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Commerce, Labor, and Economic Development

E-4 Unemployment Insurance Trust Fund

Overview

The Kansas Unemployment Insurance (UI) Trust Fund was created in 1937 as the state counterpart to the Federal Unemployment Insurance Trust Fund. The Fund provides income stability for Kansas citizens during times of economic difficulty while stimulating economic activity. The Legislature has modified the provisions of the Kansas Unemployment Insurance law several times over the past two decades to address the accumulation of excess balances in the Fund. (Note: UI moratoriums and rate cuts began to be enacted in mid to late 90s.) The recent economic crisis, culminating in 2009, resulted in the rapid depletion of the Fund's reserves, despite measures to ensure the Fund's adequacy.

State Fund Contributions

Contributions to the UI Trust Fund are made by Kansas employers and are governed by KSA 44-710a. The Fund is designed to be self correcting. When unemployment rates increase, contribution rates increase, and contribution rates decline during better economic times. The State charges a fee on the first $8,000 of wages paid to each employee, called the taxable wage base. Starting in rate year 2015, the taxable wage base increases from the current $8,000 to $12,000. In rate year 2016, the wage base increases again, from $12,000 to $14,000. The fee amount collected from employers varies, depending upon the presence or absence of several factors or conditions, such as employer classifications. Employers in Kansas can be classified as a new employer, an entering and expanding employer, a positive balance employer, or a negative balance employer.

New employers in the construction industry with less than three years of employment history are charged a fee amount equal to 6.0 percent of their taxable wage base. For new employers who are not in the construction industry, have fewer than 24 months of payroll experience, and who pay all contributions by January 31, the contribution rate may be 2.7 percent if the Fund's balance is sufficient, as specified by law.

After receiving notice from the state Department of Labor regarding contributions owed for the upcoming rate year, a new employer has 30 days to request an alternative rate be applied if the employer can provide information that the employer's operation has been in existence in another state for a minimum of three years prior to moving to Kansas.

If the condition is met, the contribution rate charged to the employer may be equal to the rate previously charged by another state, provided that rate was not less than 1.0 percent. An employer, including an employer in the construction industry, that is new and expands in Kansas may be charged a contribution rate of, 2.7 percent for four years if there has been an increase in employment growth over the previous year equal to or greater than 100.0 percent. In order to retain the reduced contribution rate, the employer must maintain a positive account balance throughout the four year period the reduced rate is in effect.

Employers with an employment history of at least three years qualify for experience-based ratings. Employers are classified as positive balance when their total contributions to the Fund exceed the amount withdrawn by qualified recipients of unemployment benefits. Positive balance employers are grouped into 51 categories, depending upon their unemployment experience. In combination with the Reserve Fund ratio and the planned yield, a specific contribution rate is determined for each employer.

Employers who are not classified as negative balance employers are eligible to receive a fee discount of 15.0 percent if all reports are filed and contributions are made by January 31. This discount does not apply if other discounts provided by law are in effect or if the Fund's balance is insufficient.

Employers are classified as negative balance when their total contributions to the Fund fail to exceed the amount withdrawn by qualified recipients. Grouped into 20 categories, all negative balance employers are charged a base contribution rate of 5.4 percent. The surcharge rate for the first negative balance group is 0.1 percent, and the surcharge rate for each subsequent group increases by 0.1 percent. The surcharge rate for the twentieth group is 2.0 percent. The surcharge ceases to apply after rate year 2014. Employers have the choice to make additional contributions to the Fund in order to become positive balance employers and qualify for an experience-based rating with lower contribution rates.

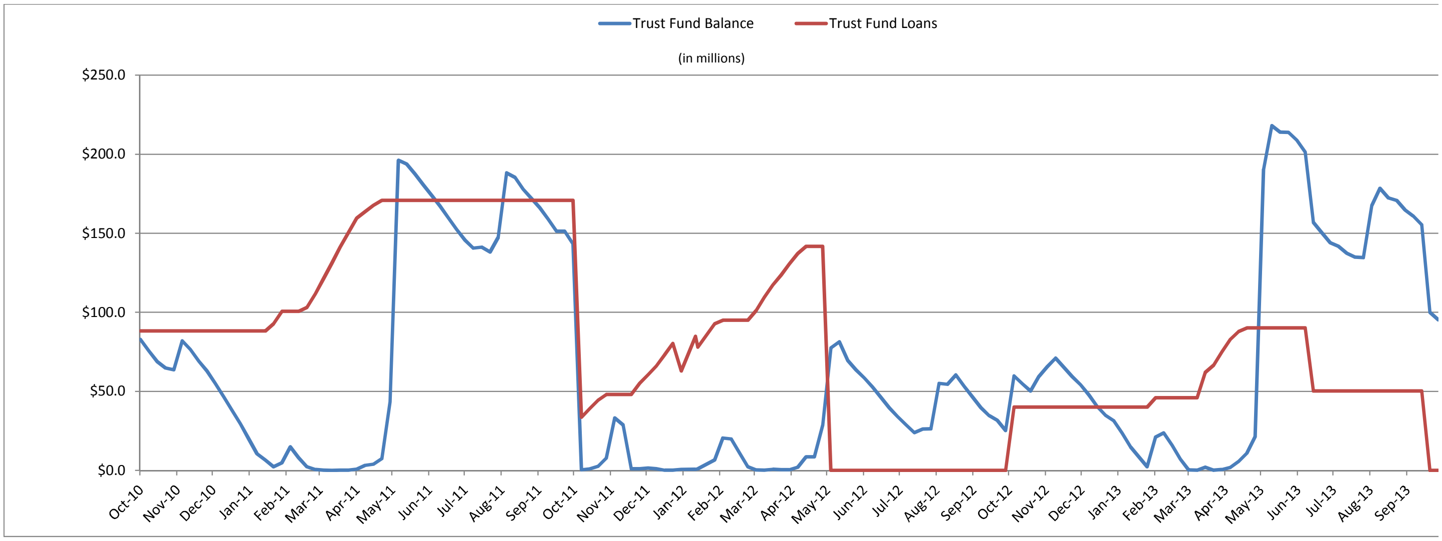
The 2011 Legislature enacted SB 77, which extends the tax rate caps for three more years, from 2012 to the end of 2014. However, the bill does not extend the 90-day extension to file contributions. SB 77 increased the number of reserve ratio groups for negative balance employers from 10 to 20. The surcharge rate applied to negative balance employers increased from 2.0 percent to 4.0 percent. For those employers in the top ten negative reserve ratio groups, there is a temporary 0.1 percent surcharge increase for 2012, 2013, and 2014. The additional surcharge revenue is deposited in the Employment Security Interest Assessment Fund.

Federal Unemployment Trust Fund

In addition to the contributions to the Kansas UI Trust Fund, employers contribute to the Federal Unemployment Insurance Trust Fund (FUTF). Employers pay a rate of 6.0 percent on the first $7,000 of income; however, the federal government provides a tax credit of 5.4 percent against this rate for states with an unemployment insurance program in compliance with federal requirements. This yields an effective contribution rate of 0.6 percent for Kansas employers. The FUTF is used for administrative purposes and to fund loans to state unemployment insurance programs when they become insolvent.

2009 Economic Crisis

Between January 2007 and December 2008, the UI Trust Fund maintained a balance between $600 million and $700 million. Benefit payments began a sharp rise starting in January 2009, increasing from an average of $6.0 million per week to $19.0 million per week in July of the same year. The tripling of benefit payments over this period resulted in accelerated depletion of Fund resources. The Kansas Department of Labor uses the Average High Cost Multiple (AHCM) system recommended by the U.S. Department of Labor in order to ensure Trust Fund adequacy. The AHCM is the number of years a state can pay benefits out of its current Trust Fund balance if it were required to pay benefits at a rate equivalent to an average



of the three highest 12-month periods in the past 20 years.

The last time Kansas experienced a period of unemployment exceeding 6.5 percent was in 1982. This means that there was no equivalent three-month period of unemployment included in the AHCM calculation. The unemployment rate is not the only variable impacting the Trust Fund balance. The primary determinants of the Trust Fund depletion rate are the average weekly benefit, the number of persons to whom unemployment is paid, and the amount of time for which benefits are paid.

Current Status of the Fund

During the recession of 2008, the State borrowed funds from the Federal Unemployment Account to make unemployment benefit payments. The State borrowed $170.8 million in April 2011 but paid down the amount to $33.7 million in October 2011. The State then borrowed amounts weekly up to $141.7 million in April 2012. The State paid the federal loan balance in May 2012 with a goal to not borrow any additional funds from the federal government going forward. In total, the Kansas Department of Labor paid $5.7 million in interest payments on these loans, including $4.6 million in September 2011 and $1.1 million in September 2012. The Department of Labor may borrow amounts from the Pooled Money Investment Board (PMIB) as necessary. The agency does not currently expect any future loans will be necessary.

SB 77—An Act Concerning the Employment Security Act

SB 77 took effect in 2011 and authorized the creation of the Employment Security Interest Assessment Fund, which pays interest owed to the U.S. Department of Labor for advances received by the UI Trust Fund. In addition to increasing the surcharge rate negative balance employers pay from 2.0 percent to 4.0 percent and creating a temporary 0.1 percent increase for 2012, 2013, and 2014, changes were made to improve the UI Trust Fund's solvency.

The law repealed the provision that allowed an unemployed individual to receive compensation for the waiting period of one week. The bill also modified the "trailing spouse" provision so that it applies only to the spouses of personnel in the U.S. armed forces or military reserves. Under previous law, a person could receive UI benefits if that person left a job because the person's spouse had to transfer to another location for employment.

The PMIB may make long-term loans to the Kansas Department of Labor in order to fund debt obligations owed to the federal government. The interest rate for a PMIB loan may not exceed 2.0 percent. The loan period cannot exceed three years unless the PMIB and the Secretary of Labor agree to the extension.

The law grants an unemployed individual who receives UI benefits the discretion to have state income tax withheld from the payments. Federal law currently allows an unemployed individual to have federal income tax withheld.

Employee Benefits

The amount of money an employee can receive in unemployment compensation will vary depending on the level of compensation the employee received during employment and the length of time the employee can receive benefits. However, there are strict upper and lower limits on benefit payments to prevent over-and under-compensation. If the Department of Labor determines a person made a false statement or representation when applying for benefits, that person is disqualified from receiving benefits for five years.

Calculating the Weekly Benefit

The weekly benefit amount is what the claimant will receive each week in unemployment compensation. The weekly benefit amount is determined by multiplying 4.25 percent times the highest earning quarter in the first four of the last five completed calendar quarters. KSA 44-704(c) limits the weekly benefit amount to 60.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year. Subsection (d) of the same statute guarantees that employees will receive at least 25.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year.

Calculating the Length of Compensation

During a standard or non-recessionary period, an employee's duration of benefit is calculated in one of two ways, whichever is less. First, an employee can receive weekly compensation for 26 weeks or second, the duration of benefits is determined by multiplying 1/3 times the total benefits received in the first 4 of the last 5 completed calendar quarters. The weekly benefits amount is divided into the total benefits received in order to determine the number of weeks an employee can receive compensation.

Starting in benefit year 2014, if the unemployment rate for Kansas is equal to or greater than 6.0 percent, a person is eligible for a maximum of 26 weeks of benefits. If the unemployment rate is less than 6.0 percent but greater than 4.5 percent, a person is eligible for 20 weeks of benefits. A person is eligible for 16 weeks of benefits if the unemployment rate is equal to or less than 4.5 percent. For purposes of this provision, the law calculates the unemployment rate at the beginning of a benefit year, using a three-month, seasonally adjusted average.

The Federal Emergency Unemployment Compensation Act of 2008 extends an employee's duration of benefit by 20 weeks and has an additional Tier 2 trigger to provide 13 weeks of compensation when unemployment exceeds 6.0 percent, for a total of 33 weeks above the 26 weeks of unemployment compensation in non-recessionary periods. All benefits paid under the Emergency Unemployment Compensation Act are paid from federal funds and do not impact the Kansas UI Trust Fund balance. The federal government recently approved an additional 14 weeks of Tier 3 unemployment compensation for Kansas. Kansas citizens are able to receive a total of 47 weeks in federal unemployment compensation separate from their state benefits.

Under KSA 44-704(a), Kansas will provide an additional 13 weeks of unemployment compensation when the Kansas economy hits one of several indicators, including an unemployment rate of at least 6.5 percent for the previous three months. An applicant can receive less than 13 weeks of extended state benefits in the event his or her original eligible benefit period was less than 26 weeks based on the 1/3 calculation. Under state law, Kansas extended benefits are paid 50.0 percent from the Kansas UI Trust Fund and 50.0 percent from the FUTF.

Enforcement of the UI System

In 2013, the Legislature authorized the Secretary of Labor to hire special investigators with law enforcement capabilities to investigate UI fraud, tax evasion, and identity theft.

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