Congress Enacts and President Signs Unemployment Related Extensions in "Fiscal Cliff" Bill - Extends WOTC

On January 1st the House of Representatives passed the Senate passed version of HR 8, the "American Taxpayer Relief Act of 2012 and the President promptly signed the measure. Title V of the bill addresses unemployment issues, see http://www.gpo.gov/fdsys/pkg/BILLS-112hr8eas/pdf/BILLS-112hr8eas.pdf . According to the Congressional Budget Office, the unemployment related provisions will increase the federal deficit by $30.1 billion with no offset. All of the increased spending is projected to be in FY 2013 and 2014 with no breakdown for source of funds between FUTA funded and general revenue accounts provided in the CBO reports. See the report at
http://www.cbo.gov/sites/default/files/cbofiles/attachments/American%20Taxpayer%20Relief%20Act.pdf

The good news from an employer's point of view is that the FUTA tax rate and base were not increased as part of the negotiated package of amendments.

The primary features of the legislation included

1. **Section 501. Extension of the Emergency Unemployment Compensation Program for a year, including the provision which prohibits states as a condition of receiving reimbursement for EUC payment from enacting measures that reduce the average weekly benefit amount.**

Comment: This extension does not increase the deficit in the FUTA funded accounts because funding for EUC benefits is provided from general revenue. However, as with previous EUC extensions, to the extent that EUC adds weeks of benefits there will be an increase in the average duration of state unemployment compensation as some claimants delay intensive work search until all state and federal compensation is about to exhaust. Assuming that the President signs the bill this week, there will be a series of notifications generated to claimants by state UI agencies to advise them about how to claim weeks of EUC that otherwise would not have been available. EUC triggered off in all states for the week beginning December 29th. With the enactment of the extension, EUC claims will once again be available.

Employers should check with state agencies about charges to employer accounts, if any, for claimants who may have claimed a week of regular state unemployment compensation or regular extended unemployment compensation because the UC program had not yet been extended.

2. **Section 502. Temporary Extension of Extended Benefit Provisions for a year**

Comment: This extension continues the current 100% federal reimbursement for states triggering on regular Extended Benefits. It also provides that states not be required to enact a "waiting week" provision as a requirement of regular EB reimbursement. Because the total unemployment rate in most states has been tracking down, the number of states triggering "on" will be small. As of December 30, 2012, no state was triggered “on” regular EB. In addition, because the language provides for the payment of EUC before regular EB, the net effect on state unemployment trust funds and the FUTA funded federal extended unemployment compensation account will be minimal in 2013. Nonetheless, employers and states should pay attention to state claims and regular EB that may have been filed that should instead have been filed as EUC claims for the current week. Employers and state UI trust fund accounts will benefit from any charges being against the EUC program.

3. **Section 503. Extension of Funding for Reemployment Services and Reemployment and Eligibility Assessment Activities through fiscal year 2014**

Comment: UWC generally supports reemployment and eligibility assessment activities as part of efforts to assist unemployed workers in returning to work. These activities would be more effective if provided for regular UI claimants early in their period of unemployment instead of waiting until they have already exhausted state unemployment compensation. However, this program begins to identify areas that can be effective in the regular state UI program to reduce the duration of unemployment compensation. Careful targeting of efforts and denial of claims by claimants who fail to participate in reemployment and work search activities is reducing pay out compared to payment of weeks of benefits without paying attention to ongoing eligibility and work search requirements.

UWC continues to advocate for repeal of the “no reduction” provision as it unduly restricts states from addressing solvency of state unemployment trust funds. States in which the weekly benefit amount is significantly higher than the national average or surrounding states should be able to include a reduction in the weekly benefit amount calculation as part of solvency legislation. As a practical matter, this federal prohibition will result in more states reducing the number of potential weeks of state unemployment compensation or making other benefit reductions that might not be as appropriate but are driven by the need to address solvency.

In addition, we continue to track the triggering of regular EB. In the event that there is a softening in the economic recovery there could be an increase in total unemployment rate in comparison to the last two or three years. The mix of EB and EUC triggering “on” and “off” should be monitored to assure that charges to the employer funded state UI trust funds and the FUTA funded extended unemployment compensation accounts are minimized.

4. **Work Opportunity Tax Credit Extension**

A number of employers participate in the work opportunity tax credit (WOTC) program and have been waiting for statutory extension of the program for some time. Authorization for the program was extended in Section 309 of the Act with respect to individuals who began work for the employer after December 31, 2011 and the end of 2013.

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