

- SUBJECT:** Liability of employers reimbursing TWC for unemployment benefits
- COMMITTEE:** Economic and Small Business Development — favorable, without amendment
- VOTE:** 9 ayes — Button, Johnson, C. Anderson, Faircloth, Isaac, Metcalf, E. Rodriguez, Villalba, Vo
- 0 nays
- WITNESSES:** For — Ed Berger, Bexar Medina Atascosa WCID No1; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Annie Spilman, National Federation of Independent Business - Texas)
- Against — None
- On — Steve Riley, Texas Workforce Commission
- BACKGROUND:** Under the Texas Unemployment Compensation Act (Labor Code, ch. 201-215), workers who are terminated may be eligible to receive unemployment benefits from the unemployment compensation fund. Conditions that may make a worker ineligible for benefits include that the worker was discharged for misconduct connected with the individual's last work, as described by sec. 207.044, or that the worker left the last work voluntarily without good cause connected with the individual's work, as described by sec. 207.045.
- Employers pay contributions to the Texas Workforce Commission (TWC) for unemployment benefits either through taxes or reimbursements. Under Labor Code, sec. 204.062, certain employers pay a replenishment tax into the unemployment compensation fund. This tax replenishes the unemployment compensation fund for some benefits paid to eligible workers that were not charged to any specific employer. Because no one employer can be held liable for these benefits, the cost is spread among a group of employers.

Labor Code, secs. 205.001 and 205.002 permit political subdivisions, Indian tribes, and nonprofit organizations to pay reimbursements for benefits instead of unemployment tax contributions, including the replenishment tax. Sec. 205.013 stipulates that these reimbursing employers pay into the unemployment compensation fund for any unemployment benefits that have been paid to a worker.

According to TWC, reimbursing employers are liable for benefits paid in error. The reimbursing employer cannot be credited until the commission receives money back from the claimant.

DIGEST:

HB 3373 would amend Labor Code, ch. 205 to stipulate that a reimbursing employer would not be liable to pay a reimbursement to the unemployment compensation fund for unemployment benefits paid to workers if their separation from work resulted from the individual:

- being discharged for misconduct; or
- voluntarily leaving work without good cause connected with the individual's work.

The bill also would allow reimbursing employers to contest reimbursements billed to the employer by the Texas Workforce Commission that violated the provisions of the bill. The employer would use dispute resolution procedures under the Texas Unemployment Compensation Act.

HB 3373 would take effect September 1, 2015, and would apply only to a claim for unemployment compensation benefits filed on or after that date.

**SUPPORTERS
SAY:**

HB 3373 would close a loophole in the Labor Code to help ensure that employers who choose to reimburse the Texas Workforce Commission for benefits paid from the unemployment compensation fund, rather than contribute taxes to the fund, were not liable for faulty claims. The bill would clarify that a reimbursing employer was not liable for certain individuals' benefits and would explicitly authorize a reimbursing employer to contest reimbursements that violated the bill's provisions.

Occasionally, a worker who is ineligible for unemployment benefits receives them anyway. Reimbursing employers currently are liable to pay, dollar for dollar, unemployment benefits that were paid to workers who were not eligible for the benefits. By requiring reimbursing employers to pay on faulty claims, current law effectively is penalizing them for choosing not to pay a replenishment tax. The bill would reduce reimbursing employers' liability to pay benefits to certain individuals and would provide reimbursing employers with an avenue for disputing these faulty claims.

OPPONENTS
SAY:

HB 3373 unfairly would transfer the risk of no-fault claims from reimbursing businesses onto businesses that pay replenishment taxes. The Texas Unemployment Compensation Act does not require any organization to identify as a reimbursing employer; the choice is up to eligible organizations. When an organization chooses to be a reimbursing employer, it is choosing not to pay the replenishment tax. It would be unfair to benefit reimbursing employers by transferring the burden to pay faulty claims to organizations contributing taxes to the unemployment compensation fund.

By reducing the liability of reimbursing employers, HB 3373 could shift an estimated \$58.4 million of tax liability from reimbursing employers to employers who pay the replenishment tax, according to the Legislative Budget Board's fiscal note.

NOTES:

According to the Legislative Budget Board's fiscal note, HB 3373 would have an estimated negative net fiscal impact of about \$3 million to general revenue through fiscal 2016-17, which would result from personnel and technology needs for the Texas Workforce Commission (TWC). TWC estimates that about \$58.4 million of tax liability would shift from reimbursing employers to contributing private employers.