



- Increases the performance burden on employers having to adjust for fewer workers.
- Fails to address issues of multiple birth or multiple claims based on the same child, i.e. whether these circumstances would be covered.
- Fails to address whether the individual receiving benefits must be the actual caregiver of the child, or whether both parents are concurrently eligible thereby creating potential for abuse of benefits.
- Fails to address whether the individual receiving benefits must indicate intent to return to work, thereby forcing employers to hold jobs open when workers may not return; DOL suggests that a claimant who does not return to work after parental leave is exhausted should be subject to the standard voluntary quit provisions of the law.
- Encourages unemployment because workers may prefer to leave work, knowing they will receive compensation, rather than continue working.

The National Partnership for Women and Families, a Washington-based advocacy group, disagrees with some of the NMDOL concerns listed above. According to the advocacy group, the US Department of Labor recently finalized regulations to allow states to offer unemployment insurance to parents who require time off from work for the crucial task of caring for their newborn and newly adopted children.

### **PERFORMANCE IMPLICATIONS**

HB 528 will affect the Labor Department in the administration of Unemployment Insurance (UI) benefits by instituting a separate benefit category in which criteria for eligibility does not include availability for work, or considerations of whether work offered is suitable. The maximum benefit period and amount earned in family leave benefits are established at one-half the regular UI amount, which will require a separate monitoring system, creating administrative difficulties.

### **FISCAL IMPLICATIONS**

The Department of Labor identified the following cost associated with the enactment of HB-528:

( 4 ) FTE – Unemployment Insurance Examiner II	
Personal Services	\$ 73,816
Personal Benefits	24,360
Administrative costs	14,446
Other costs	<u>18,454</u>
Total Additional funds	\$ 131,076

NMDOL has been informed through federal publications that the federal government may fund one-time implementation costs if contingency funds are available. If this is not available, New Mexico will have to absorb the costs of shifting resources from other activities or by using State funds. According to the U.S. Department of Labor, one-time implementation costs are assumed to be \$1 million per state, based on limited experience with other system changes.

By law FUTA funds can only be appropriated for UI administration and state employment services. Because Family Leave Unemployment Compensation is not UI the direct cost of administering this may not be funded out of FUTA revenue. The administrative costs of state temporary disability insurance programs, which are similar in design, are not funded out of FUTA for the same reason.

The Department of Labor indicates that the U.S. Department of Labor predicts that this bill will cost New Mexico approximately \$10.4 million annually in benefit and administrative costs. DOL believes

that this figure grossly understates the realistic cost of this bill. DOL further elaborates that the U.S. Department of Labor predicted this amount with unreasonably low monetary eligibility, low duration, and low female fertility rates. New Mexico has a higher fertility rate than the national average.

In addition, NMDOL offered a projection on a worst case scenario which would cost \$115 million per year. US DOL employed a rigorous methodology to determine the cost of what is termed to be "Baby UI" program and LFC believes that the \$10.4 million number is a reasonable estimate.

### **ADMINISTRATIVE IMPLICATIONS**

DOL reports that additional claims takers would have to be hired and trained to take such claims and process them. Not knowing how many claims would result from this legislation, DOL is not able to compute the exact number of positions required. It is estimated that three Examiner II claims takers in the Field Office and one at the Central Office for processing will be required.

Because family leave claimants would be eligible for benefits without work search requirements, Department publications and procedures for processing claims and not charging employer accounts would require revisions. Training of all UI claims takers throughout the state would have to be conducted to address eligibility requirement job registration and work search waivers and revisions to voluntary quit determinations. To accomplish this work DOL estimates that it would take a management analyst two months.

Department computerized programs would require modification to calculate and issue weekly benefit payments in the amount as provided in the proposed language of thirteen times the individual's weekly benefit amount or thirty percent of wages for insured work paid during the base period. The Labor Department estimates that to modify existing programs would require three systems analysts six months or 480 man hours.

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

DOL notes that the proposed legislation conflicts with NMSA 1978, Section 51-1-5A(3), which requires unemployment benefit claimants to establish that claimants are available for full-time work. A claimant under this law would not have to be available for or actively seeking work.

However, the National Partnership for Women and Families indicates that New Mexico offers unemployment insurance to those whose employers have temporarily laid them off, but will recall them, though they are not available to work for other employers during the interim.

Moreover, DOL reports that the legislation conflicts with the Federal Family and Medical Leave Act, which does not offer compensated leave. FMLA is provided to allow new parents to retain their jobs while taking leave to care for a new baby. DOL says the legislation would encourage claimants to exhaust sick and annual leave, use their unpaid FMLA leave, then quit their jobs and get paid for 13 weeks, all to the substantial detriment of the employer.

On the other hand, the National Partnership for Women and Families, point out that the new law makes it clear that provisions provide a floor, not a ceiling, for family and medical leave. The advocacy group says state unemployment insurance laws, enacted pursuant to the new Labor Department regulation, therefore would be consistent with the spirit of the Federal Family and Medical Leave Act.

## TECHNICAL ISSUES

DOL specifies that the removal of “Unemployment Compensation” from the fund description would adversely affect the precise language as to where UI Benefits are to be paid from. There are several “funds” mentioned throughout the Unemployment Compensation Law of New Mexico. Modification to the existing language may create a FUTA conformity issue, placing USDOL funding for administration purposes and employer FUTA credits in jeopardy. In addition, DOL expresses concern in removing “Regulation” and replacing it with “Rule” which the department believes would create inconsistency through the Unemployment Compensation Law. DOL is concerned with the removal of the word “Any” from Section 51-1-11 - future Rates Based on Benefit Experience, subsection G(2)(d), on page 25. The word “Any” DOL explains, provides clarification that the liability may also include a predecessor employer’s unpaid taxes, penalties, and interest.

*According to the Legislative Council Service the above concerns are part of standard procedure in the Council Service to clean up the language. For example, “unemployment compensation fund is defined in Section 4. Also, The Uniform Statute and Rule Construction Act (USRCA) states that a “rule” means a rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, promulgated by an administrative agency, that purports to affect one or more administrative agencies other than the promulgating agency or that purports to affect persons who are not members or employees of the promulgating agency. The New Mexico USRCA provides for the use of “rule” to mean or include regulation. The deletion of the word “Any” is part of the clean up language.*

## OTHER SUBSTANTIVE ISSUES

DOL mentions that the payment of UI Benefits for family leave conflicts with the fundamental purpose and nature of the UI program, the safety net for jobless workers, by allowing the expenditure of state unemployment trust funds to an entirely different and incompatible purpose of compensating employed workers and encouraging them to quit their jobs. The department further states that the purpose of UI is to compensate a worker who becomes temporarily unemployed through no fault of the employee such as when the employer no longer has suitable work available. To be eligible for UI benefits, the claimant must continue to search for suitable work. Claimants who quit on family leave are not available and continuing to search for suitable work. Finally, DOL specifies that the proposed legislation is in conflict with the cornerstone of UI policy that the jobless be “able and available” for work. The Federal Unemployment Tax Act (FUTA), 26 U.S.C.A. 3301 et. seq. requires that to qualify for payment of UI benefits out of the State Unemployment Trust Funds, the individual must be available for work.

According to the Center for Policy Alternatives , 13 states have considered legislation to provide family leave benefits using UI.

HB 528 as stated by DOL will also increase the incidence and duration of UI, which will deplete the Trust Fund.

The Highway Department reports processing 96 applications for Family Medical Leave Act (FMLA) leave over the past four years, an average of 24 applications per year. Twenty-five (25) of the approved applications have been for the birth and care of an infant after birth. The department writes that in almost every case, the employee opted to use a combination of sick, annual, and authorized leave without pay during the absence to ensure that health insurance premiums were paid by payroll deduction, thus avoiding placing an additional financial burden on the family.

**POSSIBLE QUESTIONS**

1. Must paternity be established to receive benefits in non-adoption cases?
2. Can the claimant under this legislation stack FMLA leave and the family leave for unemployment benefits for a possible total leave of 25 weeks?
3. Can a claimant take intermittent leave in short increments throughout the year, up to a total of 13 weeks, and file separate claims for benefits each time?

BD/prr