

# SENATE BILL REPORT

## SB 5626

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As of February 4, 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.

**Brief Summary of Bill**

- Establishes a Wage Replacement Program to provide benefits to claimants, who are ineligible for unemployment benefits and who meet certain qualifications.
- Requires the Employment Security Department to select a third-party administrator for the Wage Replacement Program.
- Creates a Wage Replacement Account to be funded by a wage replacement surcharge on employers and reduces an unemployment administrative rate contribution.
- Creates an advisory committee to review issues related to wage replacement.

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**SENATE COMMITTEE ON LABOR & COMMERCE**

**Staff:** Susan Jones (786-7404)

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*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.*

**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:** 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 benefits to eligible and qualified claimants, contracting with community-based organizations to notify individuals who may be eligible for benefits, administration of the advisory committee, ESD's administrative costs, and third-party administrators.

Wage replacement benefits are due and payable only to the extent that moneys are available in the funds distributed to the third-party administrator from the Washington Wage Replacement Account. The third-party administrator, ESD, and the state are not liable for any amount exceeding such sums.

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 benefits to eligible and qualified claimants and for contracting with community-based organizations to notify individuals who may be eligible for this program. The third-party administrator must:

- contract with community-based organizations to provide outreach to unemployed individuals who may be eligible for benefits;
- screen each applicant for benefits to determine if the applicant is an eligible individual;
- pay benefits to eligible individuals; and
- establish an appeal process for benefit denials, suspensions, or terminations.

Advisory Committee. ESD must appoint an advisory committee to review issues related to wage replacement. The advisory committee includes 13 members:

- three members representing immigrants' interests;
- two members each representing workers' interests and employer's interests in unemployment from a list submitted by recognized statewide organizations of employees and of employers;
- three ex officio members, without a vote, representing the state commissions on

- African American affairs, Hispanic affairs, and Asian Pacific American affairs; and
- one ex officio ESD member, without a vote, who will serve as the chair.

ESD must comply with the requirements that an advisory committee include least three individuals from underrepresented populations who have related direct lived experience in making appointments. The advisory committee must provide comment on implementation of the Wage Replacement Program, utilization of benefits, 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 claimant may apply for benefits with respect to any week of unemployment in the claimant's benefit year if the claimant provides ESD with sufficient evidence that the claimant is ineligible for UI benefits. The claimant must meet the eligibility and qualification requirements.

The claimant, who had provided sufficient evidence of being ineligible for UI benefits, must file an application for benefits with the third-party administrator, including information verifying the claimant:

- is 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 or earned wages during the claimant's base year equal to 680 times the state minimum wage in effect during the first quarter of the claimant's base year;
- is unemployed through no fault of their own; and
- has been unemployed for a waiting period of one week.

If the claimant's wages are not verified by employer reports provided by the claimant, the third-party administrator must request additional information or documentation to verify the earned wages. If the claimant fails to provide sufficient information, the claimant may be denied benefits. The third-party administrator must make the final decision on whether the claimant is eligible for benefits.

If the third-party administrator determines the claimant is eligible for benefits, the claimant may qualify for weekly benefits by self-attesting that the claimant is actively seeking work in any trade, occupation, profession, or business for which the claimant is reasonably fitted; and any wages or remuneration received. Actively seeking work means participating in job search, educational, or professional development activities. The third-party administrator may take reasonable steps to confirm the claimant's job search, educational, or professional development activities, and current unemployment status.

A claimant who is eligible and qualified for benefits must receive a weekly benefit amount equal to the weekly benefit amount calculated for UI benefits by the third-party administrator. UI benefits must be payable to any eligible and qualified claimant during the claimant's benefit year in a maximum amount equal to the lesser of 26 times the weekly

benefit amount or one-third of the claimant's base year wages.

Any denial of UI benefits must be promptly issued by written notice, including the reasons for the denial. A claimant is disqualified for UI benefits if the third-party administrator finds that a claimant:

- left the claimant's most recent work voluntarily without good cause;
- was discharged for misconduct or gross misconduct connected with the claimant's most recent work;
- knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under this chapter; or
- for any week a claimant has received, is receiving, or will receive UI, paid family and medical leave, workers' compensation benefits or other similar federal benefits.

Any information or records concerning a claimant or employing unit obtained by ESD or the third-party administrator pursuant to the administration of this chapter must be private and confidential and is exempt from the Public Records Act. ESD and the third-party administrator are prohibited from taking certain actions with respect to obtaining certain information or contacting current and former employers. The third-party administrator must create a process by which claimants can notify the administrator of payment errors and for collection and forgiveness of such overpayments.

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.

Legislative findings are provided that many immigrant workers are ineligible for unemployment insurance and that legislative intent is to establish a wage replacement program.

**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:** 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.