DECLARATION OF EMERGENCY
Workforce Commission
Office of Unemployment Insurance Administration

Invocation of the Statutory Savings Clause under R.S. 23:1664 to Delay Implementation of Act 297 of the 2021 Regular Legislative Session (LAC 40:IV.385)

The Louisiana Workforce Commission (LWC) is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., to promulgate a Rule to delay implementation of the provisions of Act 297 of the 2021 Regular Legislative Session (the enacted version of SB 244), that are inconsistent with Federal UI law, namely R.S. 23:1772(C), 23:1774(A)(4), and any other related provision that requires LWC to waive UI taxes owed. The USDOL provided the LWC with notice that waiving employer liability for back UI taxes is “not permissible under federal unemployment compensation (UC) law.”

This Emergency Rule is necessary to invoke the statutory savings clause under R.S. 23:1664, which addresses federal-state cooperation and compliance in the administration of Louisiana’s UC program. A delay in promulgating this Rule would have an adverse impact on the Louisiana Workforce Commission’s eligibility for federal funding because Act No. 297, which was signed into law by the Governor on June 14, 2021, and is effective on January 1, 2022, is not in conformity with 26 U.S.C. §3304 of the Federal Unemployment Tax Act (FUTA) and 42 U.S.C. §503, the State Unemployment Tax Act (SUTA) Dumping Prevention Act. The enactment of Act No. 297 would also require the Louisiana Workforce Commission to waive employer liability for back UI taxes. Waiving employer liability for back UI taxes is not permissible under federal unemployment compensation (UC) law and regulations. Pertinent provisions of Act No. 297 are not in conformity with federal law and regulations. The LWC only seeks to delay the provisions that are inconsistent with Federal UI law, namely R.S. 23:1772(C), 23:1774(A)(4), and any other provision that requires the LWC to waive UI taxes owed. The LWC does not seek to delay enactment of the portion of Act No. 297 that pertains to employee misclassification. Pursuant to R.S. 23:1664, which addresses federal-state cooperation and compliance in the administration of Louisiana’s UC program and requires that the administrator take such actions as may be necessary to meet the requirements of FUTA as interpreted by the U.S. Department of Labor, the Louisiana Workforce Commission seeks to invoke the savings clause under La. R.S. 23:1664 and delay implementation of Act No. 297 until the statute is amended during the 2022 Regular Legislative Session. A delay in promulgating this Rule would have an adverse impact on the LWC’s eligibility for federal funding because Act No. 297 is not in conformity with federal UC law.


HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Unemployment Insurance Administration, LR 47:

Inquiries concerning the proposed enactment may be sent to Assistant Secretary Robert Wooley, UI Administration, 1001 North 23rd Street, Baton Rouge, LA 70802 or at Rwooley@lwc.la.gov.

Ava Cates
Secretary
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