

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 822

STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JANUARY 11, 2024

SUMMARY

- Synopsis:** Creates “New Jersey Domestic Workers’ Bill of Rights Act.”
- Type of Impact:** Uncertain annual impacts on State revenue collections and expenditures.
- Agencies Affected:** Department of the Treasury; Department of Labor and Workforce Development.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Net Revenue Impact	Indeterminate
State Net Cost Impact	Indeterminate

- The Office of Legislative Services (OLS) is unable to determine the direction and magnitude of the bill’s net fiscal impact owing to uncertainty regarding the precise number of individuals who would benefit from the enactment of the bill and their current income, employer practices, and the countervailing effects of the bill on State revenue collections and expenditures related to a potential increase in reported minimum wage for those individuals.

BILL DESCRIPTION

This bill creates various rights and employment protections for domestic workers.

The bill removes the exclusion of domestic workers from the Law Against Discrimination and the New Jersey State Wage and Hour Law; requires employers to provide domestic workers with a notification of their rights under the bill; and establishes penalties for violations of its provisions, including penalties against retaliation by the employer or hiring entity.

The bill defines domestic workers as hourly and salaried employees, full-time and part-time individuals, and temporary individuals, each one of whom works for one or more employers, and works in residence caring for a child; serving as a companion or caretaker for a sick, convalescing, elderly, or disabled person; housekeeping or house cleaning; cooking; providing food or butler

service; parking cars; cleaning laundry; gardening; personal organizing; or for any other domestic service purpose. The bill's definition of domestic worker excludes any individual providing care services for a family member of the individual; an individual primarily engaged in house sitting, pet sitting, or dog walking; an individual working at a business operating out of a residence; an individual whose primary work involves house repair or maintenance; a home health care aide paid through Medicare or Medicaid; an individual who is a kinship legal guardian of a child; and an individual participating in the Kinship Navigator Program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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State Revenues: The OLS cannot determine the net impact of a potential higher reported State minimum wage on State revenue collections, but it expects that the net outcome will depend upon a number of key factors, the magnitude of their individual impacts, and the extent to which the different impacts may offset one another. These include, but are not limited to, the number of taxpayers benefiting from an increase in income, their current income versus income reported as required under the bill, the proportion of any income increase or decrease, job losses, and the level of employers' compliance with the provisions of the bill.

The OLS anticipates a State revenue gain from employees whose wages will increase to at least the current State minimum wage per hour. These employees will have larger taxable incomes under the gross income tax and will pay more in payroll taxes (unemployment insurance and temporary disability and family leave insurance); and will qualify for a lower earned income tax credit or cease being eligible altogether. The OLS also anticipates a State revenue gain in employer payroll taxes (unemployment insurance, workers' compensation insurance, and temporary disability leave insurance) from employers whose employees' wages will increase to at least the current State minimum wage per hour.

Counteracting such gains, State revenue collections will decrease if the higher minimum wage causes employers to: (1) reduce their demand for labor by eliminating the need for the domestic worker or cutting hours, thereby lowering affected employees' incomes, gross income, and payroll tax liabilities, and potentially increasing their earned income tax credit claims; and (2) absorb a decrease in employers' net income, thereby lowering their gross income tax liabilities.

Gross Income Tax: Tax data on the number of domestic workers who may be impacted by the enactment of this bill, their current income levels, and their current State tax liabilities are not available at the time of this Legislative Fiscal Estimate.

Gross income tax revenues would increase to the extent that certain domestic workers who report income below the statutory minimum filing thresholds would have their income boosted

above the thresholds. In addition, revenues would also increase as complying employers withhold taxes from domestic workers who are currently paid in cash and do not report gross income tax. Most taxpayers become liable for New Jersey gross income tax when their gross income exceeds \$20,000, but for a single filer or a married spouse filing a separate return, the threshold is \$10,000. A taxpayer with income below the applicable minimum filing threshold does not owe tax.

For a domestic worker in the abovementioned example, the marginal tax rate of 1.75 percent would be applied to all the additional taxable income above the statutory \$20,000 income level, or \$17.50 per each \$1,000 of such additional taxable income. Also, this domestic worker would pay 1.4 percent tax on all income below the \$20,000 level, or \$280.

For purposes of illustration, a domestic worker who is paid an hourly wage of \$12.90 (worker employed by employer with less than six employees) per hour and works 35 hours each week during the year would have an annual gross income of approximately \$23,500. Assuming this domestic worker is a single filer who can only claim the personal exemption of \$1,000, the taxpayer's GIT liability would approximate \$210. If that domestic worker's hourly wage is increased to at least the State's minimum wage of \$14.13, the domestic worker's annual gross income would grow to \$28,400, resulting in a \$3,400 tax liability, a \$130 difference. For every 10,000 taxpayers who meet these criteria, the State would realize a recurring gross income tax revenue increase of \$1.3 million.

The OLS further notes that the enactment of the bill may result in some job losses, to the extent that some employees are priced out of the market, given that some employers may not be willing to pay additional payroll taxes, sick leave, workers' compensation insurance, or higher wages.

For purposes of illustration, in the abovementioned example for a single full-time domestic worker earning \$23,500 per year at the current minimum wage, the gross income tax collection is approximately \$210. For every 1,000 domestic workers who lose a job due to the enactment of the bill, the State would see a \$210,000 gross income tax revenue reduction. Lastly, some employers may choose to reduce hours of employment due to higher wages, sick leave benefits, workers' compensation insurance, or higher employer payroll tax contributions, resulting in some additional State revenue losses. The OLS does not have enough information to estimate the number of potential job losses and the total possible State tax revenue loss.

Earned Income Tax Credit: If enacted, the bill may reduce the cost of the State earned income tax credit program, which is equal to 40 percent of the federal earned income tax credit, which provided \$657 million in estimated benefits to around 675,000 claimants in FY 2022. The earned income tax credit is a refundable tax credit for working people with low to moderate incomes that is administered through the gross income tax. Accordingly, any reduction in earned income tax credit benefits will increase gross income tax collections; however, the OLS is unable to estimate the potential annual fiscal impact of the legislation on the earned income tax credit program.

For 2022, a domestic worker employed full- or part-time would have had earned income and adjusted gross income which must each be less than: \$53,057 for a single filer (or \$59,187 if married filing jointly) with three or more qualifying dependent children – maximum NJ earned income tax credit of \$2,774; \$49,399 for a single filer (or \$55,529 if married filing jointly) with two qualifying children – maximum NJ earned income tax credit of \$2,466; \$43,492 for a single filer (or \$49,622 if married filing jointly) with one qualifying child – maximum NJ earned income tax credit of \$1,493; and \$16,480 for a single filer (or \$22,610 if married filing jointly) with no qualifying children – maximum NJ earned income tax credit of \$224. Based on the income limits above, it is reasonable to assume that any domestic worker whose 2022 wages were \$59,187 or less was eligible for the 2022 Earned Income Tax Credits. The OLS notes that any increase in wages which would cause a domestic worker's total income to surpass the program's income eligibility, at \$59,187, would result in the domestic worker no longer receiving the credit, reducing

the cost of the State earned income tax credit program reflected in increased gross income tax revenue collections.

Payroll Taxes: The OLS notes that the bill may result in annual increases in unemployment insurance, temporary disability, and family leave contributions from employers (employers do not contribute to the family leave program) and employees, provided that domestic workers' wages increase and there are income tax increases from informal domestic workers who currently do not report income tax.

To qualify for unemployment, temporary disability, or family leave benefits in 2023, an applicant must earn at least \$260 per week for 20 base weeks, or alternatively, earn at least \$13,000. Benefit eligibility criteria are based on the state minimum wage in effect when this Legislative Fiscal Estimate was formulated, when the minimum wage in New Jersey was \$14.13 per hour for most employees.

Unemployment Insurance Fund.

Employer Contribution: The unemployment insurance fund's reserve ratio, in part, determines an employer's tax rate, which will increase as the reserve ratio falls in order to replenish the fund balance as unemployment benefits get paid out. Currently, unemployment contribution rates for employers in FY 2023 are set by column "D" of the Experience Rating Tax Table. The OLS notes that it is reasonable to assume, if the enactment of the bill leads to compliance with reportable income for some domestic workers or higher wages for others, an increase in employer contributions to the unemployment insurance compensation fund, which magnitude the OLS cannot determine. However, given the countervailing effects of the bill on higher income and loss of wages or jobs, and to what extent the two effects may offset one another, the OLS cannot determine the direction or magnitude in payroll benefits.

Employees Contribution: New Jersey is one of only three states in which employees are subject to a tax for unemployment insurance. In New Jersey, the tax on the employee is levied at a rate of 0.3825 percent on the first \$41,100 of income earned. Thus, in calendar year 2023, the maximum employee contribution is approximately \$157 per employee ($0.003825 \times 41,100$). If the enactment of the bill results in higher wages for some domestic workers and new reportable income for others, it is reasonable to assume an indeterminate, likely insignificant, increase in the employee contribution to the unemployment insurance fund. Given the regressive nature of this tax, gains in income by the domestic worker will be partially offset by contributions to the unemployment insurance fund.

Temporary Disability and Family Leave Insurance: The Department of Labor and Workforce Development announced in October 2022 a reduction in worker contribution rates for the calendar year 2023, with temporary disability dropping to zero percent, from 0.14 percent, and family leave decreasing by more than half, to 0.06 percent, from 0.14 percent. The family leave program is funded entirely through an assessment on workers' wages, the rate of which is set by the department annually to cover anticipated program expenditures and a reserve requirement. The assessment equals the rate, which is projected to generate contributions equal to 125 percent of estimated annual family leave benefits plus 100 percent of estimated administrative costs, reduced by any unexpended prior-year account balances. The same method is used to set the temporary disability tax rate, except that the assessment amount for temporary disability insurance benefits is 120 percent of estimated benefits. Given the statutory funding formula for both programs, the OLS projects an increase in the rate for both programs for calendar year 2024.

Penalty Collections: The OLS estimates that the bill may result in an indeterminate annual increase in State revenues from penalties collected for violations established in the bill. This bill increases existing wage and hour law penalties to employers who fail to comply with the provisions of the bill. The OLS cannot determine the number of violations that employers may commit under the bill and, therefore, the amount of penalty revenue that may be generated.

State Expenditures: The OLS notes that the bill may result in annually recurring State government expenditures in a few areas: (a) means-tested government assistance programs; (b) earned income tax credit; (c) unemployment compensation and temporary disability and family leave insurance; and (d) State government workload.

Means-Tested Government Assistance Programs: Depending on employer responses to the implementation of the provisions of the bill, the outlay of State government for means-tested assistance programs, such as NJ FamilyCare, Work First New Jersey, and New Jersey Health Plan Savings, could fall or rise. Domestic workers whose income rises as a result of the bill will, depending on the eligibility criteria of a specific program, either cease being eligible for benefits or qualify for reduced benefits. Offsetting the State cost savings from the reduced reliance on means-tested assistance programs by individuals with higher incomes, the State may see an increase in program participation from individuals who cannot secure employment because of any reduction in the supply of jobs and work hours attributable to the potential of loss of jobs or loss of income. The OLS, however, has no information on which it could base an estimate of the countervailing cost effects on means-tested assistance programs, and to what extent the two effects may offset one another.

Earned Income Tax Credit: To the extent that the bill result in gross income tax increases from informal domestic workers who currently do not report income tax, the OLS notes that these workers may become eligible for the earned income tax credit.

Payroll Benefits: The bill allows an eligible domestic worker to benefit from unemployment insurance and workers compensation and temporary disability and family leave insurance. Given the countervailing effects of the bill on higher income and loss of wages or jobs, and to what extent the two effects may offset one another, the OLS cannot determine the direction or magnitude in payroll benefits.

State Government Workload: The bill may increase the annual operating expenses of the Department of Labor and Workforce Development. The extent to which the increased responsibilities will add to the department's annual expenditures will depend on the operational decisions the department will make in response to the bill. The OLS, however, does not have full information to predict the department's operational responses to the bill.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).