty to the UC Trust Fund would be approximately \$4 million in 2013-14, assuming 8 months of the enhanced penalty.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** October 22, 2013

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*