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President Signs Legislation to Stop SUTA-Dumping

President Bush on Monday signed into law the SUTA Dumping Prevention Act of 2004 (P.L. 108-295). SUTA dumping occurs when an employer forms a new company and transfers some employees to the new company with lower tax rates for the purpose of avoiding unemployment taxes. The new law includes language giving state unemployment insurance programs access to the National Directory of New Hires (NDNH). As soon as it becomes available the Public Law will be posted on the ATM. Below is the SUTA Dumping Prevention Act of 2004 (Enrolled as Agreed to or Passed by Both House and Senate).

--H.R.3463--

H.R.3463

One Hundred Eighth Congress

of the

United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday,

the twentieth day of January, two thousand and four

An Act

To amend titles III and IV of the Social Security Act to improve the administration of unemployment taxes and benefits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'SUTA Dumping Prevention Act of 2004'.

SEC. 2. TRANSFER OF UNEMPLOYMENT EXPERIENCE UPON TRANSFER OR ACQUISITION OF A BUSINESS.

(a) IN GENERAL- Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end the following:

'(k)(1) For purposes of subsection (a), the unemployment compensation law of a State must provide--

`(A) that if an employer transfers its business to another employer, and both employers are (at the time of transfer) under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to (and combined with the unemployment experience attributable to) the employer to whom such business is so transferred,

`(B) that unemployment experience shall not, by virtue of the transfer of a business, be transferred to the person acquiring such business if--

 `(i) such person is not otherwise an employer at the time of such acquisition, and

 `(ii) the State agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions,

`(C) that unemployment experience shall (or shall not) be transferred in accordance with such regulations as the Secretary of Labor may prescribe to ensure that higher rates of contributions are not avoided through the transfer or acquisition of a business,

`(D) that meaningful civil and criminal penalties are imposed with respect to--

 `(i) persons that knowingly violate or attempt to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

 `(ii) persons that knowingly advise another person to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

`(E) for the establishment of procedures to identify the transfer or acquisition of a business for purposes of this subsection.

`(2) For purposes of this subsection--

 `(A) the term `unemployment experience', with respect to any person, refers to such person's experience with respect to unemployment or other factors bearing a direct relation to such person's unemployment risk;

 `(B) the term `employer' means an employer as defined under the State law;

 `(C) the term `business' means a trade or business (or a part thereof);

 `(D) the term `contributions' has the meaning given such term by section 3306(g) of the Internal Revenue Code of 1986;

 `(E) the term `knowingly' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved; and

 `(F) the term `person' has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986.'

(b) STUDY AND REPORTING REQUIREMENTS-

(1) STUDY- The Secretary of Labor shall conduct a study of the implementation of the provisions of section 303(k) of the Social Security Act (as added by subsection (a)) to assess the status and appropriateness of State actions to meet the requirements of such provisions.

(2) REPORT- Not later than July 15, 2007, the Secretary of Labor shall submit to the Congress a report that contains the findings of the study required by paragraph (1) and recommendations for any Congressional action that the Secretary considers necessary to improve the effectiveness of section 303(k) of the Social Security Act.

(c) EFFECTIVE DATE- The amendment made by subsection (a) shall, with respect to a State, apply to certifications for payments (under section 302(a) of the Social Security Act) in rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the State legislature beginning on or after the date of the enactment of this Act.

(d) DEFINITIONS- For purposes of this section--

(1) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(2) the term 'rate year' means the rate year as defined in the applicable State law; and

(3) the term 'State law' means the unemployment compensation law of the State, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1986.

SEC. 3. USE OF NEW HIRE INFORMATION TO ASSIST IN ADMINISTRATION OF UNEMPLOYMENT COMPENSATION PROGRAMS.

Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) is amended by adding at the end the following:

(8) INFORMATION COMPARISONS AND DISCLOSURE TO ASSIST IN ADMINISTRATION OF UNEMPLOYMENT COMPENSATION PROGRAMS-

(A) IN GENERAL- If, for purposes of administering an unemployment compensation program under Federal or State law, a State agency responsible for the administration of such program transmits to the Secretary the names and social security account numbers of individuals, the Secretary shall disclose to such State agency information on such individuals and their employers maintained in the National Directory of New Hires, subject to this paragraph.

(B) CONDITION ON DISCLOSURE BY THE SECRETARY- The Secretary shall make a disclosure under subparagraph (A) only to the extent that the Secretary determines that the disclosure would not interfere with the effective operation of the program under this part.

`(C) USE AND DISCLOSURE OF INFORMATION BY STATE AGENCIES-

`(i) IN GENERAL- A State agency may not use or disclose information provided under this paragraph except for purposes of administering a program referred to in subparagraph (A).

`(ii) INFORMATION SECURITY- The State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of information obtained under this paragraph and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures.

`(iii) PENALTY FOR MISUSE OF INFORMATION- An officer or employee of the State agency who fails to comply with this subparagraph shall be subject to the sanctions under subsection (l)(2) to the same extent as if such officer or employee was an officer or employee of the United States.

`(D) PROCEDURAL REQUIREMENTS- State agencies requesting information under this paragraph shall adhere to uniform procedures established by the Secretary governing information requests and data matching under this paragraph.

`(E) REIMBURSEMENT OF COSTS- The State agency shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.'

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

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