
Commerce & Labor Committee

HB 1406

Brief Description: Regarding reporting, penalty, and corporate officer provisions of the unemployment insurance system.

Sponsors: Representatives Conway, Wood and Green; by request of Employment Security Department.

Brief Summary of Bill

- Adds services performed by corporate officers to covered employment for purposes of unemployment compensation.
- Makes corporate officers personally liable for certain contributions owed by corporations that have gone out of business.
- Charges certain benefits resulting from an employer's reporting errors to the employer's experience rating account.
- Modifies penalties for employers who file untimely, incomplete, and incorrectly formatted tax and wage reports.
- Increases weeks of disqualification and adds penalties for claimants who make false statements involving material facts.
- Specifies that personal services performed for a client under an agreement with a third party payer, including a professional employer organization, are employment for the client.

Hearing Date: 2/2/07

Staff: Jill Reinmuth (786-7134).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Corporate Officer Coverage

Services performed by corporate officers are not considered covered employment for purposes of unemployment compensation unless the corporation elects coverage. Corporate officers are persons appointed as officers under the requirements of the Washington Business Corporation Act. They include those officers described in the corporation's bylaws or appointed by the board of directors under the bylaws.

Corporate Officer Liability

Corporate officers and other individuals are not personally liable for contributions owed by corporations or limited liability companies.

Reporting Penalties

Employers must file complete and accurate tax and wage reports every quarter, including the amount of remuneration paid and the number of hours worked for each worker. If employers fail to file timely and complete quarterly unemployment tax reports, they are subject to penalties of \$250 or 10 percent of the contributions, whichever is less.

Reporting Errors

When employers fail to report the number of hours worked, that number is computed based on the amount of remuneration paid and the state minimum hourly wage rate. Claimants may be determined to be eligible for benefits based on computed hours. Claimants subsequently may be determined to be ineligible based on credible evidence of actual hours worked. Benefits paid to claimants who are subsequently determined to be ineligible are not charged to the experience rating accounts of employers who failed to report the number of hours worked. Instead, they are socialized among all contribution-paying employers.

Claimant Fraud Penalties

Individuals who knowingly make false statements involving material facts or who knowingly fail to report material facts are disqualified from benefits for that week and for an additional 26 weeks. This disqualification does not apply more than two years after the determination of disqualification.

Third Party Payers

Personal services performed for third parties under contracts with temporary services agencies, employee leasing agencies, service referral agencies, or other entities are considered to be services for the agencies when the agencies are responsible for payment of wages for these services.

A temporary services agency is one that furnishes people who work part-time or on a temporary basis for a third party. An employee leasing agency is one that places employees of a client on the agency's payroll for a fee and leases the employees back to the client. A service referral agency is one that provides people to do specific tasks for a third party.

Summary of Bill:

Corporate Officer Coverage

Services performed by corporate officers are considered covered employment for purposes of unemployment compensation. Corporate officers with more than a 5 percent interest in the corporation are not unemployed during their term of office or ownership. Corporate officers are unemployed if the corporation dissolves or if they permanently resign or are permanently removed from office.

When employers register with the Employment Security Department (Department), the registrations must include names and social security numbers of owners, partners, members, and corporate officers, as well as mailing addresses and telephone numbers. Employers must report any changes in owners, partners, members, and corporate officers within 30 days.

Corporate Officer Liability

When corporate or limited liability companies go out of business, corporate officers and other persons are personally liable for contributions owed by the businesses, and any interest and penalties on the contributions if: (1) The officers or other persons willfully failed to pay the contributions; and (2) the contributions became due while the officers or other persons were responsible for their payment.

Corporate officers and other persons are not liable, however, if the nonpayment of contributions was beyond their control. They are liable only when there is no reasonable means of collecting the contributions owed directly from the corporation or limited liability company.

"Willfully fails to pay or to cause to be paid" is defined as meaning a failure that was the result of "an intentional, conscious, and voluntary course of action."

Reporting Penalties

Penalties for filing untimely or incomplete quarterly unemployment tax and wage reports are modified as follows:

- Employers who fail to file timely reports are subject to a penalty of \$25 per violation.
- Employers who file incomplete or incorrectly formatted reports receive a warning letter for the first occurrence.

If no contributions are due, employers are subject to the following penalties:

Second occurrence Penalty of \$75

Third occurrence Penalty of \$150

Fourth occurrence and Penalty of \$250
occurrences thereafter

If contributions are due, employers are subject to the following penalties:

Second occurrence Penalty equal to 10 percent of contributions
Not less than \$75 or more than \$250

Third occurrence Penalty equal to 10 percent of contributions
Not less than \$150 or more than \$250

Fourth occurrence and Penalty of \$250

occurrences thereafter

The Commissioner of the Department may waive penalties for good cause if the failure to file timely, complete, and correctly formatted reports or pay timely contributions was not the employer's fault.

Reporting Errors

Benefits paid using computed hours are not considered an overpayment and are not subject to collection. For contribution-paying employers, benefits are charged to their experience rating accounts. For reimbursable employers, benefits must be reimbursed.

Claimant Fraud Penalties

Individuals who knowingly make false statements involving material facts or who knowingly fail to report material facts are disqualified from benefits for that week. They are also disqualified for additional weeks and subject to penalties as follows:

First time Disqualification for 26 additional weeks

Second time Disqualification for 52 additional weeks

Additional penalty equal to 25 percent of overpayment

Third and Disqualification for 104 additional weeks

subsequent times Additional penalty equal to 50 percent of overpayment

Third Party Payers

Personal services performed for clients under agreements with third party payers are employment for the client companies. The clients are considered to be the employers.

Third party payers, including professional employer organizations, must register with the Department and provide the Department with the names, addresses and employment security account numbers of client companies. In addition, third party payers must notify the Department within 30 days of adding or terminating client companies.

Third party payers must file separate tax and wage reports for each client company, using the employer account number and experience rate assigned to each client company.

Third party payers' experience rates are based on their own unemployment experience with their own non-client company employees. Clients retain their experience rates.

Personal services performed for third parties under contracts with temporary staffing services companies or services referral agencies are considered to be services for the companies or agencies when the companies or agencies are responsible for payment of wages for these services. The temporary staffing services companies and the services referral agencies are considered to be the employers.

A third party payer is an individual or entity, including a professional employer organization, that provides professional employer services, human resource functions, or other payroll administration services that may or may not establish a co-employment relationship. Third party

payers are not temporary staffing services companies, services referral agencies, and labor organizations. Third party payers are also not successor employers.

A temporary staffing services company is one that recruits and hires its own employees, finds other organizations that need the services of those employees, and assigns the employees on a temporary basis to perform work or services for a client. Temporary staffing services do not include permanent employee leasing or permanent employee placement services.

A services referral agency is one that provides people to do specific tasks for a third party.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The following sections take effect 90 days after adjournment of session in which bill is passed:

- Section 3 relating to penalties for employer reporting errors;
- Section 7 relating to penalties for claimant fraud;
- Sections 13 and 14 relating to corporate officer liability; and
- Sections 15 through 18 relating to severability, application dates, and effective dates.

The following sections take effect January 1, 2008:

- Sections 1 and 2 relating to employer reporting requirements;
- Sections 4 through 6 relating to corporate officer coverage; and
- Sections 8 through 12 relating to professional employer organizations and third party payers.