

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0288-02  
Bill No.: Truly Agreed To and Finally Passed for SS for SB 28  
Subject: Employees - Employers; Labor and Industrial Relations Department  
Type: Original  
Date: June 7, 2013

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Bill Summary: This proposal redefines “misconduct” and “good cause” for the purposes of disqualification from unemployment benefits.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 6 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOL)** assume the following:

#### Section 288.030

Individuals that are determined to have been separated from employment due to misconduct are not eligible to receive unemployment insurance (UI) benefits. This bill amends the definition of misconduct.

#### Section 288.050

Under 288.050.2 an employee discharged for misconduct is not qualified to receive unemployment compensation. The bill expands the definition of "misconduct". The bill also removes language from 288.050.3 providing that absenteeism or tardiness may constitute a rebuttable presumption of misconduct and adds absenteeism and tardiness into the new definition of misconduct as conduct that constitutes misconduct - not just a presumption.

Federal law prohibits a state from imposing a total reduction of benefit rights, or the cancellation of wage credits, unless the individual is discharged for misconduct connected with work.

The United States Department of Labor (USDOL) has reviewed this bill for conformity issues and has informed the Division of Employment Security (DES) that any interpretation of the language that would allow Missouri to impose a total reduction of benefit rights, or the cancellation of wage credits for misconduct not connected to the work would cause a conformity issue with federal law. The USDOL expressed concerns about the language in this bill and if enacted, the USDOL will require the DES to assure it that the Division will not interpret the bill in a way that would cause a conformity problem.

The bill defines as misconduct, employee conduct or an employee's failure to act demonstrating a knowing disregard of the employer's interest or a knowing violation of the standards which the employer expects of his or her employees. The current statutory definition of misconduct requires "an act of wanton or willful disregard of the employer's interest." The bill would appear to lower substantially the level of intent on the part of the employee from "wanton and willful" merely a "knowing" violation of the employer's interest. The current statutory definition of misconduct defines misconduct as an employee's "disregard of standards of behavior which the employer has a right to expect of his or her employee." The bill's definition of misconduct requires merely a knowing violation of the standards which the employer expects of his or her employee." Under the bill's definition of misconduct an employer can set any type of workplace expectation, reasonable or unreasonable, for its employees. Under the bill's definition of

ASSUMPTION (continued)

misconduct an employee's knowing violation of an unreasonable workplace expectation would appear to be misconduct.

The bill's definition of misconduct includes employee carelessness as misconduct. The current definition of misconduct requires negligence on the part of the employee to "such degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer." The bill's definition of misconduct would require only employee carelessness in such degree or recurrence demonstrating "a knowing disregard of the employer's interest or of the employee's duties and obligations to the employer." Under the bill's definition of misconduct, it would appear that one act of carelessness on the part of an employee could be sufficient to find misconduct disqualifying the employee from receiving unemployment benefits.

Under the current statutory definition of misconduct, in order to find misconduct, only "deliberate violations of the employer's rules" are misconduct. Therefore, an employee must willfully or deliberately violate the employer's attendance policy in order to be found to have committed disqualifying misconduct. Absences such as illness or family emergency are outside of the employee's control and are not deliberate or willful on the part of the employee. Therefore, an employee's violation of the employer's attendance policy due to employee illness or family emergency are not misconduct that would disqualify the employee from receiving unemployment benefits. However, under the bill's definition of misconduct, an employee's violation of the employer's no-call, no-show attendance policy, no matter the reason for the violation, would be disqualifying misconduct. Further, chronic absenteeism or tardiness in violation of a known policy of the employer, even if the employee had no control over the situation such as a serious health condition, would appear to be disqualifying misconduct under the bill's definition of misconduct. Lastly, under the bill's definition of misconduct, "one or more unapproved absences following a written reprimand or warning relating to an unapproved absence" is disqualifying misconduct irrespective of the reason for the unapproved absence or whether the absence was within the reasonable control of the employee.

Under the bill's definition of misconduct, a knowing violation of a state standard or regulation by an employee of an employer licensed or certified by the state can be disqualifying misconduct. Under the current statutory definition of misconduct the employee must willfully or intentionally violate the state standard in order to have committed misconduct which would disqualify the employee from receiving unemployment benefits.

Finally, under the current statutory definition of misconduct, a deliberate violation of a reasonable employer work rule is misconduct that disqualifies the employee from receiving

ASSUMPTION (continued)

unemployment benefits. The employee must willfully or intentionally violate the rule in order to be guilty of misconduct. Further, under current law, the employer bears the burden of proving misconduct on the part of the employee. Under the bill's definition of misconduct, any employee violation of an employer rule is disqualifying misconduct unless the employee proves that he or she did not know and could not reasonably know about the rule or the rule is unlawful. The bill's definition of misconduct does not require any intent to violate the rule on the part of the employee. Even unintended violations of an employee rule could be misconduct that would disqualify the employee from receiving unemployment benefits. Further, the bill places on the employee the burden of proving that he or she did not know of the rule and could not have reasonably known of the rule or prove that the rule is unlawful. Therefore, under the bill's definition of misconduct, any violation of a work rule is per se misconduct even if the rule is unreasonable and the violation unintended. Furthermore, the bill places upon the employee the burden of proving the absence of misconduct.

These changes would have no fiscal impact as long as Missouri interprets this bill in a manner that does not raise conformity issues with federal law.

Individuals are disqualified for UI benefits if they voluntarily leave work without "good cause" attributable to such work or to the employer. This bill adds a definition of "good cause." Currently, "good cause" is not defined in statute. This change would have no fiscal impact

In response to previous versions of this proposal, DOL stated non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$46 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$13 million in federal funds each year the Department of Economic Development- Division of Workforce Development uses for Wagner-Peyser re-employment services. In response to this version, DOL indicated that the bill does not contain a conformity issue; however, the DES will have to make an assurance it will not interpret the language in a way that would cause a conformity issue. Therefore, based on assurances from DOL, **Oversight** will not reflect a potential loss of federal funds as shown in the fiscal note for the original version of SB 28.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal appears to have no direct fiscal impact.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations



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