

# FINAL BILL REPORT

## ESSB 5478

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Synopsis as Enacted

**Brief Description:** Concerning unemployment insurance relief for certain employers.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Mullet, Billig, Cleveland, Conway, Das, Hunt, King, Kuderer, Lias, Lovelett, Nguyen, Randall, Rolfes, Saldaña, Stanford, Van De Wege and Wilson, C.).

**Senate Committee on Ways & Means**  
**House Committee on Appropriations**

**Background:** Unemployment Benefit Eligibility. An unemployed individual (claimant) is eligible to receive unemployment insurance benefits (UI benefits) if the claimant worked at least 680 hours in the base year; was separated from employment through no fault of the claimant's, or quit work for good cause; and 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.

Unemployment Insurance Contributions. Most employers pay contributions to finance unemployment benefits. A contribution paying employer's tax rate is experience-rated so 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. Based on the benefit ratio, the employer is assigned a rate class from 1 to 40. The rate class determines the experience rate for the employer. The experience rates range from zero to 5.4 percent. In addition to the experience-rated tax, employers may pay a graduated social cost tax and a solvency surcharge. The graduated social tax is flat social cost factor multiplied by the percentage assigned to each rate class. Except as provided in ESSB 5061, the maximum flat social tax is 1.22 percent and the assigned percentages range from 40 to 120 percent.

Charging Unemployment Insurance Benefits Paid. UI 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

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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.

Previously Enacted Legislation. ESSB 5061 enacted this session, provided certain UI benefits and relief to claimants and employers. For certain employers, benefits were not charged to the experience rating account, including the one-week waiting period waived under the CARES Act and UI benefits paid for all weeks starting with the week ending March 28, 2020 through May 30, 2020. A contribution paying employer may also now 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 public health emergency at the plant, building, worksite, or other facility. ESSB 5061 also reduced the maximum flat social tax and suspended the solvency tax for five years.

EHB 2965, enacted in 2020, provided \$25 million to the state COVID-19 unemployment account for ESD to forgive certain unemployment insurance benefits for eligible employers who applied for relief. The funds were spread proportionally across the total amount of benefits requested to be forgiven by eligible employers, and were sufficient to provide 23.75 percent of approved relief.

North American Industry Classification System Code. The North American Industry Classification System (NAICS) was developed as the standard for use by Federal statistical agencies in classifying business establishments for collection, analysis, and publication of statistical data related to the business economy of the United States. NAICS was developed by the federal Office of Management and Budget, and adopted in 1997 to replace the old Standard Industrial Classification system. The following are certain three digit NAICS codes and industry descriptions:

323	Printing and Related Support Activities
331	Primary Metal Manufacturing
448	Clothing and Clothing Accessories Stores
451	Sporting Goods, Hobby, Book, and Music Stores
453	Miscellaneous Store Retailers
481	Air Transportation
485	Transit and Ground Passenger Transportation
487	Scenic and Sightseeing Transportation
512	Motion Picture and Sound Recording Industries
711	Performing Arts, Spectator Sports, and Related Industries
712	Museums, Historical Sites, Zoos, and Parks
713	Amusement, Gambling, and Recreation Industries
721	Accommodation
722	Food Services and Drinking Places
812	Personal and Laundry Services

**Summary:** Unemployment Insurance Relief Account Created. The unemployment insurance relief account (UI Relief account) is created. Revenues to the UI Relief account consist of appropriations and all other funding directed for deposit into the UI Relief account. Only the ESD commissioner may authorize expenditures from the UI Relief account, which may be used only for reimbursing the unemployment compensation fund for forgiven benefits. By July 1, 2022, the ESD commissioner must certify to the treasurer the amount of any unobligated moneys in the UI Relief account that were appropriated by the Legislature from the general fund during the 2021-2023 fiscal biennium. The treasurer must transfer the unobligated moneys back to the general fund.

Forgiven Benefits—Noncharged and Paid From the Unemployment Insurance Relief Account. By December 20, 2021, ESD must determine the forgiven benefits for approved category 1, 2, 3, and 4 employers to be reimbursed by the UI Relief account instead of being charged to the employer's experience rating account. ESD must transfer from the UI Relief account to the unemployment compensation fund an amount equal to the forgiven benefits.

Category 1 Employers' Forgiven Benefits. An approved category 1 employer means a contribution paying employer who:

- had 20 or fewer employees as of the fourth quarter of 2020;
- has an experience rating that has increased by three or more rate classes from rate year 2021 to rate year 2022; and
- belongs to NAICS codes 323, 331, 448, 451, 453, 481, 485, 487, 512, 711, 712, 713, 721, 722, 812, or 814 for rate year 2021.

Forgiven benefits for category 1 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is computed by dividing \$100 million of the total amount of money in the UI Relief account by the total approved benefits for category 1 employers. Approved benefits are the benefits paid to employees of an approved category 1 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a two rate class increase.

Category 2 Employers' Forgiven Benefits. An approved category 2 employer is a contribution paying employer who:

- has an experience rating that has increased by three or more rate classes from rate year 2021 to rate year 2022;
- belongs to NAICS codes 323, 331, 448, 451, 453, 481, 485, 487, 512, 516, 711, 712, 713, 721, 722, 812, or 814 for rate year 2021; and
- does not meet the definition of approved category 1 employer.

Forgiven benefits for category 2 employers are the approved benefits for an individual

employer multiplied by the forgiveness ratio, which is \$175 million of the total amount of money in the UI Relief Account, plus any remaining amount after the forgiveness of category 1 employer benefits, divided by total approved benefits for category 2 employers. Approved benefits are the benefits paid to employees of an approved category 2 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a two rate class increase.

Category 3 Employers' Forgiven Benefits. An approved category 3 employer is a contribution paying employer who:

- had 20 or fewer employees as of the fourth quarter of 2020;
- has an experience rating that has increased by four or more rate classes from rate year 2021 to rate year 2022; and
- does not meet the definitions of categories 1 or 2.

Forgiven benefits for category 3 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is \$75 million of the total amount of money in the UI Relief Account, plus any remaining amount after the forgiveness of category 2 benefits, divided by the total approved benefits for category 3 employers. Approved benefits are the benefits paid to employees of an approved category 3 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a three rate class increase.

Category 4 Employers' Forgiven Benefits. An approved category 4 employer is a contribution playing employer who:

- had at least 21 but fewer than 5000 employees as of the fourth quarter of 2020;
- has an experience rating that has increased by four or more rate classes from rate year 2021 to rate year 2022; and
- does not meet the definitions of categories 1, 2, or 3.

Forgiven benefits for category 4 employers are the approved benefits for an individual employer multiplied by the forgiveness ratio, which is \$150 million of the total amount of money in the UI relief account, plus any remaining amount after the forgiveness of category 3 benefits, divided by the total approved benefits for category 4 employers. Approved benefits are the benefits paid to employees of an approved category 4 employer during the fiscal year ending June 30, 2021, not to exceed an amount that would reduce the employer's rate class increase to no more than a three rate class increase.

Remaining Funding. If funding remains in the UI Relief Account after the forgiveness of benefits for all approved categories 1, 2, 3, and 4 employers, then by December 21, 2021, ESD must use the remaining funding for an additional round of forgiveness, beginning with category 1 employers, followed by category 2 employers if any additional funding remains, and ending with category 3 employers if any additional funding remains.

Miscellaneous. By September 1st of each year, the ESD must determine which employers

are delinquent in payments and have not entered into an ESD-approved deferred payment contract. ESD must notify employers of the availability of deferred payment contracts with the department and must provide technical assistance to employers as needed for entering into a department-approved contract. Approved benefits do not include benefits not charged to the employer's experience rating. ESD must adopt such rules as are necessary to carry out the forgiven benefits UI relief. This relief expires July 30, 2022. Legislative intent is provided.

**Votes on Final Passage:**

Senate	49	0	
House	97	0	(House amended)
House	95	2	(vote reconsidered/House amended)
Senate	49	0	(Senate concurred)

**Effective:** May 12, 2021