

Colorado Legislative Council Staff Fiscal Note

**STATE
FISCAL IMPACT**

Drafting Number: LLS 15-0902
Prime Sponsor(s): Sen. Roberts

Date: April 28, 2015
Bill Status: Senate Judiciary
Fiscal Analyst: Erin Reynolds (303-866-4146)

BILL TOPIC: INDEPENDENT CONTRACTOR UNEMPLOYMENT INSURANCE

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue Cash Funds	Possible increase or decrease. See State Revenue and Expenditures section.	
State Expenditures Cash Funds		
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

The bill repeals current standards related to the determination of independent contractor status under the Employment Security Act (unemployment insurance, or UI) and establishes a multifactor test to determine whether an individual is an employee or an independent contractor for the purposes of UI. Specifically, the bill outlines 11 criteria. An individual who meets six or more of these criteria, by a preponderance of the evidence, is considered an independent contractor for UI purposes.

Background

Employment Security Act. The Colorado UI program is administered by the Division of Unemployment Insurance (division) in the Department of Labor and Employment (DLE). The program provides temporary and partial wage replacement to employees who have become unemployed through no fault of their own. UI benefits are paid from the UI Trust Fund, which is funded through premium and surcharge rates charged to employers on the first \$11,800 of each employee's wages each year. The UI Trust Fund is a TABOR-exempt enterprise.

Employers are not required to provide UI coverage for independent contractors, and many construction projects and other jobs involving piece work are completed based on contracts, billing arrangements, or other agreements that are intended to reflect an independent contractor relationship. Until May 2014, courts typically found employers liable for UI coverage under current law in cases where an independent contractor did not provide similar services to any other employer for the relevant period of employment. As a result of this so-called "single-factor test," employers who had not paid UI premiums were required to make these payments to the state on a case-by-case basis.

Colorado Supreme Court May 2014 rulings on independent contractors. In May 2014, the Colorado Supreme Court issued decisions in two cases involving whether an individual is an independent contractor for the purposes of UI: *Industrial Claims Appeals Office v. Softrock Geological Services, Inc.* and *Western Logistics, Inc. d/b/a Diligent Delivery Systems v. Industrial Claims Appeals Office*. In these cases, the court held that the Employment Security Act requires consideration of the totality of the circumstances, including consideration of multiple factors in existing statute, to determine an independent contractor's UI status. In both cases, the employer was held not liable for the UI coverage of independent contractors despite the division's determination that the employer should be liable according to the single-factor test.

State Revenue and Expenditures

The bill is anticipated to have a minimal effect on state revenue and expenditures. To the extent that the number of employers held liable for failure to provide UI coverage changes as a result of the bill, a corresponding increase or decrease in UI revenue and expenditures will occur. This includes revenue and expenditures from the TABOR-exempt UI Trust Fund, as well as the Employment Support Fund and the Employment Training and Technology Fund, which are not TABOR-exempt.

Assumptions. This bill assists in the establishment of a new standard for independent contractor determinations in Colorado UI cases, but determinations under the bill will generally reflect the totality of circumstances, consistent with the Colorado Supreme Court's May 2014 holdings. The bill primarily gives effect to evolving precedent, rather than substantially changing the outcome of independent contractor determinations.

Because employers who believe an individual is an independent contractor do not generally contribute to, or cause benefits to be paid from, state UI funds on behalf of that contractor, changes in independent contractor determinations change state revenue only to the extent that these employers are audited or otherwise compelled to take corrective action. Only a large increase in the number of employers liable for failure to provide UI coverage would cause a significant change in state revenue and expenditures. Given the history of a high rate of employer liability, a significant increase in UI revenue and expenditures is not likely to occur under this bill.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

Departmental Difference

The CDLE estimates that the bill will reduce state revenue from premiums and interest earnings to the Unemployment Insurance Trust Fund by \$32,351,335 annually, and reduce state expenditures from this fund as well as the Employment Support Fund and the Employment Training and Technology Fund by \$10,013,413 annually. This estimate is based on the CDLE's assumption that the bill will reclassify 5 percent of the 1.97 million private UI-covered employees in the state to non-covered independent contractor status. The fiscal note assumes that employers who believe an employee is an independent contractor do not generally contribute to, or cause benefits to be paid from, the state UI funds.

State and Local Government Contacts

Labor and Employment

Local Affairs

Personnel and Administration