

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 854
 INTRODUCER: Commerce Committee and Senator Fasano
 SUBJECT: Unemployment Compensation/Day Laborer
 DATE: March 5, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper	CM	Fav/CS
2.			TA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) includes day laborers employed by labor pools in the definition of “temporary employee” in s. 443.101(10), F.S., thereby making the current provisions relating to unemployment compensation for temporary employees applicable to day laborers.

This CS amends the following section of the Florida Statutes: 443.101.

II. Present Situation:

The Labor Pool Act

Part II of ch. 448, F.S., also known as the Labor Pool Act¹ (act), was enacted in 1995 to protect the health, safety and well-being of day laborers throughout Florida. The act also outlines uniform standards of conduct and practice for labor pools. "Labor pool" is defined as a business entity that operates a labor hall by one or more of the following methods:

¹ Sections 448.20-448.25, F.S.; ch. 95-332, L.O.F.

- Contracting with third-party users to supply day laborers to them on a temporary basis;
- Hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor; or
- Fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business.

Unemployment Compensation

Chapter 443, F.S., outlines the state's unemployment compensation (UC) program. According to the United States Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.² The program is administered as a partnership of the Federal government and the states. The individual states collect UC payroll taxes on a quarterly basis, which are used to pay benefits while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA), used to provide grants to the states to fund UC administration (the FUTA is codified at 26 U.S.C. 3301-3311).

Under current law, eligibility for unemployment compensation is based on the work performed by an individual during a 1-year period referred to as the "base period." The base period is the first 4 of the last 5 completed calendar quarters immediately before the individual filed a valid claim for benefits.³ The fifth completed calendar quarter – the "lag quarter" – is not used to determine monetary eligibility.

According to s. 443.111(2), F.S., in order to establish a benefit year for UC benefits, an individual must:

- Have been paid wages in 2 or more calendar quarters in the base period; *and*
- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least \$3,400 in the base period.

The most recent quarter of work cannot be credited toward the 2-quarter requirement or the \$3,400 requirement. Therefore, individuals who have been employed in only 2 quarters may not be able to establish eligibility. For example, an employee who has only worked during the 2 quarters immediately before filing a claim would not qualify for benefits even if he or she earned more than \$3,400. Consequently, some seasonal workers and short-term members of the labor market may not be able to establish monetary eligibility for benefits calculated using the base period in current law.

Disqualification for Unemployment Compensation

² USDOL, *State Unemployment Insurance Benefits*, <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp>. 17 April 2006.

³ Section 443.036(7), F.S.

Section 443.101, F.S., specifies the circumstances under which an individual would be disqualified from receiving unemployment compensation benefits, to include:

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;
- Failing to apply for available suitable work when directed by AWI or the one-stop career center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;
- Receiving remuneration in the form of wages or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception;
- Involvement in an active labor dispute which is responsible for the individual's unemployment;
- Receiving unemployment compensation from another state;
- Making false or fraudulent representations in filing for benefits;
- Illegal immigration status;
- Receiving benefits from a retirement, pension or annuity program with certain exceptions;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work;
- Loss of employment as a leased employee for an employee leasing company or as a temporary employee for a temporary help firm if the individual fails to contact the temporary help or employee-leasing firm for reassignment; and
- Discharge from employment due to drug use.

Disqualification for UC Benefits – Temporary or Leased Employees

Section 443.101(1), F.S., provides that when an employee, whether full-time, part-time or temporary, “voluntarily leaves work without good cause attributable to his or her employing unit,” they become ineligible for unemployment compensation benefits.

Sub-sub paragraph (10)(a)2. defines a “temporary employee” as an “employee assigned to work for the clients of a temporary help firm.” A “temporary help firm” is defined as

“a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.”

Sub-sub paragraph (10)(a)3. defines a “leased employee” as an employee assigned to work for the clients of an employee leasing company regulated under part XI or ch. 468, F.S.

Paragraph (10)(b) provides that a temporary or leased employee

“...is deemed to have voluntarily quit employment and is disqualified for benefits ...if, upon conclusion of his or her latest assignment, the temporary or leased employee, without good cause, failed to contact the temporary help or employee-leasing firm for

reassignment, if the employer advised the temporary or leased employee at the time of hire and that the leased employee is notified also at the time of separation that he or she must report for reassignment upon conclusion of each assignment, regardless of the duration of the assignment, and that unemployment benefits may be denied for failure to report.”

Recent decisions by the Unemployment Commission appeals referees support the conclusion that the specific conditions for “voluntarily” leaving work for temporary and leased employees do not include day laborers employed by a labor pool.⁴ As such, the specific notice conditions allowed for temporary and leased employees may not be interpreted as applicable for day laborers.

However, AWI reports that the commission interprets the definition of “temporary help firm” to include a labor pool and the definition of “temporary employee” to include a day laborer. Consequently, day laborers may be subject to the conditions applicable for temporary employees.

III. Effect of Proposed Changes:

Section 1 amends s. 443.101(10), F.S., to include a day laborer performing day labor who is employed by a labor pool, in the definition of “temporary employee,” thereby making the current provisions relating to unemployment compensation for temporary employees applicable to day laborers.

Consequently, a day laborer will be deemed to have voluntarily quit employment and be disqualified for unemployment benefits if, upon conclusion of his or her latest assignment, the day laborer, without good cause, failed to contact the labor pool for reassignment, if the labor pool advised the day laborer at the time of hire and that the day laborer is notified also at the time of separation that he or she must report for reassignment upon conclusion of each assignment, regardless of the duration of the assignment, and that unemployment benefits may be denied for failure to report.

Furthermore, this subsection is amended to specify that the “time of hire” for a day laborer is upon “acceptance of the first assignment following completion of an employment application with the labor pool.”

Day labor is defined by reference (s. 448.22, F.S.) as temporary labor or employment that is occasional or irregular for which the worker is employed for not longer than the time period required to complete the temporary assignment for which the individual worker was hired, although an individual may be eligible for additional temporary assignments when available.

Labor pool is defined by reference (s. 488.22, F.S.) as a business entity that operates a labor hall by one or more of the following methods:

- Contracting with third-party users to supply day laborers to them on a temporary basis.

⁴ Information on file with the Senate Committee on Commerce.

- Hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor.
- Fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business.

Section 2 provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that this reduces the incidence of day laborers qualifying for unemployment compensation benefits, required contributions to the Unemployment Compensation Trust Fund by labor pools may be lower.

B. Private Sector Impact:

To the extent that this reduces the incidence of day laborers qualifying for unemployment compensation benefits, labor pools may pay less in the required contributions to the Unemployment Compensation Trust Fund.

C. Government Sector Impact:

AWI reports that it does not anticipate any significant change in the disqualification of labor pool workers since the bill creates law that mirrors the current interpretation by the Unemployment Appeals Commission with respect to employees of temporary help firms.

The Agency does not believe there will be any significant positive or negative affect to the trust fund as a result of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The CS includes day laborers in the definition of temporary employee, thereby making the current provisions relating to unemployment compensation to temporary employees applicable to day laborers.

B. Amendments:

N/A

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
