

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1052-01  
Bill No.: HB 461  
Subject: Employees - Employers; Department of Labor and Industrial Relations, Labor and Management; Taxation and Revenue - General  
Type: Original  
Date: February 10, 2015

---

Bill Summary: This proposal establishes the Employee Reclassification Act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
General Revenue	(\$413,623)	(\$367,295)	(\$371,918)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$413,623)</b>	<b>(\$367,295)</b>	<b>(\$371,918)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
Worker's Compensation	(\$453,734)	(\$453,734)	(\$453,734)
Second Injury Fund	(\$2,722,406)	(\$2,722,406)	(\$2,722,406)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(\$3,176,140)</b>	<b>(\$3,176,140)</b>	<b>(\$3,176,140)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
UI Administration Fund	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)
Wagner Peysner Fund	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (\$50,000,000)</b>	<b>\$0 or (\$50,000,000)</b>	<b>\$0 or (\$50,000,000)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
General Revenue	4 FTE	4 FTE	4 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>4 FTE</b>	<b>4 FTE</b>	<b>4 FTE</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

**Oversight** was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

Officials from the **Attorney General's Office** assume any potential cost arising from this proposal can be absorbed with existing resources.

Officials from the **Office of the State Courts Administrator**, the **Department of Revenue** and **Office of Administration - Division of Personnel** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal would create the "Employee Reclassification Act". The proposed change requires that the DOLIR afford employers the same relief afforded to employers under the "safe harbor" provision.

ASSUMPTION (continued)

DOLIR officials stated the United States Department of Labor (USDOL) has informally reviewed this bill and has determined it raises several conformity issues with federal law.

DOLIR officials noted the federal and state governments are jointly responsible for administering the unemployment insurance (UI) system, and state laws must meet certain federal requirements for the state agency to receive the administrative grants needed to operate its UI program and for employers to qualify for certain tax credits.

Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, DOLIR would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, DOLIR would lose the approximately \$12 million in federal funds each year the Department of Economic Development - Division of Workforce Development uses for Wagner-Peyser reemployment services.

DOLIR officials stated the Federal Unemployment Tax Act (FUTA) imposes a 6.0 percent payroll tax on employers. Most employers never actually pay the total 6.0 percent due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4 percent against the FUTA payroll tax if the USDOL's Secretary of Labor approves the state's UI law. However, if this proposal would cause Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0 percent, or approximately an additional \$880 million per year.

DOLIR officials outlined the potential nonconformity issues in their response. In addition to a number of technical issues related to payments to certain licensed professions and corporations, the proposal would require DOLIR to provide an opinion letter as to the classification of an individual; if DOLIR later determined the individual was incorrectly classified by the employer based on the DOLIR opinion letter, DOLIR could not add penalties or additions to tax for that employer.

DOLIR officials noted DOLIR does not currently have a process for the creation of opinion letters. This bill would require the DOLIR to conduct an investigation prior to providing an opinion letter to an employer. It is unclear how this process would work when a business requests an 'opinion' prior to actually bringing on workers.

DOLIR officials assume 4 additional FTE (1 Legal Counsel and 2 Auditors) would be required to provide for the implementation of the changes in this proposal. Cost for these additional FTE would be funded by the General Revenue due to potential federal conformity issues.

ASSUMPTION (continued)

In addition, DOLIR officials noted the proposal does not provide for situations in which the relationship changed after the opinion letter was issued. Thus, under this bill, the DOLIR could issue an opinion letter based upon application of the law at that time and determine employment at a later date based upon a new investigation/audit. In this situation, the DOLIR would be obligated to forgive any additional tax, interest, etc. owed as a result of misclassification. This change will require significant computer programming at a cost of \$51,712. It will also require cost for mailing and supplies necessary to produce this letter at a cost of \$78,484.

The classification of some workers as independent contractors based on IRS determinations (even though DOLIR would not reach the same conclusion based on state law) would mean that employers would no longer be required to provide those individuals with workers' compensation coverage. With lower premium collections overall, the amount of taxes and surcharges collected by the State of Missouri to fund the Workers' Compensation Program and the Second Injury Fund would decrease in a parallel fashion.

Though it is uncertain exactly how many fewer workers would be classified as covered employees, any decrease in the premium base would result in a corresponding decrease in state revenues collected as a percentage of the premium base. For the purpose of this fiscal estimate, DOLIR assumes the premium base would decrease 3%, or \$45,373,440. Based on this amount, the Admin Tax collected would decrease by \$453,734 and the Second Injury Surcharge collections would decrease by \$2,722,406. The total loss in state funding would be an estimated \$3,176,140.

**Oversight** assumes the proposed language may result in conformity issues with federal law. Oversight will show the loss of federal funds as \$0 (the proposal would be implemented in a way that does not conflict with federal technical requirements) or the amount estimated by DOLIR, \$38 million (Missouri fails to comply with federal regulations) to the Unemployment Insurance Administration Fund and \$0 or \$12 million to the Wagner Peyser Fund.

Although it is uncertain how many fewer workers would be classified as worker's compensation covered employees, any decrease in the premium base would result in a corresponding decrease in state revenues. For fiscal note purposes, Oversight will use DOLIR estimates of a 3% loss in the premium base of \$453,734 to the Workers' Compensation Fund and a loss of \$2,722,406 to the Second Injury Fund.

Based on DOLIR's assumptions, Oversight will show a cost to the General Revenue for DOLIR's estimated administrative cost required to provide for the implementation of the changes in this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>GENERAL REVENUE</b>			
<u>Cost - DOLIR</u>			
Personal Service	(\$164,989)	(\$199,967)	(\$201,967)
Fringe Benefits	(\$85,803)	(\$103,993)	(\$105,033)
Expense and Equipment	<u>(\$162,831)</u>	<u>(\$63,335)</u>	<u>(\$64,918)</u>
<u>Total Cost - DOLIR</u>	<u>(\$413,623)</u>	<u>(\$367,295)</u>	<u>(\$371,918)</u>
FTE Change - DOLIR	4 FTE	4 FTE	4 FTE
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>	<b><u>(\$413,623)</u></b>	<b><u>(\$367,295)</u></b>	<b><u>(\$371,918)</u></b>
Estimated net FTE Change to the General Revenue fund	4 FTE	4 FTE	4 FTE
<b>WORKERS' COMPENSATION FUND</b>			
<u>Loss - DOLIR</u>			
Lower WC premium collections (3% decrease in premium base)	<u>(\$453,734)</u>	<u>(\$453,734)</u>	<u>(\$453,734)</u>
<b>ESTIMATED NET EFFECT TO THE WORKERS' COMPENSATION FUND</b>	<b><u>(\$453,734)</u></b>	<b><u>(\$453,734)</u></b>	<b><u>(\$453,734)</u></b>
<b>SECOND INJURY FUND</b>			
<u>Loss - DOLIR</u>			
Lower WC premium collections (3% decrease in premium base)	<u>(\$2,722,406)</u>	<u>(\$2,722,406)</u>	<u>(\$2,722,406)</u>
<b>ESTIMATE NET EFFECT TO THE SECOND INJURY FUND</b>	<b><u>(\$2,722,406)</u></b>	<b><u>(\$2,722,406)</u></b>	<b><u>(\$2,722,406)</u></b>

<u>FISCAL IMPACT - State Government</u>	FY 2016	FY 2017	FY 2018
(continued)	(10 Mo.)		

**UNEMPLOYMENT  
 ADMINISTRATION FUND**

<u>Loss - DOLIR</u>	\$0 or	\$0 or	\$0 or
Potential non-conformity with federal law	<u>(\$38,000,000)</u>	<u>(\$38,000,000)</u>	<u>(\$38,000,000)</u>

<b>ESTIMATED NET EFFECT TO THE UNEMPLOYMENT ADMINISTRATION FUND</b>	<b>\$0 or</b>	<b>\$0 or</b>	<b>\$0 or</b>
	<b><u>(\$38,000,000)</u></b>	<b><u>(\$38,000,000)</u></b>	<b><u>(\$38,000,000)</u></b>

**WAGNER PEYSER FUND**

<u>Loss - DOLIR</u>	\$0 or	\$0 or	\$0 or
Potential non-conformity with federal law	<u>(\$12,000,000)</u>	<u>(\$12,000,000)</u>	<u>(\$12,000,000)</u>

<b>ESTIMATED NET EFFECT TO THE WAGNER PEYSER FUND</b>	<b>\$0 or</b>	<b>\$0 or</b>	<b>\$0 or</b>
	<b><u>(\$12,000,000)</u></b>	<b><u>(\$12,000,000)</u></b>	<b><u>(\$12,000,000)</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2016	FY 2017	FY 2018
	(10 Mo.)		

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
--	------------	------------	------------

FISCAL IMPACT - Small Business

Direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal would create the Employee Reclassification Act, and would modify provisions related to employment taxes.

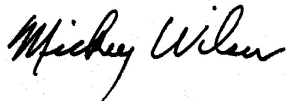
FISCAL DESCRIPTION (continued)

The proposal would create a presumption that payments to certain individuals and other entities would be considered payments to an independent contractor and not to an employee. The proposal would prohibit the assessment of penalties for misclassification under certain circumstances and require the Department of Labor and Industrial Relations to develop a process to provide opinion letters for employers as to the status of certain payments.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations  
Office of Administration  
Attorney General's Office  
Office of the State Courts Administrator  
Office of the Secretary of State  
Department of Revenue



Mickey Wilson, CPA  
Director  
February 10, 2015

Ross Strobe  
Assistant Director  
February 10, 2015