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HOUSE BILL 2777

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State of Washington

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By Representatives Conway, Patterson, Tokuda, Campbell, Morris, Veloria, Keiser, Chopp, Robertson, Cole, Scheuerman, Dickerson, Smith, Costa, Dellwo and Cody

Read first time 01/19/96. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to unemployment compensation for unemployment  
2 resulting from unfair labor practices; and amending RCW 50.20.090 and  
3 50.20.190.

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

5 **Sec. 1.** RCW 50.20.090 and 1988 c 83 s 1 are each amended to read  
6 as follows:

7 (1) An individual shall be disqualified for benefits for any week  
8 with respect to which the commissioner finds that the individual's  
9 unemployment is:

10 (a) Due to a strike at the factory, establishment, or other  
11 premises at which the individual is or was last employed; or

12 (b) Due to a lockout by his or her employer who is a member of a  
13 multi-employer bargaining unit and who has locked out the employees at  
14 the factory, establishment, or other premises at which the individual  
15 is or was last employed after one member of the multi-employer  
16 bargaining unit has been struck by its employees as a result of the  
17 multi-employer bargaining process.

18 (2) Subsection (1) of this section shall not apply if it is shown  
19 to the satisfaction of the commissioner that:

1 (a)(i) The individual is not participating in or financing or  
2 directly interested in the strike or lockout that caused the  
3 individual's unemployment; and

4 (~~(b)~~) (ii) The individual does not belong to a grade or class of  
5 workers of which, immediately before the commencement of the strike or  
6 lockout, there were members employed at the premises at which the  
7 strike or lockout occurs, any of whom are participating in or financing  
8 or directly interested in the strike or lockout: PROVIDED, That if in  
9 any case separate branches of work which are commonly conducted as  
10 separate businesses in separate premises are conducted in separate  
11 departments of the same premises, each such department shall, for the  
12 purpose of this subdivision, be deemed to be a separate factory,  
13 establishment, or other premises; or

14 (b) The strike that caused the individual's unemployment is found  
15 to be an unfair labor practice strike by an administrative law judge or  
16 other official with appropriate jurisdiction who has conducted a  
17 hearing on the matter, or the judge or official finds that the lockout  
18 that caused the individual's unemployment is an unfair labor practice.  
19 The individual shall not be disqualified for benefits for any week in  
20 which the unfair labor practice is found to have been committed or for  
21 any subsequent weeks in which the lockout or unfair labor practice  
22 strike continues.

23 (3) Any disqualification imposed under this section shall end when  
24 the strike or lockout is terminated.

25 **Sec. 2.** RCW 50.20.190 and 1995 c 90 s 1 are each amended to read  
26 as follows:

27 (1) An individual who is paid any amount as benefits under this  
28 title to which he or she is not entitled shall, unless otherwise  
29 relieved pursuant to this section, be liable for repayment of the  
30 amount overpaid. The department shall issue an overpayment assessment  
31 setting forth the reasons for and the amount of the overpayment. The  
32 amount assessed, to the extent not collected, may be deducted from any  
33 future benefits payable to the individual: PROVIDED, That in the  
34 absence of a back pay award, a settlement affecting the allowance of  
35 benefits, fraud, misrepresentation, or willful nondisclosure, every  
36 determination of liability shall be mailed or personally served not  
37 later than two years after the close of or final payment made on the  
38 individual's applicable benefit year for which the purported

1 overpayment was made, whichever is later, unless the merits of the  
2 claim are subjected to administrative or judicial review in which event  
3 the period for serving the determination of liability shall be extended  
4 to allow service of the determination of liability during the six-month  
5 period following the final decision affecting the claim.

6 (2)(a) The commissioner may waive an overpayment if the  
7 commissioner finds that said overpayment was not the result of fraud,  
8 misrepresentation, willful nondisclosure, or fault attributable to the  
9 individual and that the recovery thereof would be against equity and  
10 good conscience(~~(:—PROVIDED, HOWEVER, That)~~). However, the  
11 overpayment so waived shall be charged against the individual's  
12 applicable entitlement for the eligibility period containing the weeks  
13 to which the overpayment was attributed as though such benefits had  
14 been properly paid.

15 (b) An overpayment may not be assessed if: (i) The individual  
16 received benefits pursuant to a determination under RCW  
17 50.20.090(2)(b); and (ii) the overpayment results from the individual's  
18 receipt of a back pay award or settlement arising out of that labor  
19 dispute or from a reversal during review or appeal of the original  
20 finding of an unfair labor practice.

21 (3) Any assessment herein provided shall constitute a determination  
22 of liability from which an appeal may be had in the same manner and to  
23 the same extent as provided for appeals relating to determinations in  
24 respect to claims for benefits: PROVIDED, That an appeal from any  
25 determination covering overpayment only shall be deemed to be an appeal  
26 from the determination which was the basis for establishing the  
27 overpayment unless the merits involved in the issue set forth in such  
28 determination have already been heard and passed upon by the appeal  
29 tribunal. If no such appeal is taken to the appeal tribunal by the  
30 individual within thirty days of the delivery of the notice of  
31 determination of liability, or within thirty days of the mailing of the  
32 notice of determination, whichever is the earlier, said determination  
33 of liability shall be deemed conclusive and final. Whenever any such  
34 notice of determination of liability becomes conclusive and final, the  
35 commissioner, upon giving at least twenty days notice by certified mail  
36 return receipt requested to the individual's last known address of the  
37 intended action, may file with the superior court clerk of any county  
38 within the state a warrant in the amount of the notice of determination  
39 of liability plus a filing fee of five dollars. The clerk of the

1 county where the warrant is filed shall immediately designate a  
2 superior court cause number for the warrant, and the clerk shall cause  
3 to be entered in the judgment docket under the superior court cause  
4 number assigned to the warrant, the name of the person(s) mentioned in  
5 the warrant, the amount of the notice of determination of liability,  
6 and the date when the warrant was filed. The amount of the warrant as  
7 docketed shall become a lien upon the title to, and any interest in,  
8 all real and personal property of the person(s) against whom the  
9 warrant is issued, the same as a judgment in a civil case duly docketed  
10 in the office of such clerk. A warrant so docketed shall be sufficient  
11 to support the issuance of writs of execution and writs of garnishment  
12 in favor of the state in the manner provided by law for a civil  
13 judgment. A copy of the warrant shall be mailed to the person(s)  
14 mentioned in the warrant by certified mail to the person's last known  
15 address within five days of its filing with the clerk.

16 (4) On request of any agency which administers an employment  
17 security law of another state, the United States, or a foreign  
18 government and which has found in accordance with the provisions of  
19 such law that a claimant is liable to repay benefits received under  
20 such law, the commissioner may collect the amount of such benefits from  
21 the claimant to be refunded to the agency. In any case in which under  
22 this section a claimant is liable to repay any amount to the agency of  
23 another state, the United States, or a foreign government, such amounts  
24 may be collected without interest by civil action in the name of the  
25 commissioner acting as agent for such agency if the other state, the  
26 United States, or the foreign government extends such collection rights  
27 to the employment security department of the state of Washington, and  
28 provided that the court costs be paid by the governmental agency  
29 benefiting from such collection.

30 (5)(a) Any employer who is a party to a back pay award or  
31 settlement due to loss of wages shall, within thirty days of the award  
32 or settlement, report to the department the amount of the award or  
33 settlement, the name and social security number of the recipient of the  
34 award or settlement, and the period for which it is awarded. Unless  
35 subsection (2)(b) of this section applies, when an individual has been  
36 awarded or receives back pay, for benefit purposes the amount of the  
37 back pay shall constitute wages paid in the period for which it was  
38 awarded(~~(. For)~~), and for contribution purposes, the back pay award or

1 settlement shall constitute wages paid in the period in which it was  
2 actually paid. The following requirements shall also apply:

3 ~~((a))~~ (i) The employer shall reduce the amount of the back pay  
4 award or settlement by an amount determined by the department based  
5 upon the amount of unemployment benefits received by the recipient of  
6 the award or settlement during the period for which the back pay award  
7 or settlement was awarded;

8 ~~((b))~~ (ii) The employer shall pay to the unemployment  
9 compensation fund, in a manner specified by the commissioner, an amount  
10 equal to the amount of such reduction;

11 ~~((c))~~ (iii) The employer shall also pay to the department any  
12 taxes due for unemployment insurance purposes on the entire amount of  
13 the back pay award or settlement notwithstanding any reduction made  
14 pursuant to ~~(a)~~(i) of this subsection;

15 ~~((d))~~ (iv) If the employer fails to reduce the amount of the back  
16 pay award or settlement as required in ~~(a)~~(i) of this subsection, the  
17 department shall issue an overpayment assessment against the recipient  
18 of the award or settlement in the amount that the back pay award or  
19 settlement should have been reduced; and

20 ~~((e))~~ (v) If the employer fails to pay to the department an  
21 amount equal to the reduction as required in ~~((b))~~ (a)(ii) of this  
22 subsection, the department shall issue an assessment of liability  
23 against the employer which shall be collected pursuant to the  
24 procedures for collection of assessments provided herein and in RCW  
25 50.24.110.

26 (b) This subsection (5) does not apply to the employer of a  
27 recipient of an award or settlement against whom an overpayment is not  
28 assessed pursuant to subsection (2)(b) of this section.

29 (6) When an individual fails to repay an overpayment assessment  
30 that is due and fails to arrange for satisfactory repayment terms, the  
31 commissioner shall impose an interest penalty of one percent per month  
32 of the outstanding balance. Interest shall accrue immediately on  
33 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed  
34 when the assessment becomes final. For any other overpayment, interest  
35 shall accrue when the individual has missed two or more of their  
36 monthly payments either partially or in full. The interest penalty

1 shall be used to fund detection and recovery of overpayment and  
2 collection activities.

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