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**SUBSTITUTE HOUSE BILL 1474**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Chopp, Ortiz-Self, Ryu, Wylie, Santos, Fitzgibbon, Berry, Simmons, Sells, Lovick, Goodman, Ormsby, Valdez, Berg, Harris-Talley, Lekanoff, Stonier, Macri, Peterson, Bronoske, and Pollet)

AN ACT Relating to strengthening penalty and audit tools for employer violations in unemployment insurance; amending RCW 50.12.072, 50.12.220, and 50.24.190; creating a new section; prescribing penalties; and providing an effective date.

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

**Sec.**  RCW 50.12.072 and 2010 c 72 s 2 are each amended to read as follows:

An employer that ((~~knowingly~~)) fails to register with the department and obtain an employment security account number, as required under RCW 50.12.070(2), is subject to a penalty not to exceed one thousand dollars per quarter or two times the taxes due per quarter, whichever is greater. This penalty is in addition to all other penalties and is in addition to higher rates for employers that do not meet the definition of "qualified employer" under RCW 50.29.010. ((~~This penalty does not apply if the employer can prove that it had good cause to believe that it was not required to register with the department.~~)) This penalty may be waived for good cause if the commissioner determines that the failure to register with the department was not due to the employer's fault.

**Sec.**  RCW 50.12.220 and 2020 c 334 s 3 are each amended to read as follows:

(1) If an employer fails to file a timely report as required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer is subject to a penalty of twenty-five dollars per violation, unless the penalty is waived by the commissioner or subsection (2)(c) of this section applies.

(2) An employer who files an incomplete or incorrectly formatted tax and wage report as required by RCW 50.12.070 must receive a warning letter for the first occurrence. The warning letter will provide instructions for accurate reporting or notify the employer how to obtain technical assistance from the department. Except as provided in subsections (3) and (4) of this section, for subsequent occurrences within five years of the last occurrence, the employer is subject to a penalty as follows:

(a) When no contributions are due: For the second occurrence, the penalty is seventy-five dollars; for the third occurrence, the penalty is one hundred fifty dollars; and for the fourth occurrence and for each occurrence thereafter, the penalty is two hundred fifty dollars.

(b) When contributions are due: For the second occurrence, the penalty is ten percent of the quarterly contributions due, but not less than seventy-five dollars and not more than two hundred fifty dollars; for the third occurrence, the penalty is ten percent of the quarterly contributions due, but not less than one hundred fifty dollars and not more than two hundred fifty dollars; and for the fourth occurrence and each occurrence thereafter, the penalty is two hundred fifty dollars.

(c) An employer whose tax and wage report is incomplete due to a failure to report the standard occupational classification or job title of each worker must pay an incomplete report penalty under this subsection only if the employer knowingly failed to report the standard occupational classification or job title of each worker.

(3)(a) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(b) An employer will automatically be deemed to having knowingly misrepresented the amount of the employer's payroll if all of the following conditions are met:

(i) An employer failed to report one or more individuals as employees within 90 days of the date the report was due;

(ii) The department discovered the unreported individual or individuals for reasons other than a voluntary audit under RCW 43.05.140;

(iii) The department issued an order and notice of assessment to the employer based on the unreported wages paid to the unreported employee or employees;

(iv) The order and notice of assessment was not reversed on appeal; and

(v) Within five years of the date of the order and notice of assessment, the department again discovers for reasons other than a voluntary audit under RCW 43.05.140 that the employer failed to report one or more individuals as employees within 90 days of the date the report was due.

(c) Nothing in (b) of this subsection precludes the department from finding that the employer knowingly misrepresented its payroll and imposing the penalty under (a) of this subsection.

(4) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(5) If, after a claimant requests a redetermination or reconsideration of the amount of benefits potentially payable pursuant to RCW 50.20.160(1), the department determines an employer failed to report any or all of the claimant's wages during that claimant's base year or alternate base year, and the addition of those unreported wages to the claimant's base year or alternate base year leads to an increase in either the claimant's weekly benefit amount or maximum amount of benefits payable under RCW 50.20.120, the employer is subject to a penalty of 40 percent of the unreported wages. This penalty is in addition to all other penalties.

(6) If, during an audit that is not a voluntary audit under RCW 43.05.140, the department discovers wages not previously reported by an employer that were due to be reported under RCW 50.12.070, or the rules adopted pursuant thereto, the employer is subject to a penalty of 20 percent of the unreported wages. This penalty is in addition to all other penalties, except it may not be imposed on the same wages already subject to the penalty in subsection (5) of this section.

(7) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

((~~(6)~~)) (8) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to file timely, complete, and correctly formatted reports or pay timely contributions was not due to the employer's fault.

((~~(7)~~)) (9) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

((~~(8)~~)) (10) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030.

**Sec.**  RCW 50.24.190 and 1979 ex.s. c 190 s 15 are each amended to read as follows:

(1) The commissioner shall commence action for the collection of contributions, interest, penalties, and benefit overpayments imposed by this title by assessment or suit within three years after a return is filed or notice of benefit overpayment is served. No proceedings for the collection of such amounts shall be begun after the expiration of such period.

(2) The period for commencing action for the collection of contributions, interest, and penalties shall be tolled during the time the department is conducting an audit that is not a voluntary audit under RCW 43.05.140.

(3) In case of a false or fraudulent return with intent to evade contributions, interest, or penalties, or in the event of a failure to file a return, the contributions, interest, and penalties may be assessed or a proceeding in court for the collection thereof may be begun at any time.

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 or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec.**  This act takes effect January 2, 2022.

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