Legislative Fiscal Office
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Bill Title: Relating to unemployment insurance benefits for employees unemployed due to a labor dispute; declaring an emergency.

Government Unit(s) Affected: Employment Department, Department of Administrative Services, Employment Relations Board, Statewide - Executive Branch, Statewide - Legislative Branch, Statewide - Judicial Branch, Counties, Cities, School Districts, Special Districts, Metro, TriMet, Oregon Health and Science University

Summary of Fiscal Impact

Costs related to this measure are indeterminate at this time - see explanatory analysis.

Measure Description

Under current law, an individual is disqualified from receiving unemployment insurance (UI) benefits for any week that the Oregon Employment Department (OED) determines that the unemployment is due to an active labor dispute at the individual's place of employment. The measure amends existing law to specify that an individual who is otherwise eligible for UI benefits is not disqualified for benefits or waiting week credit for any week that OED finds that the individual is unemployed because of a lockout at the factory, establishment, or other premises at which the individual is or was last employed, or at which the individual claims employment rights by union agreement or otherwise, regardless of UI laws relating to availability to work, actively seeking work, or refusal to accept suitable work. The measure further specifies that an individual is disqualified for UI benefits for the first three weeks that OED finds that the unemployment is due to a strike. However, an individual who is otherwise eligible for UI benefits is not disqualified for UI benefits or waiting week credit after the first three weeks of unemployment, if the individual is unemployed because of a strike, regardless of UI laws relating to availability of work, actively seeking work, or refusal to accept suitable work.

The measure specifies that the amount of benefits an individual receives during a labor dispute constitutes a debt to the UI Trust Fund, and the amount of benefits will accrue interest at a rate of 0.1346% per week unless repaid within a year. For any such debt, the measure requires that a labor union, if any, remit payment to the UI Trust Fund. The measure provides that an employer's account may not be charged for benefits paid to an individual during a labor dispute.

The measure requires a labor organization that maintains a strike fund to demonstrate to OED that the strike fund has sufficient financial reserves to provide a weekly payment of $836 to each individual who is a member of the labor organization for at least four weeks during the strike; and that the labor organization must pay all represented employees regardless of their participation in strike support activities. Benefits must be paid to striking individuals the week after the strike fund is depleted to 10% or less of the original fund.

The measure provides that benefits received by an employee of a school district or an education service district during a lockout will count towards the employee's total compensation in the applicable collective bargaining agreement, and the district must deduct the amount of benefits received from the employee's future wages.

The measure provides that back pay paid to resolve a strike an employer to an employee who received benefits can be reduced to reflect the amount of benefits the employee received for the period for which the back pay was paid or awarded if the employee has not repaid benefits for the period during which the strike was in active progress. Benefits overpaid to an individual as a result of receiving back pay from an employer to resolve a strike are liable to be repaid to the UI Trust Fund by that individual. OED may not waive recovery of overpaid benefits that are the result of back pay to an individual from an employer to resolve a strike.

The measure makes striking by public employees unlawful. The measure requires labor disputes involving public employees to be resolved through compulsory arbitration. The measure makes it unlawful for individuals compensated as law enforcement personnel for school districts or public universities to strike, and certain firefighters.

Fiscal Analysis

The measure makes specified individuals who are on an active strike newly eligible for UI benefits after a four-week waiting period. While the measure is anticipated to have minimal impact on the UI Trust Fund, the measure could place the Oregon Employment Department (OED) out of conformity with federal law governing UI benefits. If Oregon were found to be nonconforming with federal law, Oregon employers would lose federal credit for UI taxpaying employers. While Oregon remains in conformity, taxpaying employers pay about $129 million per biennium in federal unemployment taxes. If Oregon were found to be nonconforming, this could increase to about $1.3 billion in federal unemployment taxes per biennium.

Employment Department

Under the measure, strikes by public sector employees are unlawful. As a result, this fiscal impact assumes that reimbursing employers will have no impact to the UI Trust Fund. This fiscal impact further assumes that the labor unions representing those striking workers who received UI benefits will repay all the benefit payments within one year before having to pay interest. Due to the timing of UI benefits payments and repayment, there could be some minimal impact from lost interest. As of December 2024, the balance of the UI Trust Fund was $6.4 billion.

OED anticipates that an additional 2,402 weeks of benefits paid at an average weekly cost of $643 to employees of taxpaying employers, would result in an additional $1.5 million of benefit payments in the 2025-27 biennium. In the 2027-29 biennium, OED anticipates an additional 3,328 weeks of benefits paid at an average weekly cost of $700 to employees of taxpaying employers, would result in an additional $2.3 million of benefit payments. However, because these benefits will be repaid to the UI Trust Fund by the labor unions representing the striking workers, the measure will have a minimal impact on the UI Trust Fund.

The measure would also have an impact on OED's administrative costs. OED's Contributions and Recovery Division would need to develop new processes in the Frances Online system, including tracking UI benefits paid to striking workers; repayment of benefits paid from someone other than the recipient; weekly interest to be assessed; and abatement of interest after repayment of benefits and possible refunds for overpayments of repaid benefits. To manage this increase in workload, OED would need two positions (1.13 FTE), including one permanent, full-time Revenue Agent 3 position to track benefits paid and manage repayments; and one part-time, limited duration Information Systems Specialist 8 position to conduct development, testing, communication, and training of the changes to Frances Online. The estimated cost of these positions, including position-related services and supplies, is $245,593 Other Funds in the 2025-27 biennium and $199,280 Other Funds in the 2027-29 biennium. Funding for these positions would come from UI administrative grant funding, the Supplemental Employment Department Administration Fund, and the Employment Department Special Fraud Control Fund. OED would also have minimal costs associated with updates to training and responding to appeals from unions responsible for repaying UI benefits.

Public Employers

The measure would not increase the amount of UI benefits paid by reimbursing employers because it makes striking by public employees illegal and states that UI benefits paid may not be billed to an employer's account. Instead, it requires labor unions to have a strike fund with sufficient funds to pay the benefits of eligible employees for at least four weeks; and treats the UI benefits paid as a debt that accrues interest unless repaid by the labor union within one year. This means that reimbursing employers would not be responsible for paying back the UI Trust Fund for any benefits paid to striking employees; instead, the measure requires the employee or the labor union representing the employee to pay back the UI Trust Fund. However, in the event of a strike, public employers may have to continue paying for employee benefits included in the striking employees' collective bargaining agreement, such as health and dental insurance, life insurance, and retirement benefits, or may need to hire replacement workers to provide critical public services during the strike.

In addition, the provisions in the measure that treat UI benefits as a loan to be repaid, and that require differences in benefit payments to individuals based on if a labor organization has a strike fund, could potentially place OED out of conformity with federal law regarding UI benefits. If Oregon were found to be nonconforming with federal law, the state may be subject to financial sanctions against OED's administrative grant, and taxpaying employers could potentially be required to pay additional taxes under the Federal Unemployment Tax Act (FUTA). Currently, taxpaying employers pay an effective FUTA tax rate of 0.6% and receive a 5.4% credit. If found to be nonconforming, taxpaying employers would lose this credit and be subject to the full 6% tax rate. Currently, employers pay about $129 million per biennium in federal unemployment taxes. The loss of the FUTA tax credit due to nonconformity could result in taxpaying employers with subject employees having to pay an estimated $1.3 billion per biennium in federal unemployment taxes. This FUTA nonconformity penalty estimate is based only on taxpaying employers. This estimate excludes reimbursing employers, which includes all state government employers and most local government employers. However, some local governments and nonprofit entities are taxpaying employers for purposes of UI benefits, and this estimate would apply to them.

Department of Administrative Services and Employment Relations Board

Under current law, the Department of Administrative Services (DAS) bargains on behalf of the executive branch of state government. The Legislature approves a special purpose appropriation (commonly referred to as the "salary pot") each biennium for purposes of covering a potential increase in state employee compensation. DAS bargains within the salary pot for state employee cost-of-living adjustments, regular step increases, and increases in state employee health care coverage, as well as other terms and conditions of employment.

Strikes are currently prohibited for certain public employees under the Public Employees Collective Bargaining Act (PECBA). As an alternative to a strike, PECBA requires that the collective bargaining units and employers of strike-prohibited units use binding interest arbitration for unresolved employment disputes. The binding arbitration process is initiated by filing a petition with the Employment Relations Board (ERB), along with the final offer and cost summary. ERB then sends notice to the parties that binding arbitration has been initiated. Each party submits to the other party a written last best offer package on all unresolved mandatory subjects. When there is no agreement between the parties, unresolved mandatory subjects in the last best offers are decided by the arbitrator based on criteria outlined in statutes. The arbitrator selects only one of the last best offer packages submitted by the parties.

Currently, approximately 16% of executive branch employees are strike-prohibited. The measure would prohibit all 35,000 state employees from striking. Consequently, the potential for additional interest arbitration may increase the ERB workload and DAS legal bills, assuming more cases go to binding interest arbitration.

School Districts

The measure specifies that benefits received by an employee of a school district or an education service district during a lockout shall count toward the employee's total compensation in the applicable collective bargaining agreement, and that the district must deduct from the employee's future wages the amount of benefits received. The school districts would need to reduce the amount of back pay to account for the UI benefits their employees received during the strike. The process of deducting benefits from future wages is anticipated to have an administrative impact on school districts, but it will depend on the number of affected district employees.

Relevant Dates

The measure takes effect on January 1, 2026.