

Approved A. W. Douville 3-28-89
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:12 a.m./~~p.m.~~ on March 16, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Gomez - Excused
Representative O'Neal - Excused
Representative Whiteman - Excused
Committee staff present:

Jerry Donaldson - Legislative Research Department
Jim Wilson - Revisor of Statutes' Office
Kay Johnson - Committee Secretary

Conferees appearing before the committee:

Paul Bicknell - Chief of Contributions, Department of Human Resources
Bill Clawson - Chief of Benefits, Department of Human Resources

Chairman Douville called the meeting to order at 9:12 a.m.

Substitute SB 275 - Employment security law, definition of "employer", successor experience rating, back pay awards and extended benefits.

Paul Bicknell, Chief of Contributions, Department of Human Resources, addressed the committee and explained the proposed changes contained in Sub. SB 275, attachment #1:

- K.S.A. 44-703(h)(4)(B) - provides for establishment of liability for an employing unit which acquires less than 100 percent of an employer's annual payroll when the partial successor employing unit is controlled substantially by the same interests as the predecessor employing unit and intends to continue the acquired percentage as an ongoing business.
- K.S.A. 44-703(o) - includes back pay in the definition of wages. This change also requires the back pay award or settlement to be allocated to the week or weeks and reported as specified in the order or agreement. If not specified, in the judgment of the secretary, the back pay would be allocated and reported to the week or weeks that wages would have been paid.
- K.S.A. 44-710(e)(2)(F) - increase the size of the bond or deposit required of reimbursing employers from 3.6 percent to 5.4 percent. (This increase is a result of the increase in the "standard rate" in 1983 to 5.4 percent. The standard rate is the maximum effective contribution rate that can be assigned contributing employers.)
- K.S.A. 44-710a(b)(3) - requires a mandatory transfer of experience rating factors when an employing unit which acquires less than 100 percent of an employer's annual payroll and the partial successor employing unit is controlled substantially by the same interests as the predecessor employing unit and intends to continue the acquired percent as an ongoing business.

Examples of each proposed law change are contained in attachment #1.

Bill Clawson, Chief of Benefits, Department of Human Resources, addressed the committee regarding an additional change related to benefits, attachment #2:

- K.S.A. 44-704a(d) & (e) - this amendment reduces the state share of amount paid on extended benefits to match the reduction that may be required by the Graham-Rudman-Hollings Deficit Reduction Act if we are paying extended benefits.

Chairman Douville asked if anyone from labor or industry had a comment on this bill. Wayne Maichel, Kansas AFL-CIO, speaking from the audience, said he is also a member of the Employment Security Advisory Council and he supports Sub. SB 275. Rob Hodges, Kansas Telecommunications Association, also speaking from the audience, said the changes

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:12 a.m./~~p.m.~~ on March 16, 1989.

are detailed and technical and he supports the bill.

Representative Schauf moved that Sub. SB 275 be passed favorably. Representative Lane seconded the motion. The motion carried.

Chairman Douville stated that SB 295 was not on the agenda for today, but if there are no objections the committee will take it up today. Representative Buehler asked for additional time to study the bill. Chairman Douville said the bill will be heard tomorrow, March 17, 1989.

The meeting adjourned at 9:30 a.m. The next meeting will be Friday, March 17, 1989 at 9:00 a.m. in room 526-S.

PROPOSED LAW CHANGE

SUB. SB 275
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Lines 161-168

K.S.A 44-703(h)(4)(B)

Provides for establishment of liability for an employing unit which acquires less than 100 percent of an employer's annual payroll when the partial successor employing unit is controlled substantially by the same interests as the predecessor employing unit and intends to continue the acquired percentage as an ongoing business.

Example

Employer X is a partnership of John Jones and Sam Smith and operates two business entities -- one is a cab company and the other is a car leasing entity. The partners decide to form two separate corporations -- Corporation A to run the cab company and Corporation B to operate the car leasing business. The cab company amounted to 40 percent of the partnership's annual payroll and the car leasing amounted to 60 percent.

Under current law, since neither corporation acquired substantially all the employing enterprises, organizations, trade or business, or substantially all the assets, liability would not be created immediately.

Under the above explained amendment, since both partners are now both officers in the two separate corporations, both corporations would have established liability immediately.

S.A. 44-703(o)

Includes back pay in the definition of wages. This change also requires the back pay award or settlement to be allocated to the week or weeks and reported as specified in the order or agreement. If not specified, in the judgment of the secretary, the back pay would be allocated and reported to the week or weeks that wages would have been paid.

Example

Fact Situation:

1. The claimant is discharged and files a claim for UI benefits. Claimant is cleared for payment and is paid 10 weeks at \$210.00 each.
2. An NLRB adjudicator rules the claimant is to be reinstated and made whole. The back pay award granted is minus any benefits that have been paid. Total award was \$10,100.00.

Current Procedure:

3. Currently we do nothing as far as benefit eligibility is concerned since benefits were claimed and paid legally and in good faith and further the amount was reduced from the back pay amount.
4. The back pay award amount (minus the amount of benefits paid) is reported by the employer and taxed and allocated to the quarters as if they had been paid. Benefits are charged to the employer's account (if base period employer) for total benefits paid.

Proposed Law Change:

5. With law change the employer will report and pay tax on the total back pay award.
6. The employer also reimburses the fund for the amount of benefits paid, i.e. $\$210.00 \times 10 \text{ weeks} = \$2,100.00$; $\$8,000.00$ in lost wages for a total award of $\$10,100.00$. The claim then is void and the claimant is made whole. The employer may write a check for taxes on the total award and a check for the $\$2,100.00$.
7. This would apply to all employers except reimbursing and they would not have a tax to pay.

Reasons for Consideration of a Law Change:

1. Under current procedures, the trust fund finances \$2100 of this employer's back pay award.
2. The claimant is not made "whole".
 - a. If the claimant again becomes unemployed at a later date during the established benefit year he would only have 16 weeks of benefit entitlement remaining.
 - b. If the claimant again becomes unemployed at a later date and must establish a new benefit year utilizing the wage credits established as a result of the back pay award, the entitlement may be reduced since the wage credits established were reduced by the amount of the weekly benefit amount paid.

PROPOSED LAW CHANGE

K.S.A. 44-710(e)(2)(F)

Increase the size of the bond or deposit required of reimbursing employers from 3.6 percent to 5.4 percent. (This increase is a result of the increase in the "standard rate" in 1983 to 5.4 percent. The standard rate is the maximum effective contribution rate that can be assigned contributing employers).

Example

When a governmental entity or a non-profit organization exempt under Section 501(c)(3) of the Federal Internal Revenue Code which is exempt from income tax under Section 501(a) elects to become a reimbursing employer, they must file with the secretary a surety bond or may elect in lieu of the surety bond, to deposit with the secretary money or securities as approved by the secretary.

Under current law, this amount of the bond or deposit shall not exceed 3.6 percent of the organization's taxable wages paid for employment by the eligible employer during the four quarters immediately preceding the effective date of election. If the employer did not pay wages in each of such four quarters, the amount of bond or deposit shall be determined by the secretary.

Under the above explained amendment, the size of the bond would be increased from 3.6 percent to 5.4 percent. This would provide protection to the Employment Security Fund in the amount of one years contributions at the rate of 5.4 percent.

PROPOSED LAW CHANGE

K.S.A. 44-710a(b)(3)

Requires a mandatory transfer of experience rating factors when an employing unit which acquires less than 100 percent of an employer's annual payroll and the partial successor employing unit is controlled substantially by the same interests as the predecessor employing unit and intends to continue the acquired percent as an ongoing business.

Example

Employer X is a partnership of John Jones and Sam Smith and operates two business entities -- one is a cab company and the other is a car leasing entity. This employer has an assigned contribution rate of 5.9 percent. (The experience rating account has a negative account balance and a negative reserve ratio of 9.582 percent). The partners decide to form two separate corporations -- Corporation A to run the cab company and Corporation B to operate the car leasing business. The cab company amounted to 40 percent of the partnership's annual payroll and the car leasing amounted to 60 percent.

Under current law since neither corporation acquired substantially all of the employing enterprises, organization, trade or business, or substantially all the assets, the two corporations would not be required to transfer the experience rating of the partnership. Consequently, the contribution rate of 5.9 percent could be purged and each new corporation would start out at the new employer industry rate of 3.48 percent.

Under the above explained amendment, since both partners are now both officers in the two new corporations, it becomes mandatory to transfer 40 percent of the experience rating factors to Corporation A (the percent of the partnership's annual payroll acquired by Corporation A) and 60 percent of the experience rating factors to Corporation B. As a result of this mandatory transfer, both corporations would continue to pay at the same contribution rate of the predecessor partnership, 5.9 percent.

K.S.A. 44-704a(d) and (e)

This amendment reduces the state share of amount paid on extended benefits to match the reduction that may be required by the Graham-Rudman-Hollings deficit Reduction Act if we are paying extended benefits.

Example

If an individual has a benefit entitlement of \$100 a week and the Graham-Rudman-Hollings reduction is 2%, then the amount of the federal reduction is \$1 since the federal portion is 50% of the weekly benefit amount. This amendment reduces the state portion equally at \$1. The individual's total benefit amount would also be reduced by the equal percentage amount.