

SENATE BILL REPORT

ESHB 1821

As Reported By Senate Committee On:
Labor, Commerce & Trade, March 30, 1995

Title: An act relating to unemployment compensation for persons with public employment contracts.

Brief Description: Modifying unemployment compensation for persons employed under public employment contracts.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Kessler, Buck, Quall, Carlson, Casada and Basich).

Brief History:

Committee Activity: Labor, Commerce & Trade: 3/27/95, 3/30/95 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE & TRADE

Majority Report: Do pass as amended.

Signed by Senators Pelz, Chair; Heavey, Vice Chair; Deccio, Franklin, Hale, Newhouse and Palmer.

Staff: Patrick Woods (786-7430)

Background: In order to receive unemployment insurance (UI) benefits in Washington, a person must be unemployed and available for work. In addition, the individual is prohibited from receiving payment for services rendered or must meet specific criteria as a qualified partially unemployed person.

If the person is receiving previously accrued compensation during a nonwork period, and that compensation is assigned to a specific period by an agreement with the employer, or other permitted reason, the compensation is considered remuneration for that period. If the payments make the person eligible for regular fringe benefits, then the payments are considered to be assigned for that period of time. Under these circumstances, the individual is not eligible to receive unemployment insurance benefits. Certain payments, such as severance pay, are not considered remuneration that can be assigned to a nonwork period and therefore, the individual is eligible to receive unemployment insurance benefits. These provisions concerning assignment of accrued compensation do not apply to persons employed by educational institutions.

There is no provision in the UI statutes addressing the assignment of settlement proceeds or other similar proceeds that are received in lieu of completion of an employment contract when the parties to the settlement do not assign the proceeds as compensation for specified periods of time.

Washington's unemployment insurance law provides that an employee of a nonprofit or public education institution is not eligible for unemployment benefits for periods of unemployment occurring between two successive academic years or terms if the employee has reasonable assurance of performing services in the next year or term.

"Reasonable assurance" is a written, verbal, or implied agreement that the employee will perform services in the same capacity during a subsequent year or term as in the previous year or term. The services must be performed under the same terms or conditions of employment. However, most community colleges make the agreement contingent on enrollment, funding or program changes. As a result, many parttime faculty consider the agreement to be inadequate.

Under a recent Washington court decision (Evans v. Employment Security Department, 72 Wn. App. (1994)), the Washington Court of Appeals determined "whether [the statute] prohibits granting unemployment benefits during the summer quarter to a parttime community college teacher reasonably assured of teaching the following term." 72 Wn. App. at 864. The court held that the summer quarter is an "academic term" within the meaning of the statute, and is not a break between academic terms or years. Therefore, unemployment benefits were payable during the summer quarter to a parttime faculty member who was not hired to teach the summer quarter.

On July 13, 1994, and on February 22, 1995, the U.S. Department of Labor wrote to the Employment Security Department to notify the ESD that the Evans decision raised a conformity issue. Both letters state that "the effect of the Evans decision is to seriously undermine the denial provisions of [federal law] by rendering the phrase "academic year" superfluous. In effect, it would appear that individuals who perform services for educational institutions with summer terms could qualify for [unemployment compensation] during that term, even though there is no evidence that they would normally perform services during that period."

Summary of Amended Bill: For unemployment insurance purposes, an individual who receives a settlement or other proceeds as a result of a negotiated settlement for termination of an employment contract with a public agency is considered to be receiving remuneration. The proceeds are assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract. Individuals receiving a settlement under these circumstances are not eligible to receive UI benefits during this time period.

For the purposes of unemployment insurance, "academic year" is defined as fall, winter, spring and summer quarters and comparable semesters unless, based upon objective criteria such as enrollment and staffing, it is considered to be a break between terms or semesters.

The existing definition of "reasonable assurance" whereby an employee is given a written, verbal, or implied agreement that he or she will perform services in the same capacity during the coming academic year is modified. The new definition requires that the agreement not be contingent on enrollment, funding or program changes.

Amended Bill Compared to Substitute Bill: The amended bill defines "academic year" and modifies the existing definition of "reasonable assurance."

Appropriation: None.

Fiscal Note: Requested on February 23, 1995.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (On bill): The bill is needed to address a problem whereby an individual's contract at a public institution can be bought out and that individual can receive unemployment benefits during the period of time for which he or she received the cash settlement. (On amendment): The amendment is needed to address a federal compliance problem due to a recent Washington court decision, Evans v. Employment Security Department, which held that the summer quarter is an "academic term" for unemployment insurance purposes.

Testimony Against: None.

Testified: Representative Kessler, original prime sponsor; Graeme Sackrison, ESD; Wendy Rader-Ronofalski, Washington Federation of Teachers; Keith Hoeller; Diane Evans.