

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 500

SPONSOR: Commerce and Economic Opportunities Committee and Senator Wasserman Schultz

SUBJECT: Unemployment Compensation for Birth and Adoption

DATE: April 5, 2001                      REVISED: 04/10/01 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 500 allows unemployment compensation to be paid for a maximum of 12 weeks to a parent while on a leave of absence from work or when voluntarily quitting work to be with the parent’s child during the first year after birth or adoption. The committee substitute provides that compensation will not be charged against the account of any employer, but allows the cost of compensation to be socialized among all contributory employers; however, it is unclear whether reimbursable employers are required to pay the cost of compensation.

The committee substitute provides for reduction of compensation when a parent receives disqualifying income and requires employers to post notices of program availability. The committee substitute also requires the director of the Agency for Workforce Innovation to provide a report to the Governor and Legislature regarding program effectiveness.

This committee substitute creates section 443.232, Florida Statutes.

**II. Present Situation:**

**Family and Medical Leave**

In 1993, the United States Congress enacted the Family and Medical Leave Act (FMLA).<sup>1</sup> The law allows employees who are employed at a worksite of an employer that employs at least 50 persons within 75 miles of the worksite to receive up to 12 weeks of unpaid, job-protected leave. This leave must be granted by the employer for any of three reasons: a serious health condition

<sup>1</sup> Pub. L. No. 103-3, 107 Stat. 6 (codified at 29 U.S.C. ss. 2601-2654) (1993).

that makes the employee unable to perform the employee's job; to care for the employee's spouse, son, daughter, or parent who has a serious health condition; or to care for the employee's child after birth or placement for adoption or foster care. Leave for care of a newborn or newly placed child must conclude within 12 months after the birth or placement.<sup>2</sup> Although the FMLA provides leave with full job protection, the act does not require employers to replace any of the wages lost by an employee who takes leave, and the employer may require employees to use any accrued paid vacation or personal leave when taking family and medical leave under the act.

A 1996 study by the Commission on Family and Medical Leave<sup>3</sup> found that 3.4 percent of employees needed leave for a reason covered by the FMLA, but did not take leave.<sup>4</sup> For these employees, loss of wages was the most significant obstacle to taking unpaid leave after the birth or adoption of a child. Of the employees surveyed in the commission's report, 63.9 percent were unable to take leave because they could not afford the associated loss of wages.<sup>5</sup> "[A]t least partial wage replacement," the study recognized, is significant "in making it possible – especially for low-income women – to take maternity disability leave at all, and to take longer periods of leave."<sup>6</sup> The lowest rates for reasons that employees expressed for needing leave they did not take were maternity (0.5 percent) and caring for a newborn, adopted, or foster child (8.4 percent).<sup>7</sup> By comparison, employees responded they needed leave they did not take for their own health (43.7 percent) and to care for an ill child, spouse, or parent (44.7 percent) at much higher rates.<sup>8</sup>

The study also found that although women are more likely to take leave than men (58.2 percent compared to 41.8 percent), reflecting in large part the facts that men do not bear children and women are somewhat more likely to care for infants than men,<sup>9</sup> men and women take comparable amounts of parental leave.<sup>10</sup> The study recognizes, however, that some portion of women's care of newborns is probably included in their designation of maternity-disability leave.<sup>11</sup>

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<sup>2</sup> 29 C.F.R. s. 825.201.

<sup>3</sup> Commission on Family and Medical Leave, U.S. Dep't of Labor, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* (1996) (The 16-member commission included two United States Senators and two United States Representatives. In addition, the Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, and the Administrator of the Small Business Administration served ex-officio on the commission.).

<sup>4</sup> *Id.* at 98.

<sup>5</sup> *Id.* at 99-100.

<sup>6</sup> *Id.* at 100.

<sup>7</sup> *Id.* at 99.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 92.

<sup>10</sup> *Id.* at 95.

<sup>11</sup> *Id.*

Regarding the length of leave, the study found that maternity-disability leave tends to be longer than leave for a serious health problem. Over 40 percent of paid maternity-disability leave lasted more than 12 weeks, compared to about 45 percent of unpaid maternity-disability leave.<sup>12</sup> Most leave to care for newborns, however, is less than 12 weeks, with a significant proportion less than 1 week.<sup>13</sup> About 50 percent of all employees who took leave to care for newborns were away from work for less than 1 month, and about 37.1 percent of employees on unpaid leave took 1 week or less.<sup>14</sup>

Among other policy proposals, the commission recommended that states extend unemployment compensation to employees on family or medical leave.<sup>15</sup>

### **Birth and Adoption Unemployment Compensation**

In 1999, based in part on the Commission on Family and Medical Leave's recommendations, the President of the United States directed the United States Secretary of Labor to propose regulations allowing unemployment compensation funds to be used to provide partial wage replacements to mothers and fathers on leave after the birth or adoption of a child. Proposed as an experiment, the President directed the United States Department of Labor (USDOL) to evaluate the effectiveness of these regulations. The result was a regulation adopted in June 2000 by the Employment and Training Administration of the USDOL.<sup>16</sup>

Under the regulation, the USDOL used its authority to interpret federal unemployment compensation statutes, specifically the "able to work and available for work" requirements, to allow an experimental program to examine the use of the unemployment compensation program as a way to provide partial wage replacement to employees who take approved leave or who otherwise leave their employment after the birth or adoption of a child.<sup>17</sup>

This experimental program is known as the Birth and Adoption Unemployment Compensation program and is designed to test whether providing parents with unemployment compensation during the first year of a newborn's life, or after placement for adoption, will help employees maintain and promote their connection to the workforce by allowing them time to bond with their children and to develop stable child-care systems while adjusting to the accompanying changes in lifestyle before returning to work.<sup>18</sup> The expanded interpretation of the "able and available" requirements applies only to this experimental program and does not extend to any other part of the federal unemployment compensation program.

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<sup>12</sup> *Id.* at 97.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 199.

<sup>16</sup> 20 C.F.R. pt. 604 (2000).

<sup>17</sup> Supplementary Information to 20 C.F.R. pt. 604, Fed. Reg. 37,210-11 (2000).

<sup>18</sup> *Id.*

As an attachment to the regulation, the USDOL adopted model state legislation to implement a state program of unemployment compensation for birth and adoption.<sup>19</sup> The committee substitute is modeled after the USDOL's proposed legislation.

The USDOL's regulation took effect on August 14, 2000; however, on June 26, 2000, the United States Chamber of Commerce and two individual businesses brought suit against the USDOL in the United States District Court for the District of Columbia seeking to prevent implementation of the rule.<sup>20</sup> According to the Agency for Workforce Innovation, the court has not yet issued a decision.

### **Unemployment Compensation in Florida**

Unemployment insurance provides temporary income payments to make up part of the wages lost by workers who lose their jobs through no fault of their own and who are able and available to work. The objective of the program is to provide a cushion to absorb some of the shock of unemployment to jobless workers and their families.<sup>21</sup> This temporary income helps workers sustain their families when they are without jobs. The weekly benefit ranges from a minimum of \$32 to a maximum of \$275 per week.<sup>22</sup> All unemployment compensation tax payments are deposited into the Unemployment Compensation Trust Fund and are used for the sole purpose of paying compensation to eligible claimants.<sup>23</sup> The employer pays for the unemployment compensation program as a cost of doing business. Workers do not pay any part of unemployment compensation taxes in Florida, and employers may not make payroll deductions for this purpose.<sup>24</sup> Employers with stable employment records receive credit in reduced tax rates after a qualifying period.

The Florida Unemployment Compensation Law<sup>25</sup> provides conditions when a worker is eligible for compensation.<sup>26</sup> An unemployed individual may only receive unemployment compensation in any week if, among other things, the individual is able to work and available to work.<sup>27</sup> Current law defines the term "able to work" to mean physically and mentally capable of performing the duties of the occupation in which work is being sought,<sup>28</sup> while the term

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<sup>19</sup> Attachment I to 20 C.F.R. pt. 604, 65 Fed. Reg. 37,225 (2000).

<sup>20</sup> *LPA, Inc. et al. v. Elaine L. Chao, Secretary, U.S. Dep't of Labor*, No. 00-1505 (D.C. filed June 26, 2000).

<sup>21</sup> See s. 443.021, F.S.

<sup>22</sup> Section 443.111(3), F.S.

<sup>23</sup> Section 443.191(3), F.S.

<sup>24</sup> Section 443.131(1) & (4)(b)3., F.S.

<sup>25</sup> Chapter 443, F.S.

<sup>26</sup> Section 443.091, F.S.

<sup>27</sup> *Id.* s. 443.091(1)(c)1., F.S.

<sup>28</sup> Section 443.036(1), F.S.

“available for work” is defined as actively seeking employment and being ready and willing to accept suitable employment.<sup>29</sup>

When an individual voluntarily quits work, the individual is disqualified from receiving unemployment compensation unless the individual quits for good cause.<sup>30</sup> The term “good cause” is defined as cause that is attributable to the employer or which consists of illness or disability of the individual requiring separation from employment.<sup>31</sup> Further, an individual is disqualified from receiving unemployment compensation if the individual’s unemployment is due to a voluntary leave of absence.<sup>32</sup>

### **Financing Unemployment Compensation in Florida**

The Florida Unemployment Compensation Law provides three methods of financing unemployment compensation.<sup>33</sup> Compensation paid to private sector employees is financed through the contributory method.<sup>34</sup> Compensation paid to public sector employees<sup>35</sup> is financed through the reimbursement method<sup>36</sup> or through the Public Employers Unemployment Compensation Benefit Account.<sup>37</sup> Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method.<sup>38</sup>

The reimbursement method is a self-insurance system that requires payments to the Unemployment Compensation Trust Fund only when compensation is paid based on an individual’s service to the employer.<sup>39</sup> If compensation is not paid based on that service, the employer is not required to make payments to the trust fund.<sup>40</sup>

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<sup>29</sup> Section 443.036(6), F.S.

<sup>30</sup> Section 443.101(1)(a), F.S.

<sup>31</sup> *Id.* s. 443.101(1)(a)1., F.S.

<sup>32</sup> Section 443.101(1)(c), F.S.

<sup>33</sup> Section 443.131, F.S.

<sup>34</sup> Section 443.131(3), F.S.

<sup>35</sup> Public sector employees include state employees, employees of political subdivisions of the state (including counties and municipalities), and employees of certain nonprofit organizations. Section 443.131(4) & (5), F.S.

<sup>36</sup> Section 443.131(5), F.S.

<sup>37</sup> Section 443.131(6), F.S.

<sup>38</sup> Section 443.131(4), F.S.

<sup>39</sup> *Id.*; s. 443.131(5), F.S.

<sup>40</sup> *See id.*

Under the contributory method, employers pay tax quarterly on the first \$7,000 of each employee's annual wages.<sup>41</sup> The method of determining varying tax rates assigned to taxpaying employers is referred to as "experience rating." The purpose of experience rating under the Florida Unemployment Compensation Law is to keep the Unemployment Compensation Trust Fund stabilized between 4 and 5 percent of the taxable payrolls reported by all employers, and to ensure that employers with higher unemployment compensation costs pay at a higher tax rate.

An employer's experience rate is based on the employer's own employment record in relation to the employment records of all other employers. The rate at which taxes are paid is based on the employer's experience with unemployment during the 3-year period before the effective date of the tax rate. An employer's initial tax rate is 2.7 percent.<sup>42</sup> After an employer is subject to benefit charges for 8 calendar quarters, the tax rate may be adjusted to a low of 0.1 percent<sup>43</sup> or a high of 5.4 percent.<sup>44</sup> The adjustment in the tax rate is determined by calculating several factors.

The benefit ratio is the most significant factor in determining the tax rate, and it is the factor over which the employer has control. The benefit ratio is the cost of benefit charges as a percentage of the employer's taxable wages and is calculated by dividing the total compensation charged to the employer's record over the preceding 3 years by the amount of the employer's payroll during the same 3-year period.<sup>45</sup>

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual \$100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual.<sup>46</sup> However, an employer can obtain relief from benefit charges (noncharging) by responding to a notification of the claim with information concerning the reason for the individual's separation from work or refusal to work.<sup>47</sup> In general, an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account.

Compensation that cannot be charged against any employer's account is recovered through adjustment factors that socialize the cost of this compensation among all contributory employers who, during the previous 3 years, had benefit experience.<sup>48</sup> These adjustment factors include the noncharge adjustment factor, the excess payments adjustment factor, and the positive fund size

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<sup>41</sup> Sections 443.036(40)(b)1. & 443.131(2), F.S.

<sup>42</sup> Section 443.131(2)(a) & (3)(b)2., F.S.

<sup>43</sup> Section 443.131(3)(e)1., F.S.

<sup>44</sup> Section 443.131(2)(b) & (3)(c), F.S.

<sup>45</sup> Section 443.131(3)(b)2., F.S.

<sup>46</sup> *Id.*; s. 443.131(3)(a), F.S.

<sup>47</sup> Section 443.131(3)(a), F.S.

<sup>48</sup> *See* s. 443.131(3)(e), F.S.

adjustment factor.<sup>49</sup> Because only contributory employers pay these adjustment factors, reimbursable employers do not pay the noncharge adjustment factor.

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the Unemployment Compensation Trust Fund. The effect is an increase in the adjustment factors, which consequently increases tax rates for all contributory employers. Conversely, when unemployment is low, the adjustment factors decrease and tax rates for rated employers are reduced accordingly.

### **Adoption**

Under current law, “[a]ny person, a minor or an adult, may be adopted.”<sup>50</sup>

### **III. Effect of Proposed Changes:**

The committee substitute creates a state program of unemployment compensation for birth and adoption and implements the federal Birth and Adoption Unemployment Compensation program.<sup>51</sup> The committee substitute allows a parent who is on a leave of absence from his or her employer or who left work to be with his or her child during the first year of life to receive unemployment compensation for a maximum of 12 weeks. Similarly, the committee substitute allows a parent to receive unemployment compensation for a maximum of 12 weeks during the first year following the placement with the parent of a child under 18 years of age for adoption.

To authorize this unemployment compensation, the committee substitute exempts these parents from current statutory provisions that disqualify them from receiving compensation. These provisions relate to voluntarily quitting work, availability for work, inability to work, and failure to actively seek work.

The committee substitute clarifies that the current provisions of the Unemployment Compensation Law<sup>52</sup> which reduce compensation due to receipt of disqualifying income also apply to compensation received under the unemployment compensation program for birth and adoption. The committee substitute reduces the compensation a parent will receive if his or her employer provides payments resulting from the birth or adoption, and the committee substitute reduces compensation paid to a parent who receives payments from a disability insurance plan contributed to by an employer in proportion to the amount contributed by the employer.

Unlike the Family and Medical Leave Act of 1993, unemployment compensation paid under the committee substitute applies to all parents regardless of the number of employees in an employer’s workforce, and the committee substitute does not require parents to use any accrued paid vacation or personal leave before receiving compensation. In addition, both parents of a

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<sup>49</sup> Section 443.131(3)(e), F.S.

<sup>50</sup> Section 63.042(1), F.S.

<sup>51</sup> 20 C.F.R. pt. 604 (2000).

<sup>52</sup> Chapter 443, F.S.

child who have the required work experience are eligible to receive unemployment compensation under the committee substitute.

The committee substitute provides that the unemployment compensation paid to these parents will not be charged against the account of the parents' employers. Thus, an employer's experience rating will be unaffected by the payment of compensation to a parent. However, these payments will be made from the Unemployment Compensation Trust Fund. The cost of compensation will be recovered through increases in the noncharge adjustment factor that will socialize the costs of compensation among all contributory employers. It appears clear the committee substitute exempts compensation from being charged to the accounts of contributory employers, but it is less clear whether reimbursable employers will be required to reimburse the trust fund for benefits paid to their workers. Because reimbursable employers do not pay the noncharge adjustment factor, if they do not reimburse the trust fund, the cost of compensation paid to their workers will be socialized among all contributory employers. The Legislature may wish to amend the committee substitute to clarify whether reimbursable employers are required to make payments to the trust fund for unemployment compensation for birth and adoption paid to their workers.

The committee substitute also requires employers to post at each worksite, in a conspicuous location, information relating to the availability of unemployment compensation for birth and adoption.

Two years after the committee substitute takes effect, it requires the director of the Agency for Workforce Innovation to report on the effectiveness of the unemployment compensation program for birth and adoption to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The committee substitute also requires that the state unemployment compensation program for birth and adoption be applied consistent with rules adopted by the United States Department of Labor (USDOL). As discussed in the Present Situation section of this analysis, the Employment and Training Administration of the USDOL has already adopted a regulation implementing the Birth and Adoption Unemployment Compensation program.<sup>53</sup>

The committee substitute takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

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<sup>53</sup> 20 C.F.R. pt. 604 (2000).



C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Using national labor force statistics from the Bureau of Labor Statistics of the United States Department of Labor, the Agency for Workforce Innovation (AWI) estimates that a total of 200,734 parents will be eligible to receive unemployment compensation for birth and adoption under the committee substitute. Based on these data, the AWI estimates the recurring costs to the Unemployment Compensation Trust Fund will be (\$52 million) if 10 percent of eligible parents receive compensation for 12 weeks. This figure is doubled if 20 percent of eligible parents participate (\$104 million).

<b>Participation Rate</b>	<b>Number of Participants</b>	<b>Weeks of Leave</b>	<b>Average Benefit</b>	<b>Recurring Cost to UC Trust Fund</b>
10%	20,073	12 weeks	\$216/week	<b>(\$52 million)</b>
20%	40,147	12 weeks	\$216/week	<b>(\$104 million)</b>

To estimate the impact of the committee substitute on employer tax rates, AWI used 1999 annual tax rate calculations to simulate the impact of this compensation at the 10 and 20-percent participation rates. These estimates show that the noncharge adjustment factor would increase from .0024 to .0029 (at 10-percent participation) or .0033 (at 20 percent). The average employer tax rate would increase from .0156 to .0161 (at 10 percent) or .0165 (at 20 percent). The amount of unemployment compensation taxes paid by employers for each employee would increase from \$109.20 to \$112.70 (at 10 percent) or \$115.50 (at 20 percent).

These estimates are based upon two assumptions: 1) that all participating parents will receive all 12 weeks of leave; and 2) that 10 or 20 percent of eligible parents will participate in the program. As discussed above, the Commission on Family and Medical Leave found that about 16.8 percent<sup>54</sup> of employees used leave for a reason covered by the Family and Medical Leave Act, but that 3.4 percent of employees needed leave and did not take it.<sup>55</sup> Of those, the commission reported that 0.5 percent needed maternity leave and 8.4 percent needed leave for caring of a newborn, adopted, or foster child.<sup>56</sup> The commission also found that most leave for care of newborns is less than 12 weeks, with a significant proportion less than 1 week.<sup>57</sup> About 50 percent of all employees who took leave for care of newborns missed less than 1 month of work, and about 37.1 percent of employees on unpaid leave

<sup>54</sup> Commission on Family and Medical Leave, U.S. Dep’t of Labor, *A Workable Balance: Report to Congress on Family and Medical Leave Policies*, 91-92 (1996).

<sup>55</sup> *Id.* at 91-92 & 98.

<sup>56</sup> *Id.* at 97-99.

<sup>57</sup> *Id.*

took 1 week or less.<sup>58</sup> The United States Department of Labor estimated the average duration of unemployment compensation for birth and adoption would be 6 weeks.<sup>59</sup>

These divergent statistics demonstrate the difficulty in estimating the actual cost to the Unemployment Compensation Trust Fund and, ultimately, the cost to employers. The AWI also estimated, however, that a dramatic increase in unemployment compensation payments caused by the committee substitute would likely affect the solvency of the Unemployment Compensation Trust Fund. The AWI cited that if the trust fund's balance fell below 4 percent of the state's taxable wages, a positive fund size adjustment factor would be assessed to all contributory employers to restore the fund to statutory requirements. The AWI also relayed that a positive fund size adjustment factor has not been used in calculating employer tax rates since 1984.

#### B. Private Sector Impact:

A parent would be eligible to receive unemployment compensation for a maximum of 12 weeks while on a leave of absence from work or when voluntarily quitting work to be with his or her child during the first year after birth or adoption.

As discussed above, the noncharge adjustment factor would increase the tax rates of contributory employers to cover the costs of unemployment compensation paid to parents. If the Unemployment Compensation Trust Fund balance falls below 4 percent of the state's taxable wages, contributory employers might also be charged a positive fund size adjustment factor until the fund balance stabilized.

#### C. Government Sector Impact:

The Agency for Workforce Innovation (AWI) projected what its operational costs would be if 100 percent of all eligible parents used all 12 weeks of unemployment compensation available under the committee substitute. Based on the agency's experience that 1 FTE is needed to process every 2,580 claims, AWI projected that a maximum of 77 FTEs would be needed to implement the committee substitute. Including salaries and benefits and other operational costs, the estimated recurring cost to administer the program is (\$3.7 million). As discussed above, it is difficult to estimate what AWI's increased workload and associated costs will be given the uncertainty in estimating the number of claims that will be processed.

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

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<sup>58</sup> *Id.*

<sup>59</sup> Supplementary Information to 20 C.F.R. pt. 604, 65 Fed. Reg. 37,210, 37,214 (2000).

**VIII. Amendments:**

#1 by Banking and Insurance:

Reduces the maximum period of time a parent would be eligible to receive unemployment compensation from 12 weeks to 6 weeks while on leave of absence from work, or when voluntarily quitting work to be with his or her child during the first year after birth or adoption.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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