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BUSINESS, LABOR REPS PUSH STRONGER S.U.T.A. BILL

Federal laws preventing so-called SUTA dumping are, and should be treated as, the bare minimum for addressing the problem of businesses trying to avoid unemployment taxes, business and labor leaders said at a forum presented by the Michigan State University Institute for Public Policy and Social Research.

Presenters at "Talk of Tax Reform: Unemployment Taxes and Business Loopholes" said allowing businesses with higher lay-off rates to avoid paying a relative share of the unemployment tax burden would essentially mean higher taxes for other businesses, as unemployment benefits were not likely to decrease.

The Legislature has passed bills banning SUTA dumping that some said were not strong enough. However, as the bills went through the legislative process a number of business groups argued the state should only enact what the federal government requires.

The first issue that has to be addressed by the Legislature is the state's goals toward SUTA dumping, said Matthew Harvill, vice president for unemployment compensation for Kelly Services Incorporated. "Do we really want to stop SUTA dumping or do we merely want to conform to the federal legislation?" he said. "If we can build a consensus that the known unemployment experience of a workforce should be recognized regardless of organizational structure, then I think we can move forward."

But he said the solution has to address more than the federal requirements. "The federal legislation was never meant to be a cure all, a silver bullet for SUTA dumping."

The Michigan legislation deals with companies shifting employees to a subsidiary with a better employment record, purchasing another company with a lower rate and shifting employees there, and, in some versions, moving employees to a contract labor company such as Kelly Services.

He said some of the reluctance to make the Michigan solution more comprehensive is the concern that it will affect professional employer organizations, such as Kelly Services. "This is not a PEO issue," he said. "I would prefer that the experience of clients would be recognized by PEOs."

Mr. Harvill said the bills proposed in Michigan have only caught some of the possible ways that businesses are avoiding their unemployment tax burden. "States that are further ahead than Michigan have identified nine techniques," he said.

And Rick McHugh, the National Employment Law Project Midwest coordinator for the Unemployment Safety Net Program, said SUTA dumping is essentially defrauding the unemployment system, and he argued the Legislature is treating businesses defrauding the system much more kindly than it treats employees.

"I know the Legislature would respond differently if a report had come out that workers were receiving benefits they were not entitled to," he said. "I can't tell you the last time an employer went to jail for not paying their taxes."

Mr. Harvill said his company could be forced to consider using loopholes that it has so far avoided just to remain competitive. "If states like Michigan say we're just going to conform to the minimum requirements, then what am I supposed to do as an employer?" he said. "If the Legislature says it's all right, then do we have a fiduciary responsibility to do it?"

Mr. Harvill said Kelly Services began the fight to eliminate SUTA dumping after accounting firms presented options for doing so to corporate executives. Though some of Kelly's management had approved of some plans to shift employees to subsidiaries, he said the company chair nixed the idea as not passing the "Wall Street Journal test."

"If it's on the front page of the Wall Street Journal, would we want our name associated with it?" he said.

The company instead focused on ways to keep its employees working to cut unemployment costs.

The battle to eliminate SUTA dumping began when accountants approaching the company changed their message from one of suggesting it as an option to questioning whether a company not making such moves was acting in the best interests of its shareholders, Mr. Harvill said.

Mr. Harvill argued that the State Unemployment Tax Act (SUTA) is designed to affect competition, but not in the way that it is being used by some companies. "If I'm more stable in my employment, I create a competitive advantage," he said, adding that the advantage it taken away of other companies are allowed to hide or avoid higher layoff rates.

Not taking any, or even sufficient, action to prevent SUTA dumping essentially takes the experience factor out of the tax system, said Stephen Woodbury, an economics professor at Michigan State University. Insufficient action could as much as double the amount of unemployment tax being transferred to companies with high layoff rates, he said.

In a study of Missouri, Washington and Pennsylvania, Mr. Woodbury said he found between 23 percent and 25 percent of the states' unemployment taxes were transferred from companies with low layoff rates to those with high layoff rates. In a model giving businesses flat rate unemployment taxes, he said the transfer rate increased to about 45 percent in each of the states.

Mr. McHugh said the penalties in the bills, $5,000 in fines, are also not enough to deter SUTA dumping. He said that would be a small percentage of the contract for accountants working with a large employer like Kelly Services.

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