

SENATE BILL REPORT

ESSB 5061

As Passed Senate, January 27, 2021

Title: An act relating to unemployment insurance.

Brief Description: Concerning unemployment insurance.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Keiser, Conway, Billig, Dhingra, King, Nguyen, Saldaña, Stanford and Wilson, C.; by request of Office of the Governor).

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/13/21, 1/18/21 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 1/27/21, 42-7.

Brief Summary of Engrossed First Substitute Bill

- Provides unemployment insurance benefits to high risk individuals, or those who live with high risk individuals, who voluntarily quit their jobs during a public health emergency if they cannot work from home for that employer, but are able and available to work from home for other employers.
- Waives the one-week waiting period and shared work benefits when paid by the federal government.
- Increases the minimum weekly benefit amount from 15 percent to 20 percent of the average weekly wage.
- Limits an individual's weekly benefit amount to the individual's weekly wage.
- Decreases the maximum social tax and suspends the solvency surcharge tax for five years.

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.

- Modifies the voluntary contribution and shared work programs.
- Makes certain unemployment insurance benefits nonchargeable to employers.
- Requires the Employment Security Department to provide a report to the Legislature and the Governor.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5061 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; King, Ranking Member; Robinson and Saldaña.

Minority Report: Do not pass.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and Honeyford.

Staff: Susan Jones (786-7404)

Background: Unemployment Benefit Eligibility Conditions. An unemployed individual (claimant) is eligible to receive unemployment insurance benefits (UI benefits) if the individual: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of the claimant's or quit work for good cause; and (3) is able to work, available to work, and is actively searching for suitable work. The Employment Security Department (ESD) administers Washington State's unemployment insurance program.

Waiting Period. A claimant must be unemployed for a one-week waiting period before being eligible for UI benefits. Under the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and until the end of 2020, the federal government reimbursed the states for 100 percent of the UI benefits paid for the first week of unemployment. During most of COVID-19, the one-week waiting period in the state was waived. Under the federal Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act), for week of unemployment after 2020 through March 14, 2021, the federal reimbursement for the one-week waiting period is 50 percent.

Weekly Benefit Amounts. A claimant's weekly benefit amount (WBA) is 3.85 percent of the average quarterly wages of the individual's total wages during the two highest quarters of the individual's base year. The maximum WBA is the greater of \$496 or 63 percent of the average weekly wage (AWW), calculated annually by ESD. The minimum WBA is 15

percent of AWW. Beginning July 1, 2020, the maximum and minimum WBAs were \$844 and \$201.

Unemployment Insurance Contributions—Payroll Taxes; Benefit Ratio Calculation. Most employers pay contributions—payroll taxes—to finance unemployment benefits. A contribution paying employer's tax rate is experience-rated so that the rate is determined, in part, by the benefits paid to its employees. A benefit ratio is computed for each qualified employer by dividing the total amount of benefits charged to the account of the employer by the taxable payrolls over a four year period.

In addition to the experience-rated tax, employers may pay a social cost factor rate (social tax). The social tax is generally calculated by dividing the total social costs, the total UI benefits paid less the contributions paid, by the total payroll. The maximum social tax is 1.22 percent. The social tax is graduated for employers based on their experience rate classes. There is also a solvency surcharge that applies if there are fewer than seven months of UI benefits in the UI trust fund, which may not exceed 0.2 percent.

Some nonprofit organizations, states and political subdivisions of the state, and Indian tribes may qualify as reimbursable employers. Reimbursable employers reimburse ESD for UI benefits actually paid to separated employees instead of paying unemployment contributions.

Charging UI Benefits Paid. Benefits paid are charged to the experience-rating of base year employers on a pro rata basis according to the amount of wages paid to the claimant by the employer in the claimant's base year compared to the wages paid by all employers. Some benefits, such as those paid for certain good cause quits, are charged only to the separating employer, or are not charged to any employer.

Voluntary Contribution Program. By February 15th of the rate year, an employer may make a voluntary contribution of part or all of the benefits charged to the employer's account during the two most recent years ending on June 30th. There is a 10 percent voluntary contribution program (VCP) surcharge on the amount of the contributions. Upon receiving the contributions and the surcharge, the benefits charges are cancelled and a new benefit ratio is calculated for the employer. The minimum amount of a voluntary contribution must result in a recomputed benefit ratio that is in a rate class at least four rate classes lower than the rate class that included the employer's original benefit ratio. The VCP is only available to employers who have moved up at least 12 rate classes from the previous tax rate year.

Shared Work Compensation Plan. A shared work compensation plan allows employers to reduce employee hours by as much as 50 percent and their shared work employees are eligible for partial UI benefits to replace a portion of their lost wages. ESD approves plans, which must include at least one employee; reduce the shared work employees weekly hours by at least 10 percent and not more than 50 percent; and certify that the employer will

continue providing the employees any health and retirement benefits.

Under the CARES Act and the Continued Assistance Act, the federal government has been and will continue to reimburse the states for 100 percent of the shared work UI benefits paid through March 14, 2021. During most of COVID-19, the statutory requirement to charge the shared work UI benefits to contribution paying or reimbursable employers was waived.

Lump Sum Retirement Payment Deduction. Lump sum retirement payments are prorated over the life expectancy of a claimant. The prorated amount is deducted from the WBA.

Trade Adjustment Assistance Program. The Trade Adjustment Assistance program (TAA) is a federal re-employment program. The program helps U.S. workers become re-employed after losing their jobs due to international trade. Certified workers can receive help looking for and relocating to a new job, as well as training for a new occupation. Through a combination of UI benefits and trade readjustment allowances, participants may receive benefits for up to 130 weeks. New federal rules for the program were finalized and effective September 21, 2020.

Summary of Engrossed First Substitute Bill: Benefit Eligibility for High-Risk Individuals. After April 4, 2021 and during the weeks of a public health emergency (PHE), an unemployed individual, who left work voluntarily and who is high risk or resides with an individual who is high risk, is eligible for UI benefits. In addition, the unemployed individual may meet the able and available for work requirements if the individual is able to perform, available to perform, and is actively seeking suitable work which can be performed for an employer from the individual's home and the individual or another individual residing with the unemployed individual is high risk. ESD must consider the degree of risk to the health of those residing with the individual for the suitable work requirement.

High risk individuals include an individual that was in an age category defined as high risk for the disease that is the subject of the PHE, or has an underlying health condition identified as a risk factor for the disease. The determination for the age categories and health conditions is made by the federal Centers for Disease Control and Prevention, the Department of Health, or the equivalent agency in the state where the individual resides.

Public Health Emergency Definition. PHE means a declaration or order that covers the jurisdiction where the unemployed individual was working on the date the individual became unemployed concerning any dangerous, contagious, or infectious diseases, including a pandemic, and is issued as follows:

- the President has declared a national or regional emergency;
- the Governor declared a state of emergency; or
- the Governor or state executive of another state where the unemployed individual was working at the time of the declaration declared a state of emergency.

Waiting Period. For any weeks when the one-week waiting period is fully paid or fully reimbursed by the federal government, the waiting period is waived. When the waiting period is partially paid or partially reimbursed by the federal government, ESD may waive the waiting period.

Minimum Weekly Benefit Amount Increases. For claims on or after July 1, 2021, the minimum WBA increases to 20 percent of the AWW for preceding June 30th. An individual may not receive a WBA that exceeds the individual's weekly wage for claims with an effective date on or after January 2, 2022, or such subsequent date by ESD rule to continue eligibility of claimants in this state for federal unemployment benefits or receipt of federal funds under the CARES Act, the Continued Assistance for Unemployed Workers Act, or other act extending such benefits or funds.

Noncharging of UI Benefits Paid. UI benefits paid for the one-week waiting period are not charged to contribution paying employers' experience rating account or to certain reimbursable employers when the waiting period is fully paid or fully reimbursed by the federal government. If the waiting period is partially paid or partially reimbursed ESD may, by rule, elect not to charge the benefits paid.

UI benefits paid for all weeks starting with the week ending March 28, 2020 through May 30, 2020 are not be charged to the experience rating account of any contribution paying employer.

A contribution paying employer may request that benefits paid not be charged to the employer's experience rating when the benefits paid are a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility and the closure resulted from the presence of any dangerous, contagious, or infectious disease that is the subject of a PHE at the plant, building, worksite, or other facility.

UI Taxes: Social and Solvency Surcharge. The maximum social tax for the following rate years is:

- 0.50 percent for 2021;
- 0.75 percent for 2022;
- 0.80 percent for 2023;
- 0.85 percent for 2024; and
- 0.90 percent for 2025.

The solvency surcharge is suspended for 2021 to 2025.

Voluntary Contribution Program. From the effective date and until May 31, 2026, the 10 percent VCP surcharge is not charged; the VCP payment deadline is extended to March 31st; the minimum amount of a voluntary contribution must result in a recomputed benefit ratio at least two rate classes lower than the original rate class; and only employers who have moved up at least eight rate classes may use the program.

Shared Work Program. Shared work employers must have at least two employees covered in the program. Shared work benefits paid or reimbursed by the federal government are not charged to contribution paying or reimbursable employers. Shared work employees may participate in training, including employer-sponsored training or ESD approved training funded under the Workforce Innovation and Opportunity Act, to enhance job skills.

Lump Sum Retirement Payment Deduction. A lump sum payment from certain retirement plans is not deducted from the WBA.

Trade Adjustment Assistance Program. Changes are made to the provisions related to an adversely affected worker's benefit eligibility related to enrollment in an approved training to reflect the new federal rules under the TAA.

ESD Report. Annually beginning on December 1, 2021 through 2025, ESD, in consultation with the Unemployment Insurance Advisory Committee, must provide a report to the Legislature and the Governor that provides the status of the trust fund and any federal advances; and analyzes the impact of the minimum WBA increase.

By December 1, 2021, ESD must provide a report to the Legislature and the Governor that reviews the amount of wages subject to tax, including an analysis of the equitable treatment of employers and a comparison of the percentage of wages subject to tax for small, medium, and large businesses and how changes to the taxable wages would impact trust fund balances and employer contributions.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We need to take urgent action on unemployment issues as employers have received their tax bills for the next quarter, due in April. Those tax bills for some of the hardest hit employers have increased 500 plus percent. During a recession and a pandemic, that is unacceptable. There are four goals for the bill: economic stabilization and stimulus; premium reductions aimed at businesses hardest hit, while staying in federal conformity; improvement of equity for small employers and lowest paid workers; and restoration of the trust fund, which can take five to six years.

The bill is not perfect and will have to be revisited next year. Many of the necessary precautions, quarantine, business and school closures, and travel limitations have had profound economic impacts on all corners of the state and all types of businesses and

families. The Legislature acted quickly at the end of last session to set up a fund for certain UI issues and rate increases. The reality was beyond any scale that could have been anticipated. This is not the only solution. There are other tools and federal aid, with many distributions and grants. This bill is within Washington's control. The bill better prepares the state and labor force to deal head on with a public health emergency.

ESD paid over \$13 billion in UI benefits to Washingtonians with \$4 billion from the UI trust fund. This was critical financial support. We started the crisis with one of the strongest trust funds in the nation. The crisis put incredible strain on the fund and resulted in large tax increases unless the Legislature acts. The 2020 average UI rate was 1.03 percent, currently projected to increase to 1.88 percent for 2021. Under the bill, the average rate would be approximately 1.17 percent for 2021. The bill provides tax relief to businesses, enhanced worker support, and improvement to the UI program to better respond to future crisis. The bill takes full advantage of federal funding for programs. The bill weighs the needs and concerns. The bill strikes a reasonable balance by reducing taxes over the short term but building the trust fund over the long run.

The commissioner started meetings with the Unemployment Insurance Advisory Committee (UIAC) to identify lessons learned from the crisis and avenues for improvement. The bill reflects work by members of the UIAC.

The proposed substitute changes the ending date for noncharging employers to May 30th, the entirety of the "Stay Home, Stay Healthy" order. The relief of charges through May 2nd is \$750 million. For May 30th, it is approximately \$1.2 billion in relief. To stay in federal conformity, the state may not favor certain industries or sizes of business, but may set up a fund to help.

Having a bill that goes until 2025 is a concern because there are so many unknowns. There are changes from the federal government. There should be changes to the 2021 rates and then continue discussions on future items. The fraud is socialized to employers under the calculation.

The hospitality industry is the most economically damaged by the pandemic and increased UI taxes. The industry needs the immediate relief in the proposed substitute. Many general contractors face large tax increases. Even businesses without closures have had significant declines in income and increased expenses for the pandemic. There is more work to be done. There should be general funds used for those most impacted.

This is a poor time for any increase in UI taxes, especially given the international trade situation for farmers. Farmers are concerned about the magnitude of the increases in taxes, especially the social tax. Continued operations under pandemic rules is very expensive.

The bill increases the minimum benefit. The bill maintains Washington having the highest minimum WBA in the nation. Those earning the minimum benefit are more likely to work

at minimum wage jobs and part-time. This is important for working families. The bill gives ESD flexibility during these crises. The Governor's statutory waivers saved lives and help families.

Many people are frustrated with the UI system. This broken system is an obstacle to workers getting paid owed benefits. People get overpayment notices. We were not prepared for this pandemic. The bill does not go far enough for workers. Workers should not have to wait for months. People have not been able to pay bills while waiting. The worker should start getting the minimum amount immediately. The bill does not address employers' refusals to provide wage data. We face a devastating impact when benefits run out. The bill needs to be combined with an extension of benefits. We cannot just rely on the federal government.

CON: This bill is a starting point. The UI system is working and does not need a major change. Getting people back to work is a self-correcting mechanism and should be top priority. We should not saddle employers with COVID-19 costs. Using the budget stabilization account could avoid a federal loan. Employers should be held harmless for COVID-19 UI benefits. Because of timing, we are going to have to come back next year. The current version kicks the can down the road for employers, creating a balloon payment to be paid. Rather than having employers shoulder the entire burden, maybe it is time to tap into the rainy-day fund and future federal funds.

Small businesses continue to struggle with closures and capacity restrictions. They face large tax increases, which will make it harder to put people back to work. We appreciate some provisions. It relies on federal loans with additional assessments on employers, causing more tax burden.

OTHER: We are encouraged, but this is a long-term effort that may be affected by future federal impacts. We need to help small businesses, facing huge tax increases.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Anne Paxton, Policy Director, Unemployment Law Project; Joe Kendo, Washington State Labor Council, AFL-CIO; Josh Swanson, International Union of Operating Engineers, Local 302; Kimberly Adams, UNITE HERE Local 8; Caitlyn Jekel, Office of Governor Jay Inslee; Dan Zeitlin, Washington ESD; Julia Gorton, Washington Hospitality Association; Bob Battles, Association of Washington Business; Jerry Vanderwood, Associated General Contractors; Tammie Hetrick, WFIA; Cindy Richardson, UNITE HERE Local 8; Steve Weaver, Working Washington; Karen Womack, UNITE HERE Local 8; Sandrisha Wesley, Working Washington; Joaquin DeLaPuente, Working Washington; Mariah Mitchell, Working Washington.

CON: Bruce Beckett, Washington Retail Association; Tom Kwieciak, Building Industry Association of Washington; Frank Lyall, Lyall Farms; Karen Poulsen, Sun Valley Ranch; Christine Bolton, Enfield Farms, Inc.; Patrick Connor, National Federation of Independent

Business.

OTHER: Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: PRO: Jeff Robinson, Washington ESD; Larry Sheahan, Washington ESD; Scott Michael, Washington ESD; Aquina Phillips, Working Washington; Ruby Brown, Working Washington; Madi Ped, Working Washington; David Oviedo, Working Washington; Sonia Lopez, Working Washington; Sriya Chowdhury, Working Washington.