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FISCAL IMPACT REPORT

SPONSOR <u>Trujillo/Roybal Caballero</u>	LAST UPDATED <u>3/6/2023</u> ORIGINAL DATE <u>2/3/2023</u>
SHORT TITLE <u>Non-Tenure-Track Faculty Unemployment</u>	BILL NUMBER <u>House Bill 151/aHEC</u>
ANALYST <u>Hanika-Ortiz</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
WSD (update IT system)	No fiscal impact	No fiscal impact	No fiscal impact		Recurring	WSD operating
GSD	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	Unemployment Compensation Retention Fund
Higher-ed institutions	No fiscal impact	Indeterminate, but minimal	Indeterminate, but minimal		Recurring	Various operating funds (GF/Federal)

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

New Mexico Higher Education Department (NMHED)
 New Mexico Independent Community Colleges (NMICC)
 University of New Mexico (UNM)
 Higher Education Department (HED)
 Workforce Solutions Department (WSD)
 Eastern New Mexico University (ENMU)

SUMMARY

Synopsis of the HEC Amendment to House Bill 151

The House Education Committee Amendment clarifies the intent of the bill, which is to define “reasonable assurance” as it relates to unemployment compensation (UC) for employees of educational institutions. Furthermore, for “reasonable assurance” to be satisfied, the offer of employment must now be substantially the same or is a higher employment position. The HEC Amendment also removes ~~non-tenure-track faculty member~~ when describing a UC claimant and removes the proposed subsection for clarifying how contingent job offers should be analyzed.

The additional clarification of “reasonable assurance” appears to be consistent with federal guidance to workforce agencies for determining unemployment compensation benefits. The HEC Amendment to HB151 addresses a request from WSD to clarify certain job offers. Federal guidance suggests state workforce agencies may still be required to look at the totality of circumstances, and find it was highly probable the job would exist in the following year or term.

Synopsis of Original House Bill 151

House Bill 151 (HB151) amends Section 51-1-5 NMSA 1978 to extend unemployment insurance (UI) benefits to non-tenured faculty at higher ed institutions, unless (a) the institution has made an offer of employment for the following year or term, either in writing, oral or implied; (b) the offer was made by an individual with authority to make the offer; (c) the offer is in the same type position; (d) the offer is not less than 90 percent of what the claimant earned previously; (e) the offer is not contingent on factors within the school’s control, such as funding decisions, course offerings, and faculty availability; and (f) if the job offer contains a contingency, that the totality of circumstances show it is highly probable those contingencies will be satisfied.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Unemployment compensation benefits are primarily funded through payroll taxes. WSD says to the extent this bill may result in additional claimants, educational institutions will bear the fiscal impact. Educational institutions that participate in GSD’s unemployment compensation program, however, will continue to see annual assessments adjusted based on actual claims expenses. The General Services Department contracts with a third-party to manage the self-insured program.

SIGNIFICANT ISSUES

Under current law, employees are not eligible for UI benefits if they have a “reasonable assurance” that they will be rehired the following year or term. A “reasonable assurance” of rehire can be established if an individual has a historical pattern of reemployment in the same capacity, a reasonable anticipation such employment will be available, and a reasonable notice or understanding the individual will be eligible for and offered employment in a similar capacity.

The bill enumerates six factors to meet to achieve “reasonable assurance.” According to WSD, this is consistent with federal requirements that govern UI benefits. In addition, the bill requires that “based on a totality of the circumstances, it is highly probable that there is a job available for the claimant.” WSD also commented on the ambiguity in subsection C-5(c), which says the individual must be offered the “same employment position” they previously held. Federal regulations only require the individual to be offered comparable work or a higher position. If subsection C-5(c) read “substantially the same or higher position,” that may reduce uncertainty.

The use of “reasonable assurance” in UI benefit determinations is not limited to higher education institutions. In subsection C-5(d), the bill identifies non-tenure-track faculty members who work for higher education institutions. It could be made clearer the bill only applies to higher education institutions, and only applies to teachers, not administrative staff (if that was the

intent). Otherwise, it may lead to increases in unemployment claims and expenditures for other educational institutions, such as public schools, that hire temporary and part-time teaching staff.

With respect to subsection C-5(a), UNM and NMICC said offers of employment committed to in writing are clear to all parties. If the offer is allowed to be oral or implied, it could be unclear as to whether or not the offer was made. An example of language used at UNM:

You acknowledge that cancellation of classes due to under enrollments, significant mid-year budget rescissions (as determined by UNM administration) or other necessary changes in the work schedule of the department, may result in revision or cancellation of this agreement. Please check with your department, college, or branch campus administrators for specific policies they may have regarding minimum enrollments and/or class cancellations related to online or other specialized courses.

With respect to C-5(e), it is not clear if class cancellation due to insufficient enrollment, significant budget reductions, or other schedule changes are considered to be a “factor within the educational institution’s control.” If so, it could lead to increases in unemployment claims.

ADMINISTRATIVE IMPLICATIONS

The proposed changes will require training for adjudicators, customer service representatives, and administrative law judges in determining whether reasonable assurance is present and will require a modification to the UFAX system to update the rationales used when issuing determinations. WSD suggested changes can be implemented with existing staff and resources.

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