

SENATE BILL REPORT

SB 5626

As Reported by Senate Committee On:
Labor & Commerce, February 21, 2025

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: Senators Saldaña, Lovelett, Valdez, Cortes, Alvarado, Orwall, Kauffman, Slatter, Dhingra, Frame, Hasegawa, Nobles, Stanford and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 2/04/25, 2/21/25 [DPS-WM, DNP].

Brief Summary of First 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.
- Creates an advisory committee to review issues related to wage replacement.

SENATE COMMITTEE ON LABOR & COMMERCE

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.

Majority Report: That Substitute Senate Bill No. 5626 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Saldaña, Chair; Conway, Vice Chair; Alvarado, Ramos and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; MacEwen and Schoesler.

Staff: Susan Jones (786-7404)

Background: Unemployment Insurance Benefits. The Employment Security Department (ESD) administers Washington State's Unemployment Insurance Program. An unemployed individual is eligible to receive unemployment insurance (UI) benefits if the individual:

- worked at least 680 hours in the base year;
- was separated from employment through no fault of the claimant's or quit work for a specified good cause; and
- is able and available to work and is actively searching for suitable work.

Under Washington law, 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 U.S. under certain conditions. Federal law restricts the payment of state unemployment benefits to undocumented workers in two ways. First, if an employee is not legally authorized to work in the U.S. at the time they are working for an employer, that work cannot be used as the basis for a UI benefits claim. Second, employees who are not legally authorized to work in the U.S. at the time of filing their UI benefits claim cannot be considered available to work.

Federal law requires a claimant to declare under penalty of perjury whether the claimant is a citizen or national of the U.S. Otherwise, the claimant must present appropriate registration documentation to verify their authorization to work in the U.S., which is then confirmed by ESD. Federal law places certain restrictions on the state UI benefits system. To enforce these restrictions, federal funding provided to the state administering the UI benefits system is conditioned upon compliance with federal law, which includes verifying the immigration status of claimants. Individual employers also receive a credit on their federal unemployment taxes if the state complies with applicable federal law.

Unemployment Insurance Taxes. The UI benefits system is funded by a federal and state unemployment tax, paid by most employers. 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.

The state tax includes an experience rated tax based on an average of the employer's layoff history over the past four fiscal quarters. Employers may 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. Additional taxes are assessed for most employers at a rate of 0.02 percent for special programs and 0.01 percent in the administrative contingency fund. State taxes are deposited into the UI trust fund, which can only be used to pay UI benefits.

Employers pay federal and state UI taxes on services performed by most undocumented workers unless performed by certain workers described in the definition of immigrant in the Federal Immigration and Naturalization Act. Therefore, unless an exemption applies or the employer is paying the worker privately, the employer must pay taxes on such services.

Summary of Bill (First Substitute): Wage Replacement Account and Surcharge. The Washington Wage Replacement Account is created and will include a wage replacement surcharge on certain employers subject to UI contributions. The surcharge rate for 2026 and 2027 is 0.01 percent. Thereafter will be determined by the ESD commissioner at the lowest rate to provide revenue during the applicable rate year that will fund administration and benefits of the Wage Replacement Program. The special programs administrative rate is reduced to 0.01 percent from 0.02 percent. The combined rate of wage replacement rate and the rate special programs administrative rate may not exceed 0.08 percent.

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

Third-Party Administrator. By July 1, 2026, ESD must select a third-party administrator, who must have experience building and operating financial benefit systems that are proven to be accessible and responsive to the target population and demonstrated mechanisms to prevent disclosure of confidential or private information. ESD may adopt rules for selecting and replacing the third-party administrator.

Each quarter, to the extent allowed by the U.S. Department of Labor, ESD must allocate the money in the wage replacement account to one or more third-party administrators for the purpose of providing payments to eligible and qualified claimants and for contracting with the community-based organizations. The third-party administrator must:

- contract with community-based organizations to provide outreach to unemployed individuals who may be eligible for payments;
- screen each applicant for payments to determine if the applicant is an eligible individual;
- pay payments to eligible individuals; and
- establish internal administrative processes for receiving and reviewing applications, making payments, and processing appeals.

Advisory Committee. ESD must appoint an advisory committee to review issues related to

wage replacement.

The advisory committee must provide comment on implementation of the Wage Replacement Program, utilization of the Program, selection and performance of the third-party administrator, and study issues the advisory committee determines to require its consideration.

Wage Replacement Claims Process. Beginning January 1, 2027, a person may apply for payments. 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 resident of the state of Washington and has sufficient photographic identification confirming their identity;
- worked 680 hours in employment in the claimant's base year;
- have been unemployed through no fault of their own; and
- have been unemployed for a waiting period of one week.

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.

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 part of any person or applicant against the ESD or third-party administrator.

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.

The definition of employment excludes services performed by a nonresident temporarily present under certain visas. Other definitions are provided, including for the term "resident of the state of Washington."

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, 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, or both.

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

- Replaces terms "benefits" with "payments," "claimant" with "applicant," and adds definitions for both terms.
- Specifies that the third-party administrator (TPA) is selected to administer and implement the Program, and establish internal administrative processes for receiving and reviewing applications, making payments, and processing appeals regarding payment denials, suspensions, or terminations.
- Specifies that the TPA may solicit and attempt to ascertain an applicant's immigration or citizenship status to the extent it is necessary to determine eligibility for payments.
- Allows a person to apply for payments by filing an application directly with the TPA, rather than allowing a person to file an application only if the claimant provides the Employment Security Department (ESD) with sufficient evidence that the claimant is ineligible for UI benefits.
- 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.
- Removes the eligibility pathway based on having earned wages in the base year equal

- to 680 times the minimum wage, limiting eligibility to persons who have worked at least 680 hours in their base year.
- Specifies that the bill 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 TPA.
 - Provides that all payments from the Program are subject to the availability of funds and other conditions established in the bill, and removes language stating that the ESD and TPA are not liable for amounts exceeding the availability of funds.
 - Codifies the new sections in a new title in the code, Title 50C RCW, rather in the Employment Security Act, Title 50 RCW.
 - Reorganizes certain sections and subsections and adds cross-references where appropriate.
 - Removes the intent section.

Appropriation: None.

Fiscal Note: Requested on February 1, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Job loss affects everyone regardless of immigration status. The bill would create a wage replacement program for Washington's undocumented worker population, creating a crucial safety net for communities if they lose their jobs through no fault of their own. With the threat of mass deportations and workplace raids with the new federal administration, it is pivotal for the Washington State Legislature demonstrate their support and protection of our state's most vulnerable workers. Ensuring undocumented workers have a safety net with a wage replacement program if they experience job loss will ensure that they can keep themselves, their families, and their communities afloat.

As we face a massive budget deficit, this program will be funded by existing employer tax contributions, a diversion method that does not come from the general fund. This program would be administered through a third-party administrator with the goal of maintaining the privacy of undocumented workers' and employers' information and data. This makes the program more cost effective and less costly to the state.

CON: We are neutral on the policy of whether or not to provide benefits to the undocumented workers in the state. The only opposition is regarding the funding mechanism. We appreciate the intent to make this cost neutral on business by decreasing one rate on private sector businesses and increasing an imposed a surcharge of an equivalent amount. The problem is the funds that employers are already paying into the UI system go

to pay for ESD's work, including critical job supports for people that are unemployed in the UI system and are looking for work. Those requirements are still going to have to be met. In ESD's 2025 decision package, they requested to actually raise that fund because the federal grant money is proportionally not taking care of the amount of costs that we have. There is already a cost pressure on that account and result in the UI rate increase for employers the future.

There is a natural tension that occurs in unemployment insurance to not lay off employees. This removes those employers. If you lay off employees, you pay an experience rate that's higher as a result of the layoff. The employer pays premiums in for the workers, but their experience rate is not impacted. The use of the unemployment insurance fund is the concern.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Leonidas Salazar; Soumyo Lahiri-Gupta, OneAmerica; April Sims, Washington State Labor Council, AFL-CIO.

CON: Lindsey Hueer, Association of Washington Business; Carolyn Logue, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: PRO: John Traynor, washington state labor council, afl-cio.