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**HOUSE BILL 1518**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Reeves, Walen, Kirby, Frame, Robinson, Tarleton, Ryu, Pollet, and Macri

AN ACT Relating to assessing employers for their employees' health care costs paid by the state; reenacting and amending RCW 74.09.053; adding a new section to chapter 49.60 RCW; adding a new chapter to Title 74 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) The legislature finds that an important part of a comprehensive approach to providing appropriate health care for all Washington citizens involves participation by employers in providing access to health care services for their workers and their families. While most Washington citizens obtain health care services through their employment or the employment of a family member, some employers with adequate resources fail to offer affordable access to health care services to their employees in Washington state. This creates inappropriate competitive advantages for those employers and greatly increases the likelihood that their employees will not have access to affordable health care services or will receive health care services through publicly funded health care programs.

(2)(a) It is the intent of the legislature to establish, as part of its comprehensive approach to expanding access to appropriate health care services, a mechanism to reimburse the state for its costs of providing access to appropriate health care services to Washington workers. Employer participation in this comprehensive approach allows the state to improve its financing of public health care programs and prioritize those resources on populations not served through employment. It also reduces the burden on taxpayers and the public health care system, and protects the health, safety, and well-being of all the state's residents.

(b) In establishing this program, it is not the intent of the legislature to influence the establishment, content, or administration of employee benefit plans. The legislature is neutral regarding whether employers choose to provide access to affordable health care coverage for their employees or pay an assessment to reimburse the state's costs for health care services for their employees.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessment" means an amount equal to the per capita cost of providing health benefits under the medical assistance program.

(2) "Authority" means the health care authority.

(3) "Employee" means any individual employed by an employer, but does not include:

(a) An employee employed by the employer for fewer than ninety days;

(b) During the first twelve months of employment with the employer, an employee who was employed through the job placement activities of the department of social and health services, the employment security department, or organizations contracting with these agencies to provide job placement services;

(c) An employee of a franchisor's franchisees. Such employees are employees of the franchisee; or

(d) An employee who is receiving disability benefits under the federal old-age, survivors, and disability insurance act.

(4) "Employer" means an employer as defined in RCW 49.46.010 who employed a total of one thousand or more employees at any and all locations in Washington in the completed calendar quarter for which a report is made in section 3 of this act, but does not include:

(a) An employer that makes payments for the purpose of providing or reimbursing the cost of health care services, as defined in RCW 48.43.005, for all of its employees who are enrolled in the medical assistance program; or

(b) A seasonal employer.

(5) "Medical assistance program" means the same as the definition in RCW 74.09.010.

(6) "Seasonal employer" means an employer in an industry, other than the construction industry, that the agencies determine, upon application by the employer:

(a) Customarily operates only during regularly recurring periods of twenty-six weeks or less in any fifty-two consecutive week period; or

(b) Customarily employs fifty percent or more of its employees for regularly recurring periods of twenty-six weeks or less within a period of fifty-two consecutive weeks.

NEW SECTION. **Sec.**  (1) Beginning with the calendar quarter ending June 30, 2020:

(a) Every employer shall report to the authority, within thirty days after the completion of a calendar quarter, the employees employed by the employer during the immediately preceding calendar quarter, including such information as the authority requires and in the form specified by the authority. The employer's chief executive officer or an individual performing a similar function shall verify the report and submit an affidavit under penalty of perjury. In the affidavit, the signing officer shall affirm that the information in the report:

(i) Was reviewed by the signing officer, and is true to the best of the signing officer's knowledge, information, and belief; and

(ii) Does not contain any untrue statement of a material fact or omit a material fact necessary to make the statement not misleading.

(b) The authority must identify the employees of each employer reporting under this subsection (1) who are under sixty-five years old and enrolled during a calendar quarter in the medical assistance program. The authority must make an actual comparison of records furnished by the employer under this subsection (1) with records of the authority and the employment security department. The authority may not disclose the names of employees identified, but must provide the employer with the number of employees identified as enrolled and other information that provides a profile of information about the characteristics of enrolled employees generally. The authority must, within sixty days after the completion of a calendar quarter, notify every employer who has employees enrolled in the medical assistance program that the employer must either:

(i) Pay an assessment specified in the notice for each employee under age sixty-five who is enrolled in the medical assistance program; or

(ii) Enter into an agreement with the authority with respect to each employee under age sixty-five who is enrolled in the medical assistance program to reimburse the authority, up to one hundred percent of the cost, for the authority's contribution to the purchase of health care coverage for the employee. The authority may require the employee to enroll in available employer-sponsored coverage when it is cost-effective for the state to do so. Any contribution made by the authority must be cost-effective for the state and consistent with Title XIX of the federal social security act.

(2) Within thirty days of receiving the notice under subsection (1)(b) of this section, the employer must either:

(a) Pay the full amount of the assessment required under subsection (1)(b)(i) of this section or enter into a payment agreement with the authority to allow the employer to make payments for the full amount of the assessment on either a quarterly, semiannual, or annual basis. All payments for a particular quarter must be made within a three calendar quarters of the notification from the authority for that calendar quarter; or

(b) Enter into an agreement with the authority pursuant to subsection (1)(b)(ii) of this section.

(3) An employer that fails:

(a) To file a timely and complete report as required under subsection (1) of this section is subject to a penalty of up to two hundred fifty dollars for each offense; and

(b) Within the time period required by subsection (2) of this section, to pay the assessment provided for in subsection (1)(b)(i) of this section or enter into an agreement provided for in subsection (1)(b)(ii) of this section is subject to:

(i) A civil penalty of five percent of the assessment due for the first month or part thereof, ten percent of the assessment due for the second month or part thereof, and twenty percent of the assessment due for the third month or part thereof;

(ii) An interest penalty of one percent per month on the assessment due; and

(iii) The suspension of eligibility for any tax preference under Title 82 or 84 RCW and any state funds for up to five years. The authority shall notify the department of revenue and the department of enterprise services of any employer that has had its eligibility suspended under this subsection.

(4)(a) An employer may request a hearing by filing a request with the authority within thirty days after the date on which the employer received the notice required in subsection (1)(b) of this section. The hearing must be conducted in accordance with chapter 34.05 RCW.

(b) If any employer fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the authority, the authority shall refer the matter to the state attorney general, who shall recover the amount assessed, and any penalties and interest, by action in the superior court. In such an action, the validity and appropriateness of the final order imposing the penalty is not subject to review.

NEW SECTION. **Sec.**  (1) An enrollee or prospective enrollee has a right to be free of interference, coercion, discrimination, or reprisal from an employer for exercising his or her rights under chapter 74.09 RCW. The remedies provided in this section are not exclusive, and an enrollee or prospective enrollee has all other rights and remedies afforded by law.

(2)(a) An employer may not discriminate in any manner against an employee or job applicant because the person has:

(i) Made inquiries about enrollment or his or her rights to enrollment in the medical assistance program or assisted another in regard to rights to such enrollment;

(ii) Applied for or enrolled in, or communicated an intent to enroll in, the medical assistance program, caused any proceeding related to such enrollment to be instituted, or testified in any proceeding so commenced; or

(iii) Cooperated with the authority with respect to becoming enrolled in the medical assistance program or for purposes of section 3 of this act.

(b) Any discrimination or attempt to discriminate against an employee within ninety days after notification of the employer under section 3 of this act that the employer has employees enrolled in the medical assistance program establishes a rebuttable presumption that such action was in violation of this section.

(3) A person who believes that he or she has been discriminated against in violation of this section:

(a) May, within six months after the alleged act of discrimination, file a complaint with the human rights commission alleging discrimination. Upon receipt of such complaint, the human rights commission shall cause an investigation to be made as the commission deems appropriate. Within sixty days after the receipt of a complaint filed under this section, the human rights commission shall notify the complainant of his or her determination. If, after such investigation, the human rights commission determines that this section has been violated, the commission shall bring an action in the superior court of the county in which the violation is alleged to have occurred. If the human rights commission determines that this section has not been violated, the employee may institute the action on his or her own behalf as provided in (b) of this subsection, but this subsection does not require a complainant to file a complaint with the human rights commission before pursuing remedies under (b) of this subsection; and

(b) Has a civil cause of action for damages against the employer.

(4) In any action brought under this section, the court shall award a prevailing plaintiff costs, including expert witness costs, and reasonable attorneys' fees and actual damages, or statutory damages of five thousand dollars, whichever is greater, to be awarded to the aggrieved employee or job applicant. The court has jurisdiction, for cause shown, to restrain violations of this section and to order all appropriate relief including reinstatement of an employee, or hiring of a job applicant, with back pay.

(5) For the purposes of this section, "discrimination" includes, but is not limited to:

(a) Refusal to employ, reemploy, or promote;

(b) Discharge from employment or demotion or suspension;

(c) Reduction in hours of work, compensation, or other adverse changes in the conditions of employment; and

(d) Involuntary transfer to another position or other duties.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

Any person claiming to be aggrieved by a violation of section 4 of this act may file a complaint with the commission. The commission shall promptly investigate and take other appropriate action as provided in section 4 of this act.

NEW SECTION. **Sec.**  The authority shall:

(1) Administer and enforce this chapter including, but not limited to, sending notices required in section 3 of this act, determining the amount of employer assessments, entering into negotiations and agreements with employers, and collecting employer assessments, including penalties and interest, using the procedures authorized under chapter 74.09 RCW;

(2) Have authority to inspect records and conduct investigations and audits of employment and payroll, as the agencies deem necessary or appropriate, to determine whether an employer has complied with this chapter;

(3) Adopt rules necessary to implement this chapter; and

(4) Deposit assessments and interest and civil penalties collected under this chapter into the general fund.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act may be known and cited as the taxpayer health care fairness act.

**Sec.**  RCW 74.09.053 and 2009 c 568 s 6 and 2009 c 479 s 62 are each reenacted and amended to read as follows:

(1) Beginning in November 2012, the ((~~department of social and health services, in coordination with the~~)) health care authority((~~,~~)) shall by November 15th of each year report to the legislature:

(a) The number of medical assistance recipients who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired. For recipients identified under (a)(i) and (ii) of this subsection, the ((~~department~~)) authority shall report the basis for their medical assistance eligibility, including but not limited to family medical coverage, transitional medical assistance, children's medical coverage, aged coverage, or coverage for persons with disabilities; member months; and the total cost to the state for these recipients, expressed as general fund-state and general fund-federal dollars. Beginning with the 2021 report, the report must include a list of the employers that are either subject to the payment of an assessment under section 3(1)(b)(i) of this act or have entered into an agreement with the authority under section 3(1)(b)(ii) of this act and which of those employers are subject to the penalties in section 3(3)(b) of this act for noncompliance with section 3(2) of this act. The information shall be reported by employer size for employers having more than fifty employees as recipients or with dependents as recipients. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are recipients or with dependents as recipients by private and governmental employers; (ii) the number of employees who are recipients or with dependents as recipients by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are recipients or with dependents as recipients by industry type.

(2) For each aggregated classification, the report will include the number of hours worked, the number of ((~~department of social and health services~~)) authority covered lives, and the total cost to the state for these recipients. This information shall be for each quarter of the preceding year.

NEW SECTION. **Sec.**  Sections 1 through 4, 6, 7, and 9 of this act constitute a new chapter in Title 74 RCW.

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