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**SUBSTITUTE HOUSE BILL 2308**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Slatter, Tharinger, Wylie, and Appleton)

AN ACT Relating to requiring employers to periodically report standard occupational classifications or job titles of workers; amending RCW 50.12.070 and 50.12.220; creating new sections; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Information collected by the employment security department from employers for the purposes of unemployment insurance requirements includes certain information, such as the employee's wages and hours worked. However, the information does not provide sufficient detail to allow for identification of the occupation of an employee; and

(b) Accurate occupational employment data would be useful in a number of ways. Job seekers use occupational employment and wage data for career planning and to assess occupational-based job opportunities within various industries and geographic areas in the state. Economists and researchers also rely on occupational employment and wage statistics to determine the composition of employment and the scope of business investment in their communities. Economic development professionals utilize employment data to identify the occupational assets of the state's labor markets to assist them in their efforts to attract businesses to their communities. Occupational and wage data are utilized for program planning, evaluating the effectiveness of training programs, and guiding students on their career pathways.

(2) The legislature further finds that:

(a) Without occupational data, the state is limited in its ability to successfully evaluate the effectiveness of job training programs;

(b) Other states recognize the importance of gathering this data and have begun to require employers to identify each employee's occupation; and

(c) Washington's future of work task force recommended adding an "occupation" field to the quarterly employer reporting forms collected by the employment security department to allow for more accurate occupational trend analyses, and more effective evaluation of education and training programs and whether or not they lead to particular occupations.

(3) Therefore, the legislature intends to require that employers include standard occupational classifications or job titles of workers in their quarterly unemployment insurance reports.

**Sec.**  RCW 50.12.070 and 2013 c 250 s 1 are each amended to read as follows:

(1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and compensation paid to the person or entity performing the work. In addition to the penalty in subsection (3) of this section, failure to obtain or maintain the record is subject to RCW 39.06.010.

(2)(a) Each employer shall register with the department and obtain an employment security account number. Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the full names and social security numbers of all such workers, the standard occupational classification or job title of each worker, and the total hours worked by each worker and such other information as the commissioner may by regulation prescribe. Reporting the standard occupational classification or job title of each worker is optional for employers until October 1, 2022.

(b) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked, the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. Benefits paid using computed hours are not considered an overpayment and are not subject to collections when the correction of computed hours results in an invalid or reduced claim; however:

(i) A contribution paying employer who fails to report the number of hours worked will have its experience rating account charged for all benefits paid that are based on hours computed under this subsection; and

(ii) An employer who reimburses the trust fund for benefits paid to workers and fails to report the number of hours worked shall reimburse the trust fund for all benefits paid that are based on hours computed under this subsection.

(3) Any employer who fails to keep and preserve records required by this section shall be subject to a penalty determined by the commissioner but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each offense, whichever is greater.

**Sec.**  RCW 50.12.220 and 2007 c 146 s 3 are each amended to read as follows:

(1) If an employer fails to file a timely report as required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer is subject to a penalty of twenty-five dollars per violation, unless the penalty is waived by the commissioner or subsection (2)(c) of this section applies.

(2) An employer who files an incomplete or incorrectly formatted tax and wage report as required by RCW 50.12.070 must receive a warning letter for the first occurrence. The warning letter will provide instructions for accurate reporting or notify the employer how to obtain technical assistance from the department. Except as provided in subsections (3) and (4) of this section, for subsequent occurrences within five years of the last occurrence, the employer is subject to a penalty as follows:

(a) When no contributions are due: For the second occurrence, the penalty is seventy-five dollars; for the third occurrence, the penalty is one hundred fifty dollars; and for the fourth occurrence and for each occurrence thereafter, the penalty is two hundred fifty dollars.

(b) When contributions are due: For the second occurrence, the penalty is ten percent of the quarterly contributions due, but not less than seventy-five dollars and not more than two hundred fifty dollars; for the third occurrence, the penalty is ten percent of the quarterly contributions due, but not less than one hundred fifty dollars and not more than two hundred fifty dollars; and for the fourth occurrence and each occurrence thereafter, the penalty is two hundred fifty dollars.

(c) An employer whose tax and wage report is incomplete due to a failure to report the standard occupational classification or job title of each worker must pay an incomplete report penalty under this subsection only if the employer knowingly failed to report the standard occupational classification or job title of each worker.

(3) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(4) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(5) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(6) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to file timely, complete, and correctly formatted reports or pay timely contributions was not due to the employer's fault.

(7) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(8) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030.

NEW SECTION. **Sec.**  By November 1, 2026, the employment security department, in coordination with the workforce training and education coordinating board, shall report to the appropriate committees of the legislature and the governor on how the standard occupational classification or job title data required to be reported under section 2 of this act has been used to evaluate educational investments, add new or modify existing training programs, or improve worksource job placement results.

NEW SECTION. **Sec.**  This act takes effect October 1, 2021.

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