

HOUSE BILL REPORT

HB 1474

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to strengthening penalty and audit tools for employer violations in unemployment insurance.

Brief Description: Strengthening penalty and audit tools for employer violations in unemployment insurance.

Sponsors: 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.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/10/21, 2/15/21 [DPS].

Brief Summary of Substitute Bill

- Modifies standards for violations of unemployment insurance registration and reporting requirements.
- Provides additional penalties for certain unreported wage discoveries.
- Pauses the period for commencing a collections action during an audit.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Harris.

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.

Staff: Lily Smith (786-7175).

Background:

Registration and Reporting.

The Employment Security Department (ESD) administers the state's unemployment benefits program. Employers must register with the ESD and file tax reports every quarter. The reports must contain: the name of all employees covered by unemployment insurance, their Social Security numbers, their wages, and the number of hours worked in the quarter.

Benefit Determinations for Unreported Hours.

When employers fail to report the number of hours worked, that number is computed based on the amount of remuneration paid and the state minimum hourly wage rate. Claimants may be determined to be eligible for benefits based on computed hours. A claimant may request a redetermination or reconsideration of payable benefits within a year of their initial benefit determination.

Audits.

The ESD conducts audits to determine whether employer-reported wages and hours are accurate. Employers may request a voluntary audit of their records and reporting. Voluntary audits may result in payment due, but not penalties for the late payment or assignment of a delinquent tax rate. Voluntary audits may also result in a refund of taxes overpaid.

Penalties and Collections.

An employer that knowingly fails to register with the ESD is subject to a penalty of the greater of \$1,000 per quarter, or two times the taxes due per quarter, unless the employer can prove it had good cause to believe it was not required to register.

An employer that fails to file a timely report is subject to a \$25 penalty per violation. An employer that files an incomplete report is issued a warning letter for the first violation. For subsequent violations, the penalties range from \$75 to \$250. An employer that knowingly misrepresents the amount of its payroll is liable for up to 10 times the difference between contributions paid and the amount due, and for the audit and collection costs.

An action for collection of employer contributions and penalties owed must be commenced within three years.

Summary of Substitute Bill:

An employer is subject to a penalty for failure to register regardless of whether the employer knowingly did so. The penalty may be waived for good cause if the failure was not due to the employer's fault, rather than if the employer can prove it had good cause to

believe it was not required to register.

An employer is automatically deemed to having knowingly misrepresented the amount of its payroll when there is a repeat failure to report employees under certain conditions.

An employer is subject to additional penalties for discoveries of unreported wages as follows:

- 40 percent of the unreported wages when a claimant request of redetermination or reconsideration leads to an increase in benefits due to unreported wages; and
- 20 percent of the unreported wages discovered in a nonvoluntary audit.

The period for commencing a collections action is tolled during a nonvoluntary audit.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that all of the conditions regarding a repeat failure to report employees must be met for the failure to be automatically considered a knowing misrepresentation of payroll.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 2, 2022.

Staff Summary of Public Testimony:

(In support) Many drivers are experiencing severe financial hardship due to not receiving unemployment insurance benefits because the companies have not provided necessary information for their claims to the ESD. These claimants have provided all their information from their end, and are navigating a complex system with many obstacles, including limited English proficiency. This is an equity issue. It is important to incentivize employers to report correctly and on time. The unemployment insurance system only works when employers properly report hours and do their part. The ESD has discretion to determine if a worker is eligible for unemployment insurance regardless of the specific employer-employee relationship, but when companies do not comply with data requests, workers are left out to dry. The issue of companies misclassifying workers to save money and win bids is becoming more apparent during the COVID-19 pandemic.

(Opposed) The removal of the "knowingly" standard shifts legitimate disputes into a system of intimidation, where employers can be penalized even when they did not know they were doing something wrong. Independent contractors are responsible for submitting their own data to the ESD. The waiver of the statute of limitations would allow the ESD to take even

longer on audits, which can already take years. Penalties and interest should also be tolled during any time the statute of limitations is tolled. Employers do not have the assistance needed from the ESD to ensure they are filing correctly. The system is currently overstressed, audits are already stringent, and this is not the right time to make these changes. The vast majority of companies are well intentioned, and the existing enforcement regime is already weighted against employers. The presumptive language in the bill creates a disproportionate burden on employers of all sizes and strips them of any due process. This will create fear and uncertainty.

Persons Testifying: (In support) Representative Chopp, prime sponsor; Melissa Purcell, International Alliance of Theatrical Stage Employees, Local 488; Tina Sigurdson, Service Employees International Union 775; Ahmed Mahamud, Drivers Union; Adam Warfa, Neguse Sebat, Yeshambel Worku, and Sybill Hyppolite, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; Cory Elliott, Northwest Carpenters; and Samantha Grad, United Food and Commercial Workers 21.

(Opposed) Rose Feliciano, Internet Association; Samantha Kersul, TechNet; Julia Gorton, Washington Hospitality Association; Jerry Vanderwood, Associated General Contractors; Tammie Hetrick, Washington Food Industry Association; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.