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**HOUSE BILL 1474**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** 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

Read first time 02/03/21. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to strengthening penalty and audit tools for  
2 employer violations in unemployment insurance; amending RCW  
3 50.12.072, 50.12.220, and 50.24.190; creating a new section;  
4 prescribing penalties; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 50.12.072 and 2010 c 72 s 2 are each amended to read  
7 as follows:

8 An employer that (~~knowingly~~) fails to register with the  
9 department and obtain an employment security account number, as  
10 required under RCW 50.12.070(2), is subject to a penalty not to  
11 exceed one thousand dollars per quarter or two times the taxes due  
12 per quarter, whichever is greater. This penalty is in addition to all  
13 other penalties and is in addition to higher rates for employers that  
14 do not meet the definition of "qualified employer" under RCW  
15 50.29.010. (~~This penalty does not apply if the employer can prove  
16 that it had good cause to believe that it was not required to  
17 register with the department.~~) This penalty may be waived for good  
18 cause if the commissioner determines that the failure to register  
19 with the department was not due to the employer's fault.

1       **Sec. 2.** RCW 50.12.220 and 2020 c 334 s 3 are each amended to  
2 read as follows:

3       (1) If an employer fails to file a timely report as required by  
4 RCW 50.12.070, or the rules adopted pursuant thereto, the employer is  
5 subject to a penalty of twenty-five dollars per violation, unless the  
6 penalty is waived by the commissioner or subsection (2)(c) of this  
7 section applies.

8       (2) An employer who files an incomplete or incorrectly formatted  
9 tax and wage report as required by RCW 50.12.070 must receive a  
10 warning letter for the first occurrence. The warning letter will  
11 provide instructions for accurate reporting or notify the employer  
12 how to obtain technical assistance from the department. Except as  
13 provided in subsections (3) and (4) of this section, for subsequent  
14 occurrences within five years of the last occurrence, the employer is  
15 subject to a penalty as follows:

16       (a) When no contributions are due: For the second occurrence, the  
17 penalty is seventy-five dollars; for the third occurrence, the  
18 penalty is one hundred fifty dollars; and for the fourth occurrence  
19 and for each occurrence thereafter, the penalty is two hundred fifty  
20 dollars.

21       (b) When contributions are due: For the second occurrence, the  
22 penalty is ten percent of the quarterly contributions due, but not  
23 less than seventy-five dollars and not more than two hundred fifty  
24 dollars; for the third occurrence, the penalty is ten percent of the  
25 quarterly contributions due, but not less than one hundred fifty  
26 dollars and not more than two hundred fifty dollars; and for the  
27 fourth occurrence and each occurrence thereafter, the penalty is two  
28 hundred fifty dollars.

29       (c) An employer whose tax and wage report is incomplete due to a  
30 failure to report the standard occupational classification or job  
31 title of each worker must pay an incomplete report penalty under this  
32 subsection only if the employer knowingly failed to report the  
33 standard occupational classification or job title of each worker.

34       (3)(a) If an employer knowingly misrepresents to the employment  
35 security department the amount of his or her payroll upon which  
36 contributions under this title are based, the employer shall be  
37 liable to the state for up to ten times the amount of the difference  
38 in contributions paid, if any, and the amount the employer should  
39 have paid and for the reasonable expenses of auditing his or her

1 books and collecting such sums. Such liability may be enforced in the  
2 name of the department.

3 (b) An employer will automatically be deemed to having knowingly  
4 misrepresented the amount of the employer's payroll if the following  
5 conditions are met:

6 (i) An employer failed to report one or more individuals as  
7 employees within 90 days of the date the report was due;

8 (ii) The department discovered the unreported individual or  
9 individuals for reasons other than a voluntary audit under RCW  
10 43.05.140;

11 (iii) The department issued an order and notice of assessment to  
12 the employer based on the unreported wages paid to the unreported  
13 employee or employees;

14 (iv) The order and notice of assessment was not reversed on  
15 appeal; and

16 (v) Within five years of the date of the order and notice of  
17 assessment, the department again discovers for reasons other than a  
18 voluntary audit under RCW 43.05.140 that the employer failed to  
19 report one or more individuals as employees within 90 days of the  
20 date the report was due.

21 (c) Nothing in (b) of this subsection precludes the department  
22 from finding that the employer knowingly misrepresented its payroll  
23 and imposing the penalty under (a) of this subsection.

24 (4) If contributions are not paid on the date on which they are  
25 due and payable as prescribed by the commissioner, there shall be  
26 assessed a penalty of five percent of the amount of the contributions  
27 for the first month or part thereof of delinquency; there shall be  
28 assessed a total penalty of ten percent of the amount of the  
29 contributions for the second month or part thereof of delinquency;  
30 and there shall be assessed a total penalty of twenty percent of the  
31 amount of the contributions for the third month or part thereof of  
32 delinquency. No penalty so added shall be less than ten dollars.  
33 These penalties are in addition to the interest charges assessed  
34 under RCW 50.24.040.

35 (5) If, after a claimant requests a redetermination or  
36 reconsideration of the amount of benefits potentially payable  
37 pursuant to RCW 50.20.160(1), the department determines an employer  
38 failed to report any or all of the claimant's wages during that  
39 claimant's base year or alternate base year, and the addition of  
40 those unreported wages to the claimant's base year or alternate base

1 year leads to an increase in either the claimant's weekly benefit  
2 amount or maximum amount of benefits payable under RCW 50.20.120, the  
3 employer is subject to a penalty of 40 percent of the unreported  
4 wages. This penalty is in addition to all other penalties.

5 (6) If, during an audit that is not a voluntary audit under RCW  
6 43.05.140, the department discovers wages not previously reported by  
7 an employer that were due to be reported under RCW 50.12.070, or the  
8 rules adopted pursuant thereto, the employer is subject to a penalty  
9 of 20 percent of the unreported wages. This penalty is in addition to  
10 all other penalties, except it may not be imposed on the same wages  
11 already subject to the penalty in subsection (5) of this section.

12 (7) Penalties shall not accrue on contributions from an estate in  
13 the hands of a receiver, executor, administrator, trustee in  
14 bankruptcy, common law assignee, or other liquidating officer  
15 subsequent to the date when such receiver, executor, administrator,  
16 trustee in bankruptcy, common law assignee, or other liquidating  
17 officer qualifies as such, but contributions accruing with respect to  
18 employment of persons by a receiver, executor, administrator, trustee  
19 in bankruptcy, common law assignee, or other liquidating officer  
20 shall become due and shall be subject to penalties in the same manner  
21 as contributions due from other employers.

22 ~~((+6))~~ (8) Where adequate information has been furnished to the  
23 department and the department has failed to act or has advised the  
24 employer of no liability or inability to decide the issue, penalties  
25 shall be waived by the commissioner. Penalties may also be waived for  
26 good cause if the commissioner determines that the failure to file  
27 timely, complete, and correctly formatted reports or pay timely  
28 contributions was not due to the employer's fault.

29 ~~((+7))~~ (9) Any decision to assess a penalty as provided by this  
30 section shall be made by the chief administrative officer of the tax  
31 branch or his or her designee.

32 ~~((+8))~~ (10) Nothing in this section shall be construed to deny  
33 an employer the right to appeal the assessment of any penalty. Such  
34 appeal shall be made in the manner provided in RCW 50.32.030.

35 **Sec. 3.** RCW 50.24.190 and 1979 ex.s. c 190 s 15 are each amended  
36 to read as follows:

37 (1) The commissioner shall commence action for the collection of  
38 contributions, interest, penalties, and benefit overpayments imposed  
39 by this title by assessment or suit within three years after a return

1 is filed or notice of benefit overpayment is served. No proceedings  
2 for the collection of such amounts shall be begun after the  
3 expiration of such period.

4 (2) The period for commencing action for the collection of  
5 contributions, interest, and penalties shall be tolled during the  
6 time the department is conducting an audit that is not a voluntary  
7 audit under RCW 43.05.140.

8 (3) In case of a false or fraudulent return with intent to evade  
9 contributions, interest, or penalties, or in the event of a failure  
10 to file a return, the contributions, interest, and penalties may be  
11 assessed or a proceeding in court for the collection thereof may be  
12 begun at any time.

13 NEW SECTION. Sec. 4. If any part of this act is found to be in  
14 conflict with federal requirements that are a prescribed condition to  
15 the allocation of federal funds to the state or the eligibility of  
16 employers in this state for federal unemployment tax credits, the  
17 conflicting part of this act is inoperative solely to the extent of  
18 the conflict, and the finding or determination does not affect the  
19 operation of the remainder of this act. Rules adopted under this act  
20 must meet federal requirements that are a necessary condition to the  
21 receipt of federal funds by the state or the granting of federal  
22 unemployment tax credits to employers in this state.

23 NEW SECTION. Sec. 5. This act takes effect January 2, 2022.

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