

SENATE BILL REPORT

SB 5911

As of February 4, 2022

Title: An act relating to providing hazard pay retention bonuses to certain health care employees.

Brief Description: Providing hazard pay retention bonuses to certain health care employees.

Sponsors: Senators Cleveland, Keiser, Billig, Conway, Das, Lovelett, Lovick, Nguyen, Randall, Saldaña, Stanford and Trudeau.

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/27/22, 2/02/22 [DPS-WM, w/oRec].

Ways & Means: 2/05/22.

Brief Summary of First Substitute Bill

- Provides a one-time hazard pay retention bonus (bonus) to certain eligible health care employees.
- Prohibits employers from taking adverse employment actions to prevent or diminish the receipt of bonuses.
- Creates a health care employee hazard pay account from which the Department of Labor & Industries (L&I) must pay bonuses.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5911 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: That it be referred without recommendation.

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.

Signed by Senator Braun.

Staff: Matt Shepard-Koningsor (786-7627)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Julie Murray (786-7711)

Background: Department of Labor & Industries Oversight. The Washington State Department of Labor & Industries (L&I) oversees workers' rights in the state, which include both wage and non-wage issues. Wage issues include, among other things, minimum wage, overtime, paid sick leave, tips and service charges, and unauthorized deductions. Various laws, such as the Minimum Wage Act and Wage Payment Act establish standards for paying wages. It is unlawful for an employer to deprive employees of their wages. An aggrieved employee may file a wage complaint with L&I. L&I must investigate wage complaints and has authority to order citations and notices of assessment against employers found in violation. An employee also has the option of filing a civil action in court to enforce a wage claim against an employer.

Hazard Pay. The United States Department of Labor describes hazard pay as additional pay for performing hazardous work involving physical hardship or extreme physical discomfort and distress that is not adequately alleviated by protective devices. The federal Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and youth employment standards affecting many employees in the private sector and in federal, state, and local governments. The FLSA does not require hazard pay.

COVID-19 Hazard Pay. Some local jurisdictions in Washington provide hazard pay to certain workers during the COVID-19 pandemic. For example, the City of Seattle requires certain grocery businesses to pay a hazard pay of four dollars per hour to their employees during the COVID-19 emergency.

Summary of Bill (First Substitute): Definitions. "Covered employee" means an individual who worked at a health care facility, as defined in state law, and was directly involved in the delivery of health services. This term does not include an individual who: is a contract employee or volunteer; has total annual earnings, including any premium or hazard pay received, greater than \$100,305 for the covered employer; or is exempt from the overtime pay provisions of the federal Fair Labor Standards Act.

"Covered employer" means an employer that employs a covered employee.

Hazard Pay Retention Bonus. A covered employee is eligible for a one-time hazard pay retention bonus (bonus) if the employee worked 240 hours for a covered employer in the fourth quarter of 2021 (eligibility period). L&I may adopt additional eligibility criteria if necessary to comply with federal funding requirements. The bonus is separate, in addition

to the employee's other compensation, and must not be considered part of their regular rate of pay or compensation, including when determining overtime.

Employer Provisions. By July 1, 2022, a covered employer must provide the following data to L&I for each covered employee it employs: legal full name; total hours worked during the eligibility period; mailing address; and taxpayer identification number. Covered employers must notify their employees whether the covered employer considers the employee to be a covered employee, and additionally, notify all such covered employees that their information was provided to L&I. It is unlawful for a covered employer to discharge, lay off, or reduce any compensation or hours worked by a covered employee to prevent, in whole or in part, the employee from receiving a hazard pay retention bonus.

Department of Labor and Industries Provisions. L&I must determine the amount of the bonus by dividing the sum available for expenditure in the health care employee hazard pay account, minus the sum of L&I's administrative costs plus \$100,000, by the total number of unique, eligible covered employees. The bonus amount may not exceed an amount equal to \$13 per hour.

As soon as practicable, but no later than October 14, 2022, L&I must issue a bonus to an eligible covered employee. A covered employee denied bonus eligibility may appeal to L&I. L&I must review submitted documentation and follow-up with the covered employee and covered employer. If L&I determines the covered employee is eligible, it must issue a bonus to the employee.

Unless additional eligibility criteria are adopted due to federal funding requirements, L&I may presume, without additional review, a covered employee is eligible for the bonus if a covered employer indicates the covered employee worked 240 hours in the eligibility period. L&I may enter into data sharing agreements with other state agencies to verify bonus eligibility. L&I must keep submitted information confidential.

Account. The health care employee hazard pay account is created and revenues to the account must consist of appropriations and transfers by the Legislature and all other funding directed for deposit. The Legislature intends to use federal funding from the Coronavirus State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to fund the account and pay bonuses. Bonuses are only available until funding in the account is exhausted.

The act expires June 30, 2023.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE (First Substitute):

- Amends the definition of "covered employee" to mean an individual who worked at a health care facility, as defined in state law, and was directly involved in the delivery of health services rather than including specified employees practicing in COVID

units. “Covered employee” does not include an individual who: (1) is a contract employee or volunteer; (2) has total annual earnings greater than \$100,305 for the covered employer; or (3) is exempt from the overtime pay provisions of the federal Fair Labor Standards Act.

- Modifies the hazard pay retention bonus (bonus) eligibility time period from the 12 calendar weeks immediately preceding June 26, 2022, to the fourth calendar quarter of 2021.
- Adds taxpayer identification number to the list of information covered employers must provide to the Department of Labor and Industries (L&I), and requires L&I to keep submitted information confidential.
- Requires covered employers to notify all of their employees whether the covered employer considers the employee to be a covered employee, and additionally, to notify all such covered employees that their information was provided to L&I.
- Allows L&I to enter into data sharing agreements with other state agencies for the purpose of verifying bonus eligibility.
- Adjusts the bonus calculation based on L&I using 7 percent of the appropriated funds for administrative costs.
- Provides that, unless L&I adopts additional eligibility criteria to comply with federal funding requirements, it may presume a covered employee is eligible for a bonus if a covered employer indicates the covered employee worked at least 240 hours in the fourth calendar quarter of 2021.

Appropriation: None.

Fiscal Note: New fiscal note requested on February 2, 2022.

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 (Labor, Commerce & Tribal Affairs): *The committee recommended a different version of the bill than what was heard.*

PRO: This bill is brought forward to recognize our health care workers who have put themselves in harm's way for nearly two years and to provide encouragement to remain in their professions. Some of these workers have lived away from their families to ensure they do not contract the virus. This bill recognizes the hard work nurses are doing. Nurses are leaving at alarming rates and hospital work these days is untenable. All hospital workers are on the front line and this bill should include all of these important workers. COVID-19 is everywhere, not just in COVID-specific units. Nurses are overworked and burnt out from this virus. Housekeepers working in hospitals are important and should be included too.

OTHER: L&I has questions regarding the implementation of the bill.

Persons Testifying (Labor, Commerce & Tribal Affairs): PRO: Senator Annette

Cleveland, Prime Sponsor; Chelene Whiteaker, Washington State Hospital Assn; Erin Allison, RN; Angel Sherburne, Environmental Services Tech; Patricia Brown, LPN; Ryan Rozencranz, RN; Laura Wood, Social Worker; Chelsea Brown, Environmental Services Tech; Terri Niles RN.

OTHER: Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying (Labor, Commerce & Tribal Affairs): No one.