

FINAL BILL REPORT

ESB 5632

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Synopsis as Enacted

Brief Description: Protecting the health care of workers participating in a labor dispute.

Sponsors: Senators Keiser, Cleveland, Conway, Hasegawa, Hunt, Kuderer, Lovelett, Stanford, Valdez and Wilson, C..

Senate Committee on Health & Long Term Care
Senate Committee on Labor & Commerce
Senate Committee on Ways & Means
House Committee on Health Care & Wellness
House Committee on Labor & Workplace Standards

Background: The Affordable Care Act and the Washington Healthplanfinder. Under the federal Patient Protection and Affordable Care Act (ACA), each state must establish a health benefit exchange through which consumers may compare and purchase individual and small group coverage, access premium and cost-sharing subsidies, and apply for Medicaid coverage. Qualified health plans (QHPs) sold in an exchange must meet certain standardized actuarial values. The tiers of coverage are based on how much of the health care costs the insurer is required to cover: Bronze—60 percent, Silver—70 percent, Gold—80 percent, and Platinum—90 percent. Washington’s health benefit exchange, the Washington Healthplanfinder, is a public-private partnership governed by a board consisting of members with expertise in the health care system and health care coverage.

The ACA also requires all United States citizens and legal residents to have health insurance coverage or pay a tax penalty. However, the tax penalty was repealed by subsequent federal legislation. Minimum essential coverage is any health plan that meets the ACA's requirements for having health coverage.

In general, under the ACA, employers with 50 or more full-time employees are required to offer minimum essential coverage to their full-time employees.

Health Insurance Coverage and Labor Disputes. In general, there is no requirement that an

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employer continue health insurance coverage for striking employees. Under National Labor Relations Board precedent, employers are prohibited from unilaterally changing the terms of employee health insurance for striking employees, but the employer is not obligated to provide compensation, such as insurance coverage, during a strike. However, the employer must maintain any accrued benefits to strikers once they return to work.

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) requires employers, with more than 20 employees, who provide group health insurance to give employees the option to purchase continued coverage for a limited time under the plan if they are separated from work. Under COBRA, the employee pays the full premium. The employer may charge the employee up to 102 percent of the cost of the plan, 2 percent of which covers administrative costs.

Summary: By January 1, 2025, the Health Benefit Exchange (Exchange) must establish a worker health plan access program (program) for Washingtonians who lose employer or joint labor management trust-provided health care coverage as a result of an active strike, lockout, or other labor dispute.

Subject to the availability of funding, the Exchange must provide enrollment assistance to help maintain coverage for individuals and their dependents who:

- provide a self-attestation regarding loss of minimal essential health care coverage from an employer or joint labor management trust fund as a result of an active strike, lockout, or other labor dispute; and
- are eligible for coverage offered through the Exchange.

The Exchange may request, and an applicable employer, labor organization, or other appropriate representative must provide, information to determine the status of a strike, lockout, or labor dispute, its impact to coverage, and any other information necessary to conduct outreach and determine eligibility for federal and state subsidies through the Exchange.

The Exchange must establish a process for providing outreach and enrollment assistance, and may establish additional procedural requirements to administer the program.

Votes on Final Passage:

2023 Regular Session

Senate 29 19

2024 Regular Session

Senate 30 19

House 56 38 (House amended)

Senate 28 20 (Senate concurred)

Effective: June 6, 2024