

SENATE BILL REPORT

SHB 1570

As of March 13, 2023

Title: An act relating to social insurance programs managed by the employment security department applicable to transportation network companies, transportation network company drivers, and part-time work.

Brief Description: Concerning social insurance programs applicable to transportation network companies and drivers.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Berry, Ryu, Alvarado, Bateman, Fitzgibbon, Ramel, Doglio, Lekanoff, Reed, Pollet, Macri and Fosse).

Brief History: Passed House: 3/2/23, 87-9.

Committee Activity: Labor & Commerce: 3/13/23.

Brief Summary of Bill

- Provides unemployment insurance (UI) to drivers providing services facilitated through a transportation network company's (TNC) digital network.
- Changes the conditions when an employer, who continues to provide part-time employment for claimants of UI benefits, may be relieved of UI benefit charges for purposes of the employer's UI experience rating.
- Creates a pilot program allowing drivers to elect to pay for Paid Family and Medical Leave coverage, and requiring TNCs to pay those drivers an amount equal to the premiums.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

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

Background: Unemployment Insurance. The unemployment insurance (UI) system, administered by the Employment Security Department (ESD), is designed to provide partial wage replacement for workers who are unemployed. A claimant is eligible to receive UI benefits if the claimant (1) worked at least 680 hours in the base year, (2) was separated from employment through no fault of their own or quit work for good cause, and (3) is available to work and is actively searching for work. Regular UI benefits are based on the claimant's earnings in the base year, adjusted based on a statutory formula.

Funding for the UI system and UI benefits are sourced from state and federal taxes. At the state level, most employers pay contributions, referred to as payroll taxes, to finance UI benefits. An employer's tax rate is experience-rated, which means the rate is determined, in part, by the UI benefits paid to its employees (benefit charges). In addition, employers pay a social cost factor rate, which is graduated based on their experience rate classes. These state payroll taxes are deposited into a trust fund, which can only be used to pay UI benefits.

In certain circumstances, a business may receive a relief from benefit charges if the claimant continues to be employed on a part-time basis with the employer seeking the relief from charges. The claimant must be employed on a regularly scheduled permanent part-time basis with that employer for the relief to be applied.

Paid Family and Medical Leave. The Paid Family and Medical Leave program (PFML), administered by ESD, provides partial wage replacement for those who meet eligibility requirements when they experience a serious health condition, take time from work to care for a family member with a serious health condition, take time to bond with a child after the birth or placement of a child, or for certain military-related events.

To be eligible, a person must have worked at least 820 hours in the state during the first four of the last five completed calendar quarters or the last four completed calendar quarters. The amount of leave available is up to: 12 weeks of paid family or medical leave; or 16 weeks of combined family and medical leave, plus an additional two weeks if there is pregnancy or birth complications.

Premiums for medical leave are shared between businesses and employees. Premiums for family leave are paid for by employees.

Self-employed persons may elect PFML coverage for an initial period of not less than three years and subsequent periods of not less than one year immediately following a period of coverage. On a quarterly basis, they must report their self-employment wages to ESD and pay the worker share of the premiums. If they fail to file reports and pay premiums, ESD may cancel their elective coverage.

With some exceptions, ESD must keep information regarding individuals and employers under PFML private and confidential. ESD may disclose this information in certain instances, such as, to a third party acting on behalf of an individual or employer.

Transportation Network Companies Work Group. Last year, ESHB 2076 was enacted, which provided, among other things, minimum pay standards and industrial insurance coverage for transportation network company (TNC) drivers. The bill also required ESD to convene a work group to study the appropriate application of UI, PFML, and long-term care on TNCs and drivers. In December 2022, ESD issued a report to the Legislature on the work group's recommendations.

Summary of Bill: Unemployment Insurance Benefits—Transportation Network Companies and Drivers. UI applies to services performed by drivers facilitated through the TNC's digital network. The laws applicable to a relationship meeting the requirements for UI benefits also apply to the relationship between a driver and a TNC.

Unemployment Insurance Benefit Relief for Employers Providing Part-Time Work. The requirement that the claimant be employed on a "regularly scheduled permanent part-time basis" with the employer is removed. Instead, an employer may receive relief from benefit charges if the claimant continues to be employed by the employer seeking relief and:

- the employer furnished part-time work to the individual during the base year;
- the individual has become eligible for benefits because of loss of employment with one or more other employers; and
- the employer has continued to furnish or make available part-time work to the individual in substantially the same amount as during the individual's base year.

Pilot Paid Family and Medical Leave Program—Transportations Network Companies and Drivers. Beginning July 1, 2024, ESD must develop a pilot program under the PFML focusing on the TNCs and drivers. The pilot program must require that:

- drivers may continue to elect coverage as self-employed individuals;
- TNCs must report to each driver the total amount of compensation that the driver earned through the TNC in that quarter;
- ESD must share data with each TNC, on a quarterly basis, on drivers who reported and paid premiums for PFML and drivers who withdrew and canceled coverage; and
- TNCs must pay each driver who elected coverage an amount equal to the premium paid.

A driver must file a written notice of election of coverage with ESD. A driver becomes eligible for PFML benefits after working 820 hours in the state during the qualifying period following the date the driver filed written notice.

The requirement to pay premiums under the pilot program ends and the section creating the pilot program expires on December 31, 2028. ESD is authorized to continue disclosing information about drivers to TNCs until February 15, 2029. ESD may adopt rules to implement the pilot program.

ESD must evaluate the pilot program for its impacts on removing barriers to accessing paid

family and medical leave and impacts on the PFML insurance account. By September, 1, 2027, ESD must submit a report to the Legislature summarizing its evaluation of the pilot program and making any recommendations.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: The bill is a continuation of the work from last year related to TNCs and drivers. The work group had many recommendations. Two of the recommendations required legislative changes. This is a great bill to provide social insurance programs for drivers.

This bill will ensure that drivers have access to unemployment benefits when needed. Many workers are putting together multiple forms of work. The tax contributions from TNCs and other businesses who rely on part-time workers will better reflect the nature of work in today's economy. Many drivers are first generation immigrants and the UI system is challenging. Drivers didn't know there was a union. The union helped drivers get UI benefits during the pandemic.

The workgroup recommended a pilot program for PFML. Drivers that elect coverage will be reimbursed by the TNCs based on their hours worked. To support the pilot, it takes new ways of collecting premiums and data. The TNCs are reimbursing the drivers for the premiums because it was negotiated in Washington and TNCs agreed to support the drivers. The pilot is the first time having a third party help the drivers collect PFML. Drivers have the ability to get reimbursed so that there will be a higher participation in elective PFML. The pilot program is important to understand how it will work for full-time and part-time drivers.

This bill provides flexibility, independence, benefits, and protections to drivers. It will have a positive impact on workers and businesses.

Persons Testifying: PRO: Allison Ford, Uber Technologies; Saahil Karpe, Lyft; Caitlyn Jekel, WA State Employment Security Dept; Daniel Zeitlin, WA State Employment Security Dept; Bill Horton; Brenda Wiest, Teamsters/Driver's Union.

Persons Signed In To Testify But Not Testifying: No one.