

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

SENATE BILL NO. 1813

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1813 with my recommendations for reconsideration.

A. Summary of Bill

This bill would reduce the unemployment insurance (UI) tax rates which will be imposed on employers during fiscal year 2011 by setting them based on the "C" column of the UI tax table. The UI tax rate which is being charged to employers during FY 2010 is based on the "B" column of the tax table. Due to the significant deficit in the UI trust fund, under current law, the tax rate would increase, starting on July 1, 2010, to the highest tax rate set by the law, which is the rate found in the "E" column, plus an additional 10 percent surcharge.

B. Recommended Action

I commend the sponsors of the bill for their efforts in crafting this legislation, which recognizes that the scheduled payroll tax increase on employers would do enormous harm to an economy already staggering from the recession. However, this bill simply does not go far enough to solve the fundamental problems with UI that will persist without bold reform. As you know, from 1992 to 2006, approximately \$4.6 billion was diverted from the UI fund. In addition, since March 2009, the State has borrowed over \$1.75 billion from the federal government. I am advised that if no immediate action is taken, the debt owed to the federal government will increase dramatically. This is simply unacceptable, and will prove catastrophic for the employer community, the labor community, and the overall

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economy. The State can no longer pursue the status quo, but must take immediate action.

It is time for the State to achieve comprehensive reform in the State's unemployment compensation system in order to bring the fund back to solvency in a fair and balanced way. There is a broad consensus that the current statutory framework for our treatment of misconduct cases is not in line with the practices of a majority of other states. Under the current statutory structure about 90 percent of the misconduct cases have the same penalty without regard to the individual's level of misconduct. This treatment is not balanced. I am advised that by redefining "misconduct" by carving out a "severe misconduct" tier, as well as creating a more proportional unemployment benefit penalty structure, the individuals seeking unemployment insurance would be treated more equitably, and the Unemployment Insurance Trust Fund would realize a significant savings each year. In this regard, I believe it would be equitable to reform this section of the law to ensure that the penalty for the misconduct is treated proportionately to the level of misconduct.

Moreover, I will advise the Department of Labor & Workforce Development to change any regulations that are not consistent with the above recommendation, and, also, to propose appropriate regulations to require that an employer provide written documentation to show that the employee's actions constitute either misconduct, severe misconduct, or gross misconduct.

Additionally, I recommend that an Unemployment Insurance Fund Task Force be established to study and assess the current unemployment insurance crisis and recommend how the State can restore the trust fund in a way that balances the interests of workers, employers, and the overall economy. The Unemployment

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Insurance Fund Task Force would replace the Employment Security Council, a group that has not met in over half a decade. A comprehensive review and assessment of the State's unemployment compensation system would include an evaluation of: eligibility standards; benefit levels; certain definitions in the unemployment compensation law; the statutory matrix for the payroll tax triggers; contributions to the unemployment insurance fund and the experience rating table; and other areas relevant to the short-term and long-term solvency of the unemployment insurance fund.

Lastly, in light of the State's fiscal crisis, and the insolvency of the State's UI fund, I am requesting that the Legislature not consider benefit increases while a task force is in place, and if a bill increasing unemployment benefits is passed by the Legislature while the task force is in place, I will not sign it.

Accordingly, I herewith return Senate Bill No. 1813 and recommend that it be amended as follows:

Page 23, Section 2, Line 47: Insert new section 2 to read as follows:

"R.S. 43:21-5 is amended to read as follows:

An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight [four] weeks in employment, which may include employment for the federal government, and has earned in employment at least ten [six] times the individual's weekly benefit rate, as determined in each case. This subsection shall apply to any individual seeking

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unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any individual who was employed in the production and harvesting of agricultural crops on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract.

(b) For the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the [five] seven weeks which immediately follow that week, as determined in each case. [In the event the discharge should be rescinded by the employer voluntarily or as a result of mediation or arbitration, this subsection (b) shall not apply, provided, however, an individual who is restored to employment with back pay shall return any benefits received under this chapter for any week or unemployment for which the individual is subsequently compensated by the employer.]

For the week in which the individual has been suspended or discharged for severe misconduct connected with the work, and for each week thereafter until the individual becomes reemployed and works four weeks in employment, which may include employment for the federal government, and has earned in employment at least six times the individual's weekly benefit rate, as determined in each case. Examples of severe misconduct include, but are not necessarily limited to, the following: repeated violations of an employer's rule or policy, repeated lateness or absences after a written warning by an employer, falsification of records, physical assault or threats that do not constitute gross misconduct as defined in this section, misuse of benefits, misuse of sick time, abuse of leave, theft of company property,

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excessive use of intoxicants or drugs on work premises, theft of time, or where the behavior is malicious and deliberate but is not considered gross misconduct as defined in this section.

In the event the discharge should be rescinded by the employer voluntarily or as a result of mediation or arbitration, this subsection (b) shall not apply, provided, however, an individual who is restored to employment with back pay shall return any benefits received under this chapter for any week of unemployment for which the individual is subsequently compensated by the employer.

If the discharge was for gross misconduct connected with the work because of the commission of an act punishable as a crime of the first, second, third or fourth degree under the "New Jersey Code of Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be disqualified in accordance with the disqualification prescribed in subsection (a) of this section and no benefit rights shall accrue to any individual based upon wages from the employer for services rendered prior to the day upon which the individual was discharged.

The director shall insure that any appeal of a determination holding the individual disqualified for gross misconduct in connection with the work shall be expeditiously processed by the appeal tribunal."

cf: P.L. 2007, c.162.

3. (New Section) a. There is created a task force to be known as the "New Jersey Unemployment Insurance Task Force," which shall be an independent body in, but not of, the Department of Labor and Workforce Development. The task force shall consist of 12 members, including:

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(1) Six non-voting members as follows: the Chairpersons of the Senate Labor Committee and the Assembly Labor Committee, ex officio, a Senator nominated by the Minority Leader of the Senate, a member of the General Assembly nominated by the Minority Leader of the General Assembly, the Commissioner of Labor and Workforce Development, ex officio, an individual appointed by the Governor who has expertise in employment, unemployment and unemployment insurance programs; and

(2) Six voting members appointed by the Governor. Three members to be appointed by the Governor from the following organizations: the New Jersey State Chamber of Commerce, the New Jersey Business and Industry Association, the New Jersey branch of the National Federation of Independent Business, the New Jersey Food Council, the New Jersey Restaurant Association, or the New Jersey Commerce & Industry Association. Three members to be appointed by the Governor from the following organizations: the New Jersey State AFL-CIO, the New Jersey State Building Trades Council, the American Federation of State, County and Municipal Employees, the Mechanical & Allied Crafts Council of New Jersey, the New Jersey State Council of the Service Employees International Union, or the New Jersey Regional Council of Carpenters.

b. The task force shall have co-chairs who are elected by the voting members: one co-chair shall be from the New Jersey State Chamber of Commerce, the New Jersey Business and Industry Association, the New Jersey branch of the National Federation of Independent Business, the New Jersey Food Council, the New Jersey Restaurant Association, or the New Jersey Commerce & Industry Association; and one co-chair shall be from the New Jersey State AFL-CIO, the New Jersey State

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Building Trades Council, the New Jersey State Council of the Service Employees International Union, the American Federation of State, County and Municipal Employees, the Mechanical & Allied Crafts Council of New Jersey, or the New Jersey Regional Council of Carpenters. Members shall be appointed as soon as practicable. Members shall be appointed for three-year terms and may be re-appointed for any number of terms. Any member of the task force who is not a legislator may be removed from office by the Governor, for cause, upon notice and opportunity to be heard. Vacancies shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member shall continue to serve upon the expiration of his term until a successor is appointed and qualified, unless the member is removed by the Governor.

c. Action may be taken by the task force by an affirmative vote of a majority of its voting members. A majority of the voting members and a majority of the non-voting members of the task force shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the task force.

d. Members of the task force shall serve without compensation, but may be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the task force within the limits of funds appropriated or otherwise made available for that purpose.

4. (New Section) a. The task force shall study and assess the current unemployment insurance crisis and recommend how the state can stabilize the unemployment insurance fund. Specifically, the work of the task force shall include, but not necessarily be limited to, an evaluation of the following: eligibility standards; benefit levels; certain

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definitions, such as "suitable work"; the statutory matrix for payroll tax triggers; contributions and the experience rating table; collections of overpayments of unemployment; methods used in order to get individuals off unemployment insurance benefits; the statutory and regulatory framework for the treatment of misconduct; and other areas relevant to the short-term and long-term solvency of the unemployment insurance fund.

b. In furtherance of its evaluation, the task force may hold public meetings or hearings within the State on any matter or matters related to the provisions of this act, and call to its assistance and avail itself of the services of the Rutgers School of Management and Labor Relations, the John J. Heldrich Center for Workforce Development, and the employees of any State department, board, task force or agency which the task force determines possesses relevant data, analytical and professional expertise or other resources which may assist the task force in discharging its duties under this act. Each department, board, commission or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate fully with the task force and to furnish such information and assistance as is necessary to accomplish the purposes of this act. The task force shall submit a written report of its findings regarding the subjects of its review and evaluation of the unemployment insurance program, including any recommendations of the task force regarding possible legislation or changes in administrative procedures based on its review and evaluation, to the Governor and to the Legislature by October 1, 2010, and for three years thereafter, unless an extension is deemed necessary and appropriate by the Governor, who shall immediately review each task force



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report upon its receipt. The task force created under the provisions of this act shall expire upon the issuance of the task force final report issued by October 1, 2013.

5. N.J.S.A. 34:1A-16 is hereby repealed. ~~There shall be within the Department of Labor an Employment Security Council, which shall consist of nine members, not more than five of whom shall be of the same political affiliation. Three of the nine members of the council shall be persons who by reason of vocation, employment or affiliation, may fairly be regarded as representative of employers, three shall be persons who by reason of vocation, employment or affiliation, may fairly be regarded as representative of employees, and three shall represent the general public. Each member of the council shall be appointed by the Governor, with the advice and consent of the Senate, for a term of four years and shall serve until his successor has been appointed and has qualified.~~

~~Each Governor shall designate one of the members of the council representing the general public as chairman of such council. Any member of the council so designated shall serve as such chairman at the pleasure of the Governor designating him and until his successor has been designated. The chairman of the council shall be its presiding officer.~~

~~Any vacancies in the membership of said council occurring other than by expiration of term shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term only. Any member of the council may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.~~

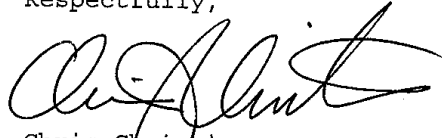
~~The members of the council shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.~~

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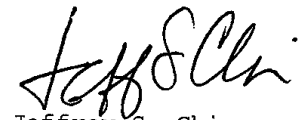
Page 23, Section 2, Line 47: Renumber Section 2 as Section 6

Respectfully,



Chris Christie  
Governor

Attest:



Jeffrey S. Chiesa  
Chief Counsel to the Governor