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HOUSE BILL 1942

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By Representatives Fey, Robinson, Tharinger, Blake, Peterson, Sawyer, Stanford, Pollet, Senn, Bergquist, Ortiz-Self, Stonier, Fitzgibbon, Jinkins, and Ormsby

Read first time 02/03/17. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to the overpayment of benefits paid to an  
2 individual unemployed due to a lockout; amending RCW 50.20.190; and  
3 creating a new section.

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

5 **Sec. 1.** RCW 50.20.190 and 2013 c 189 s 4 are each amended to  
6 read 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  
13 any 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 for which the purported  
19 overpayment was made, whichever is later, unless the merits of the  
20 claim are subjected to administrative or judicial review in which  
21 event the period for serving the determination of liability shall be

1 extended to allow service of the determination of liability during  
2 the six-month period following the final decision affecting the  
3 claim.

4 (2) The commissioner may waive an overpayment if the commissioner  
5 finds that the overpayment was not the result of fraud,  
6 misrepresentation, willful nondisclosure, or fault attributable to  
7 the individual and that the recovery thereof would be against equity  
8 and good conscience. When determining whether the recovery would be  
9 against equity and good conscience, the department must consider  
10 whether the employer or employer's agent failed to respond timely and  
11 adequately to a written request of the department for information  
12 relating to the claim or claims without establishing good cause for  
13 the failure pursuant to RCW 50.29.021(6). An overpayment waived under  
14 this subsection shall be charged against the individual's applicable  
15 entitlement for the eligibility period containing the weeks to which  
16 the overpayment was attributed as though such benefits had been  
17 properly paid.

18 (3) Any assessment herein provided shall constitute a  
19 determination of liability from which an appeal may be had in the  
20 same manner and to the same extent as provided for appeals relating  
21 to determinations in respect to claims for benefits: PROVIDED, That  
22 an appeal from any determination covering overpayment only shall be  
23 deemed to be an appeal from the determination which was the basis for  
24 establishing the overpayment unless the merits involved in the issue  
25 set forth in such determination have already been heard and passed  
26 upon by the appeal tribunal. If no such appeal is taken to the appeal  
27 tribunal by the individual within thirty days of the delivery of the  
28 notice of determination of liability, or within thirty days of the  
29 mailing of the notice of determination, whichever is the earlier, the  
30 determination of liability shall be deemed conclusive and final.  
31 Whenever any such notice of determination of liability becomes  
32 conclusive and final, the commissioner, upon giving at least twenty  
33 days' notice, using a method by which the mailing can be tracked or  
34 the delivery can be confirmed, may file with the superior court clerk  
35 of any county within the state a warrant in the amount of the notice  
36 of determination of liability plus a filing fee under RCW  
37 36.18.012(10). The clerk of the county where the warrant is filed  
38 shall immediately designate a superior court cause number for the  
39 warrant, and the clerk shall cause to be entered in the judgment  
40 docket under the superior court cause number assigned to the warrant,

1 the name of the person(s) mentioned in the warrant, the amount of the  
2 notice of determination of liability, and the date when the warrant  
3 was filed. The amount of the warrant as docketed shall become a lien  
4 upon the title to, and any interest in, all real and personal  
5 property of the person(s) against whom the warrant is issued, the  
6 same as a judgment in a civil case duly docketed in the office of  
7 such clerk. A warrant so docketed shall be sufficient to support the  
8 issuance of writs of execution and writs of garnishment in favor of  
9 the state in the manner provided by law for a civil judgment. A copy  
10 of the warrant shall be mailed within five days of its filing with  
11 the clerk to the person(s) mentioned in the warrant using a method by  
12 which the mailing can be tracked or the delivery can be confirmed.

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

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

38 (a) The employer shall reduce the amount of the back pay award or  
39 settlement by an amount determined by the department based upon the  
40 amount of unemployment benefits received by the recipient of the

1 award or settlement during the period for which the back pay award or  
2 settlement was awarded;

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

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

10 (d)(i) Except as provided in (d)(ii) of this subsection, if the  
11 employer fails to reduce the amount of the back pay award or  
12 settlement as required in (a) of this subsection, the department  
13 shall issue an overpayment assessment against the recipient of the  
14 award or settlement in the amount that the back pay award or  
15 settlement should have been reduced;

16 (ii) If the recipient of the back pay award or settlement due to  
17 loss of wages received the award or settlement as the result of a  
18 labor dispute regarding a lockout, the department shall notify the  
19 employer and assess and collect the amount of any overpayment from  
20 the employer; and

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

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

35 (7) The department shall: (a) Conduct social security number  
36 cross-match audits or engage in other more effective activities that  
37 ensure that individuals are entitled to all amounts of benefits that  
38 they are paid; and (b) engage in other detection and recovery of  
39 overpayment and collection activities.

1        NEW SECTION.    **Sec. 2.**    If any part of this act is found to be in  
2 conflict with federal requirements that are a prescribed condition to  
3 the allocation of federal funds to the state or the eligibility of  
4 employers in this state for federal unemployment tax credits, the  
5 conflicting part of this act is inoperative solely to the extent of  
6 the conflict, and the finding or determination does not affect the  
7 operation of the remainder of this act. Rules adopted under this act  
8 must meet federal requirements that are a necessary condition to the  
9 receipt of federal funds by the state or the granting of federal  
10 unemployment tax credits to employers in this state.

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