
SUBSTITUTE SENATE BILL 5769

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Labor, Commerce & Trade (originally sponsored by Senator Deccio; by request of Employment Security Department)

Read first time 02/23/95.

1 AN ACT Relating to recovery of unemployment insurance overpayments;
2 amending RCW 50.20.190; creating new sections; and declaring an
3 emergency.

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

5 **Sec. 1.** RCW 50.20.190 and 1993 c 483 s 13 are each amended to read
6 as follows:

7 (1) An individual who is paid any amount as benefits under this
8 title to which he or she is not entitled shall, unless otherwise
9 relieved pursuant to this section, be liable for repayment of the
10 amount overpaid. The department shall issue an overpayment assessment
11 setting forth the reasons for and the amount of the overpayment. The
12 amount assessed, to the extent not collected, may be deducted from any
13 future benefits payable to the individual: PROVIDED, That in the
14 absence of a back pay award, a settlement affecting the allowance of
15 benefits, fraud, misrepresentation, or willful nondisclosure, every
16 determination of liability shall be mailed or personally served not
17 later than two years after the close of or final payment made on the
18 individual's applicable benefit year (~~in~~) for which the purported
19 overpayment was made, whichever is later, unless the merits of the

1 claim are subjected to administrative or judicial review in which event
2 the period for serving the determination of liability shall be extended
3 to allow service of the determination of liability during the six-month
4 period following the final decision affecting the claim.

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

13 (3) Any assessment herein provided shall constitute a determination
14 of liability from which an appeal may be had in the same manner and to
15 the same extent as provided for appeals relating to determinations in
16 respect to claims for benefits: PROVIDED, That an appeal from any
17 determination covering overpayment only shall be deemed to be an appeal
18 from the determination which was the basis for establishing the
19 overpayment unless the merits involved in the issue set forth in such
20 determination have already been heard and passed upon by the appeal
21 tribunal. If no such appeal is taken to the appeal tribunal by the
22 individual within thirty days of the delivery of the notice of
23 determination of liability, or within thirty days of the mailing of the
24 notice of determination, whichever is the earlier, said determination
25 of liability shall be deemed conclusive and final. Whenever any such
26 notice of determination of liability becomes conclusive and final, the
27 commissioner, upon giving at least twenty days notice by certified mail
28 return receipt requested to the individual's last known address of the
29 intended action, may file with the superior court clerk of any county
30 within the state a warrant in the amount of the notice of determination
31 of liability plus a filing fee of five dollars. The clerk of the
32 county where the warrant is filed shall immediately designate a
33 superior court cause number for the warrant, and the clerk shall cause
34 to be entered in the judgment docket under the superior court cause
35 number assigned to the warrant, the name of the person(s) mentioned in
36 the warrant, the amount of the notice of determination of liability,
37 and the date when the warrant was filed. The amount of the warrant as
38 docketed shall become a lien upon the title to, and any interest in,
39 all real and personal property of the person(s) against whom the

1 warrant is issued, the same as a judgment in a civil case duly docketed
2 in the office of such clerk. A warrant so docketed shall be sufficient
3 to support the issuance of writs of execution and writs of garnishment
4 in favor of the state in the manner provided by law for a civil
5 judgment. A copy of the warrant shall be mailed to the person(s)
6 mentioned in the warrant by certified mail to the person's last known
7 address within five days of its filing with the clerk.

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

22 (5) Any employer who is a party to a back pay award or settlement
23 due to loss of wages shall, within thirty days of the award or
24 settlement, report to the department the amount of the award or
25 settlement, the name and social security number of the recipient of the
26 award or settlement, and the period for which it is awarded. When an
27 individual has been awarded or receives back pay, for benefit purposes
28 the amount of the back pay shall constitute wages paid in the period
29 for which it was awarded. For contribution purposes, the back pay
30 award or settlement shall constitute wages paid in the period in which
31 it was actually paid. The following requirements shall also apply:

32 (a) The employer shall reduce the amount of the back pay award or
33 settlement by an amount determined by the department based upon the
34 amount of unemployment benefits received by the recipient of the award
35 or settlement during the period for which the back pay award or
36 settlement was awarded;

37 (b) The employer shall pay to the unemployment compensation fund,
38 in a manner specified by the commissioner, an amount equal to the
39 amount of such reduction;

1 (c) The employer shall also pay to the department any taxes due for
2 unemployment insurance purposes on the entire amount of the back pay
3 award or settlement notwithstanding any reduction made pursuant to (a)
4 of this subsection;

5 (d) If the employer fails to reduce the amount of the back pay
6 award or settlement as required in (a) of this subsection, the
7 department shall issue an overpayment assessment against the recipient
8 of the award or settlement in the amount that the back pay award or
9 settlement should have been reduced; and

10 (e) If the employer fails to pay to the department an amount equal
11 to the reduction as required in (b) of this subsection, the department
12 shall issue an assessment of liability against the employer which shall
13 be collected pursuant to the procedures for collection of assessments
14 provided herein and in RCW 50.24.110.

15 (6) When an individual fails to repay an overpayment assessment
16 that is due and fails to arrange for satisfactory repayment terms, the
17 commissioner shall impose an interest penalty of one percent per month
18 of the outstanding balance. Interest shall accrue immediately on
19 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed
20 when the assessment becomes final. For any other overpayment, interest
21 shall accrue when the individual has missed two or more of their
22 monthly payments either partially or in full. The interest penalty
23 shall be used to fund detection and recovery of overpayment and
24 collection activities.

25 NEW SECTION. **Sec. 2.** If any part of this act is found to be in
26 conflict with federal requirements that are a prescribed condition to
27 the allocation of federal funds to the state or the eligibility of
28 employers in this state for federal unemployment tax credits, the
29 conflicting part of this act is hereby declared to be inoperative
30 solely to the extent of the conflict, and such finding or determination
31 shall not affect the operation of the remainder of this act. The rules
32 under this act shall meet federal requirements that are a necessary
33 condition to the receipt of federal funds by the state or the granting
34 of federal unemployment tax credits to employers in this state.

35 NEW SECTION. **Sec. 3.** This act applies to job separations
36 occurring after July 1, 1995.

1 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect immediately.

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