AN ACT

RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY-- CONTRIBUTIONS

Introduced By: Representatives Morin, Phillips, Shekarchi, Casey, and Tomasso

Date Introduced: May 15, 2014

Referred To: House Labor

(by request)

It is enacted by the General Assembly as follows:

SECTION 1. Section 28-43-35 of the General Laws in Chapter 28-43 entitled "Employment Security - Contributions" is hereby amended to read as follows:

28-43-35. Special rules regarding transfers of experience and assignment of rates. --

Notwithstanding any other provisions of chapters 42 -- 44 of this title, the following shall apply regarding assignment of rates and transfers of experience:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is any common ownership, management or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. In determining whether there is any common ownership, management, or control, the department may consider the following factors, which include, but are not limited to: any familial relationships, principals or corporate officers, organizational structure, day-to-day operations, assets and liabilities, and stated business purposes. The rates of both employers shall be recalculated in the following manner:

(1) The total payroll of the employees on the predecessor's payroll during the last completed calendar quarter prior to the date of the transfer, who are also on the payroll of the successor when the transfer takes effect shall be divided by the predecessor's total payroll during the last completed calendar quarter prior to the date of the transfer, and that percentage shall be
applied to the experience rating balances and payroll of the predecessor as of the end of the
experience year used to determine the contribution rate for the tax year in effect at the date of
transfer. The resulting amounts shall be subtracted from the experience rating balances and
payroll of the predecessor. The predecessor’s remaining experience rating balances and payroll
shall be used to determine its contribution rate for the new tax year or for the remainder of the
current tax year, whichever is applicable, effective on the first day of the calendar quarter
following the date of the transfer; provided, that if the date of the transfer is the first day of the
calendar quarter, then the new contribution rate shall take effect on the date of the transfer.

(2) The balances subtracted from the predecessor’s account in subdivision (a)(1) of this
section, shall be combined with the experience rating balances and payroll of the successors as of
the end of the experience year used to determine the contribution rate for the tax year in effect at
the date of transfer. Those combined balances shall be used to determine the contribution rate for
the successor for the new tax year, or for the remainder of the current tax year, whichever is
applicable, effective on the first day of the calendar quarter following the date of the transfer;
provided, that if the date of the transfer is the first day of the calendar quarter, then the new
contribution rate shall take effect on the date of the transfer. For successors in business for less
than one experience year, their contribution rate for the new tax year, or for the remainder of the
current tax year, whichever is applicable, shall be computed based on the transferred experience
rating balances and payroll of the predecessor and shall take effect on the first day of the calendar
quarter following the date of the transfer; provided, that if the date of the transfer is the first day
of the calendar quarter, then the new contribution rate shall take effect on the date of the transfer.

(3) A successor shall be deemed to be an eligible employer if its experience combined
with that of its predecessors meets the requirements of subdivision §28-43-1(3). As used in this
section, “successor” means the employing unit to whom a transfer as provided in this section is
made, and “predecessor” means the employer making the transfer and may, if the context so
requires, be construed as referring only to the separate establishment transferred in case of the
transfer of a separate establishment.

(b) If, following a transfer of experience under subsection (a) of this section, the director
determines that a substantial purpose of the transfer of the trade or business was to obtain a
reduced liability for contributions, then the experience rating accounts of the employers involved
shall be combined and the combined rate assigned to each employer account.

(c) Whenever a person who is not an employer under this chapter at the time that person
acquires the trade or business of an employer, the unemployment experience of the acquired
business shall not be transferred to such person if the director finds that such person acquired the
business solely, or primarily, for the purposes of obtaining a lower rate of contributions. Instead, such person shall be assigned the new employer rate under §28-43-8.3. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(d) Subject to the provisions herein, whenever a person who is not an employer under this chapter at the time that person acquires the trade or business, or a portion thereof, of an employer in insolvency proceedings including federal bankruptcy courts, state receiverships, masterships or other insolvency proceedings, the unemployment experience of the acquired business shall not be transferred to such person. Instead, such person shall be assigned the new employer rate under §28-43-8.3 unless the director finds that, at the time of the acquisition, there is common ownership, management or control of the two (2) employers, and in such case all of the experience will be transferred.

(e) Subject to the provisions herein, whenever a person who is an eligible employer prior to the time that person acquires the trade or business, or a portion thereof, of an employer in insolvency proceeding including federal bankruptcy courts, state receiverships, mastership or other insolvency proceedings, the unemployment experience of the acquired business shall not be transferred to such person. Instead, such person shall continue to pay employer contributions at the rate applicable to it prior to the date it made such acquisition unless the director finds that, at the time of the acquisition, there is common ownership, management or control of the two (2) employers, and in such case all of the experience will be transferred and a new rate computed.

(f)(1) If a person knowingly violates or attempts to violate subsections (a), (b) or (c), or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

(i) If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for such year, then a penalty rate of contributions of two percent (2%) of taxable wages shall be imposed for such year.
(ii) If the person is not an employer, such person shall be guilty of a misdemeanor and subject to a civil money penalty of not more than five thousand dollars ($5,000). Any such fine shall be deposited in the Rhode Island General Fund.

(2) For purposes of this section, the term "knowingly" means having actual knowledge of, or acting with deliberate ignorance, or reckless disregard for, the prohibition involved.

(3) For purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

(4) In addition to the penalty imposed by subparagraph (1), any violation of this section may also be prosecuted as a misdemeanor, and for each offense, the person may be subject to imprisonment for a period not exceeding one year.

(5) The director shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(6) For purposes of this chapter:

(1) "Person" shall include an individual, a trust, estate, partnership, association, company or corporation; and

(2) "Trade or business" shall include the employer's workforce.

(7) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

(8) Any determination of the director under this section shall be final unless an appeal from it is filed by the aggrieved party within fifteen (15) days from the date that notice is mailed to the last known address of that party. All appeals shall follow the provisions of section §28-43-13.

SECTION 2. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N   A C T
RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY--
CONTRIBUTIONS

***

1 This act would allow new employers to receive the new employer rate with respect to the
2 employment security fund when taking over an existing business in insolvency proceedings if
3 there is no common ownership, management or control of the two (2) employers and would allow
4 existing employers to maintain their current tax rate when taking over an existing business in
5 insolvency proceedings if there is no common ownership, management or control of the two (2)
6 employers.
7
8 This act would take effect upon passage.

=============
LC005667
==============