

HOUSE BILL REPORT

HB 1773

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to creating a wage replacement program for certain Washington workers excluded from unemployment insurance.

Brief Description: Creating a wage replacement program for certain Washington workers excluded from unemployment insurance.

Sponsors: Representatives Cortes, Ortiz-Self, Mena, Taylor, Farivar, Berry, Walen, Ormsby, Thai, Stonier, Ryu, Ramel, Macri, Berg, Gregerson, Zahn, Simmons, Scott, Parshley, Salahuddin, Fosse, Duerr, Doglio, Pollet and Reed.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/4/25, 2/14/25 [DPS].

Brief Summary of Substitute Bill

- Establishes a Wage Replacement Program (Program) for workers who are ineligible for unemployment insurance (UI) benefits based solely on not being authorized to work in the United States at the time the work was performed or during the week for which they are seeking payments in the Program.
- Establishes a wage replacement surcharge on payroll taxes paid by employers to fund the Program, reduces a contribution paid to the administrative contingency fund in the UI system, and caps the combined total of both the surcharge and contribution at 0.08 percent.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair;

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.

Bronoske, Obras and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; McEntire.

Staff: Kelly Leonard (786-7147).

Background:

Unemployment Insurance Benefits.

The unemployment insurance (UI) system, administered by the Employment Security Department (ESD), is designed to provide partial wage replacement for workers who are unemployed. Its primary purpose is to alleviate the hardships that result from the loss of wage income during unemployment. Regular UI benefits are based on a claimant's earnings in his or her base year, adjusted based on a statutory formula. The weekly benefit amount varies from claimant-to-claimant, but can be no greater than \$1,079.

A claimant is eligible to receive UI benefits if the claimant: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is available to work and is actively searching for work. In addition, UI benefits may not be paid unless the claimant was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under certain conditions. Federal regulations require a claimant to declare under penalty of perjury whether the claimant is a citizen or national of the United States. Otherwise, the claimant must present appropriate registration documentation to verify that he or she is authorized to work in the United States, which is then confirmed by the ESD.

Funding for Unemployment Insurance Benefits.

Funding for the UI system and UI benefits are sourced from federal and state payroll taxes. The federal tax is equal to 6 percent on the first \$7,000 paid to each employee as wages during the year, which is passed down to states to administer UI benefits systems. For state taxes, most employers pay contributions to finance UI benefits and costs, which are calculated based on a percentage of the total taxable wages paid to employees. An employer's tax rate is experience-rated so that the rate is determined, in part, by the UI benefits paid to its employees. Employers also pay a social cost factor rate, which may not exceed 1.22 percent. A solvency surcharge applies if there are fewer than seven months of UI benefits in the UI Trust Fund, which may not exceed 0.2 percent. The solvency surcharge was suspended from 2021 through 2025. These taxes are deposited into the UI Trust Fund, which can only be used to pay UI benefits. An additional tax is assessed for most employers at a rate of 0.02 percent for financing special programs and 0.01 percent for financing certain administrative costs, both of which are deposited into the administrative

contingency fund.

Federal law places certain restrictions on the state UI system. To enforce these restrictions, federal funding provided to the state for the administration of the UI system is conditioned on compliance with federal law, which includes verifying the immigration status of claimants. Individual employers also receive a credit on their federal unemployment taxes so long as the state complies with applicable federal law.

Summary of Substitute Bill:

Wage Replacement Program.

Third-Party Administrator. By July 1, 2026, the ESD must select a third-party administrator to administer the Wage Replacement Program (Program). The third-party administrator must have certain specified experience and qualifications. Within one year of being awarded a contract, the third-party administrator must:

- contract with one or more community-based organizations to provide outreach to unemployed individuals who may be eligible for payments;
- screen each applicant to determine if the applicant is eligible for payments;
- make payments to eligible applicants; and
- establish internal administrative processes for receiving and reviewing applications, making payments, and processing appeals regarding payment denials, suspensions, or terminations.

The ESD must appoint an advisory committee for the purposes of reviewing issues and topics of interest related to the administration of the Program. The advisory committee must provide comment on related rule making, policies, implementation, utilization of benefits, and study relevant issues.

Eligibility. Beginning January 1, 2027, an applicant may apply for payments by filing an application with the third-party administrator. To be eligible for payments, the applicant must:

- be ineligible for UI benefits based solely on not being authorized to work in the United States at the time the work was performed or during the week for which the applicant is seeking payments;
- be a state resident and have sufficient photographic identification confirming their identity;
- have worked 680 hours in employment in their base year;
- be unemployed through no fault of their own; and
- have been unemployed for a waiting period of one week.

To be considered a state resident, the applicant must have taken actions indicating that intent to live in the state on more than a temporary or transient basis while receiving

payments. The applicant is a state resident if the applicant meets certain criteria and/or provides certain specified documentation, including, for example, having a utility bill showing the applicant's full name and Washington address, or having a state identification card showing the applicant's full name and Washington address.

An eligible applicant may qualify for weekly payments by self-attesting that they are actively seeking work in any trade, occupation, profession, or business for which they are reasonably fitted, and the applicant reports any wages or remuneration. An applicant is disqualified for payments under certain circumstances, including, for example, if the applicant left their work voluntarily without good cause or was discharged for misconduct, or if the applicant knowingly made a false statement or representation to obtain payments from the Program.

Payments. An eligible and qualified applicant must receive a weekly payment amount calculated based on the state formula for UI benefits. The maximum payments allowable under the Program are the same as those for UI benefits.

Payments may only be distributed to an eligible applicant if funds are available for this purpose. The Program may not be construed to create an entitlement or right to services and payments, or a private right of action or claim on the party of any person or applicant against the ESD or third-party administrator.

Funding for the Wage Replacement Program.

The costs for administering the Program and making payments are paid from the Washington Wage Replacement Account (Account), which is established in the bill. Payments are payable only to the extent that moneys are available in the Account.

A wage replacement surcharge must be imposed on employers required to pay UI contributions. The surcharge rate for 2026 and 2027 is 0.01 percent. The surcharge rate in subsequent years will be determined by the ESD Commissioner at the lowest rate to provide revenue during the applicable rate year that will fund administration and payments of the Program. The rate for financing special programs through the administrative contingency fund is reduced from 0.02 percent to 0.01 percent. The combined rate of the wage replacement surcharge and the rate for financing special programs may not exceed 0.08 percent.

Expenditures from the Account may be used only for providing payments to eligible and qualified applicants, contracting with community-based organizations to notify individuals who may be eligible for payments, administration of the advisory committee, ESD's administrative costs, and third-party administrators.

Restrictions on Collecting and Disclosing Information.

In administering the Program, the ESD and third-party administrator are prohibited from taking specified actions, including:

- soliciting from the applicant, orally or in written form, an applicant's nationality, race, ethnicity, or place of birth;
- indicating in its records which documents the applicant used to prove their age or identity;
- compelling the applicant to admit in writing whether they have proof of lawful presence in the United States or to explain why they are ineligible for a social security number;
- contacting the applicant's current, former, or prospective employers including, but not limited to, for the purposes of verifying employment status, except for the purposes of verifying wages; and
- soliciting or attempting to ascertain an applicant's immigration or citizenship status, except as necessary for the third-party administrator to determine whether an applicant is excluded from UI benefits and eligible for payments in the Program.

The third-party administrator must destroy all records containing information that was provided by an applicant or collected by the ESD to verify eligibility for the Program within 15 days of an applicant no longer using the Program. Any information or records concerning an applicant or employing unit obtained by the ESD or third-party administrator for the purposes of administering the Program are confidential and not subject to disclosure under the Public Records Act, unless an exception applies.

Substitute Bill Compared to Original Bill:

The substitute bill replaces the use of the term "benefits" with "payments," and replaces the use of the term "claimant" with "applicant," and adds definitions for both terms. The definition of "employment" is modified to provide that it excludes certain forms of services that are also excluded under the UI system.

The substitute bill limits eligibility for the Program to persons who are ineligible for UI benefits based solely on not being authorized to work in the United States at the time the work was performed or during the week for which they are seeking payments. The substitute bill also removes the eligibility pathway based on having earned wages in the base year equal to 680 times the minimum wage, and otherwise limits eligibility to persons who have worked at least 680 hours in their base year. The third-party administrator is directed to establish internal administrative processes for receiving and reviewing applications, making payments, and processing appeals regarding payment denials, suspensions, and terminations. A person may apply for payments by filing an application directly with the third-party administrator (rather than allowing a person to file an application only if the claimant provides the ESD with sufficient evidence that the person is ineligible for UI benefits).

The substitute bill specifies that the Program may not be construed to create an entitlement

or right to services and payments, or a private right of action or claim on the party of any person or applicant against the ESD or third-party administrator. All payments from the Program are subject to the availability of funds and other conditions established in the bill.

The substitute provides that the third-party administrator may solicit and attempt to ascertain an applicant's immigration or citizenship status to the extent it is necessary to determine eligibility for payments.

The substitute bill codifies the new sections in a new title in the code, Title 50C RCW, rather than codifying those sections in the Employment Security Act, Title 50 RCW.

The intent section is removed.

Appropriation: None.

Fiscal Note: Requested on February 14, 2025.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Workers who are excluded from the UI system, particularly undocumented workers, are critical to the economy in the state. They pay their taxes, and their employers also pay UI taxes, even if they are ineligible for benefits. Undocumented workers have paid hundreds of millions of dollars into the UI Trust Fund. Yet when they become unemployed through no fault of their own, they are unable to access the same benefits as other workers. This makes these workers incredibly vulnerable. Many wipe out their savings, become insecure in their housing, and are unable to meet the basic needs of their children. This bill creates the Program to fill this critical gap and provide a much deserved safety net to these persons and their families. The Program is neutral in terms of costs to workers and employers. The bill diverts payroll tax moneys to pay for the Program. By using this existing funding mechanism, it has no additional costs to the state or employers.

(Opposed) Employers understand the goal of trying to support these workers, but there are significant concerns with the funding mechanism. While it is intended to be cost neutral in the short term, it diverts money from other programs administered by the ESD. It puts pressure on existing resources during a financially insecure time. These funds are needed to support the UI system. The bill also creates a situation where certain workers are accessing payments funded by payroll taxes without the corresponding impact to the employers' experience rating. This is distinct from how UI benefits operate where employers who lay off more workers are required to pay more in taxes. This surcharge will not operate this way, which lets those employers avoid feeling the same pain as others. The UI tax structure

is not the appropriate means of achieving the goal of this bill.

Persons Testifying: (In support) Representative Julio Cortes, prime sponsor; Angela F.; Irvin E.; Grace S., Interpreter; Sasha Wasserstrom, Washington Immigrant Solidarity Network; and April Sims, Washington State Labor Council, AFL-CIO.

(Opposed) Lindsey Hueer, Association of Washington Business; and Carolyn Logue.

Persons Signed In To Testify But Not Testifying: None.