
HOUSE BILL 2914

State of Washington

52nd Legislature

1992 Regular Session

By Representatives Heavey, Sprenkle, Fuhrman, Wineberry, Jones, Vance, Lisk, Silver and O'Brien; by request of Employment Security Department

Read first time 01/31/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to unemployment compensation administration;
2 amending RCW 50.13.040, 50.16.010, and 50.20.190; creating new
3 sections; and prescribing penalties.

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

5 **Sec. 1.** RCW 50.13.040 and 1977 ex.s. c 153 s 4 are each amended to
6 read as follows:

7 (1) An individual shall have access to all records and information
8 concerning that individual held by the department of employment
9 security, unless the information is exempt from disclosure under RCW
10 42.17.310.

11 (2) An employing unit shall have access to its own records and to
12 any records and information relating to a benefit claim by an
13 individual if the employing unit is either the individual's last
14 employer or is the individual's base year employer.

1 (3) The commissioner may grant an employer access to claimant
2 information or a claimant access to employer information if the access
3 is necessary for the administration of this title.

4 (4) An employing unit shall have access to general summaries of
5 benefit claims by individuals whose benefits are chargeable to the
6 employing unit's experience rating or reimbursement account.

7 **Sec. 2.** RCW 50.16.010 and 1991 sp.s. c 13 s 59 are each amended to
8 read as follows:

9 There shall be maintained as special funds, separate and apart from
10 all public moneys or funds of this state an unemployment compensation
11 fund, an administrative contingency fund, and a federal interest
12 payment fund, which shall be administered by the commissioner
13 exclusively for the purposes of this title, and to which RCW 43.01.050
14 shall not be applicable. The unemployment compensation fund shall
15 consist of

16 (1) all contributions and payments in lieu of contributions
17 collected pursuant to the provisions of this title,

18 (2) any property or securities acquired through the use of moneys
19 belonging to the fund,

20 (3) all earnings of such property or securities,

21 (4) any moneys received from the federal unemployment account in
22 the unemployment trust fund in accordance with Title XII of the social
23 security act, as amended,

24 (5) all money recovered on official bonds for losses sustained by
25 the fund,

26 (6) all money credited to this state's account in the unemployment
27 trust fund pursuant to section 903 of the social security act, as
28 amended,

1 (7) all money received from the federal government as reimbursement
2 pursuant to section 204 of the federal-state extended compensation act
3 of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304), and

4 (8) all moneys received for the fund from any other source.

5 All moneys in the unemployment compensation fund shall be
6 commingled and undivided.

7 The administrative contingency fund shall consist of all interest
8 on delinquent contributions collected pursuant to this title, all fines
9 and penalties collected pursuant to the provisions of this title, all
10 sums recovered on official bonds for losses sustained by the fund, and
11 revenue received under RCW 50.24.014: PROVIDED, That all fees, fines,
12 forfeitures and penalties collected or assessed by a district court
13 because of the violation of a state law shall be remitted as provided
14 in chapter 3.62 RCW as now exists or is later amended. Moneys
15 available in the administrative contingency fund, other than money in
16 the special account created under RCW 50.24.014, shall be expended upon
17 the direction of the commissioner, with the approval of the governor,
18 whenever it appears to him or her that such expenditure is necessary
19 for:

20 (a) The proper administration of this title and no federal funds
21 are available for the specific purpose to which such expenditure is to
22 be made, provided, the moneys are not substituted for appropriations
23 from federal funds which, in the absence of such moneys, would be made
24 available.

25 (b) The proper administration of this title for which purpose
26 appropriations from federal funds have been requested but not yet
27 received, provided, the administrative contingency fund will be
28 reimbursed upon receipt of the requested federal appropriation.

29 (c) The proper administration of this title for which compliance
30 and audit issues have been identified that establish federal claims

1 requiring the expenditure of state resources and that do not allow the
2 use of federal resources for the resolution of compliance and audit
3 issues. This compliance resource shall be used to resolve federal
4 claims by: Substitution of existing nonfederal program resources, the
5 provision of services for eligible participants to federal grant
6 programs, or direct payment to the federal government.

7 First priority for the use of the compliance resource shall be to
8 provide services to eligible participants within the state. Second
9 priority shall be to provide nonfederal substitution costs through the
10 operation of programs with administrative contingency fund resources.
11 Last priority shall be the direct payment of funds to the federal
12 government for the resolution of audit or compliance issues.

13 Money in the special account created under RCW 50.24.014 may only
14 be expended, after appropriation, for the purposes specified in RCW
15 74.09.035, 74.09.510, 74.09.520, and 74.09.700.

16 **Sec. 3.** RCW 50.20.190 and 1991 c 117 s 3 are each amended to read
17 as follows:

18 (1) An individual who is paid any amount as benefits under this
19 title to which he or she is not entitled shall, unless otherwise
20 relieved pursuant to this section, be liable for repayment of the
21 amount overpaid. The department shall issue an overpayment assessment
22 setting forth the reasons for and the amount of the overpayment. The
23 amount assessed, to the extent not collected, may be deducted from any
24 future benefits payable to the individual: PROVIDED, That in the
25 absence of fraud, misrepresentation, or willful nondisclosure, every
26 determination of liability shall be mailed or personally served not
27 later than two years after the close of the individual's benefit year
28 in which the purported overpayment was made unless the merits of the
29 claim are subjected to administrative or judicial review in which event

1 the period for serving the determination of liability shall be extended
2 to allow service of the determination of liability during the six-month
3 period following the final decision affecting the claim.

4 (2) The commissioner may waive an overpayment if the commissioner
5 finds that said overpayment was not the result of fraud,
6 misrepresentation, willful nondisclosure, or fault attributable to the
7 individual and that the recovery thereof would be against equity and
8 good conscience: PROVIDED, HOWEVER, That the overpayment so waived
9 shall be charged against the individual's applicable entitlement for
10 the eligibility period containing the weeks to which the overpayment
11 was attributed as though such benefits had been properly paid.

12 (3) Any assessment herein provided shall constitute a determination
13 of liability from which an appeal may be had in the same manner and to
14 the same extent as provided for appeals relating to determinations in
15 respect to claims for benefits: PROVIDED, That an appeal from any
16 determination covering overpayment only shall be deemed to be an appeal
17 from the determination which was the basis for establishing the
18 overpayment unless the merits involved in the issue set forth in such
19 determination have already been heard and passed upon by the appeal
20 tribunal. If no such appeal is taken to the appeal tribunal by the
21 individual within thirty days of the delivery of the notice of
22 determination of liability, or within thirty days of the mailing of the
23 notice of determination, whichever is the earlier, said determination
24 of liability shall be deemed conclusive and final. Whenever any such
25 notice of determination of liability becomes conclusive and final, the
26 commissioner, upon giving at least twenty days notice by certified mail
27 return receipt requested to the individual's last known address of the
28 intended action, may file with the superior court clerk of any county
29 within the state a warrant in the amount of the notice of determination
30 of liability plus a filing fee of five dollars. The clerk of the

1 county where the warrant is filed shall immediately designate a
2 superior court cause number for the warrant, and the clerk shall cause
3 to be entered in the judgment docket under the superior court cause
4 number assigned to the warrant, the name of the person(s) mentioned in
5 the warrant, the amount of the notice of determination of liability,
6 and the date when the warrant was filed. The amount of the warrant as
7 docketed shall become a lien upon the title to, and any interest in,
8 all real and personal property of the person(s) against whom the
9 warrant is issued, the same as a judgment in a civil case duly docketed
10 in the office of such clerk. A warrant so docketed shall be sufficient
11 to support the issuance of writs of execution and writs of garnishment
12 in favor of the state in the manner provided by law for a civil
13 judgment. A copy of the warrant shall be mailed to the person(s)
14 mentioned in the warrant by certified mail to the person's last known
15 address within five days of its filing with the clerk.

16 (4) On request of any agency which administers an employment
17 security law of another state, the United States, or a foreign
18 government and which has found in accordance with the provisions of
19 such law that a claimant is liable to repay benefits received under
20 such law, the commissioner may collect the amount of such benefits from
21 the claimant to be refunded to the agency. In any case in which under
22 this section a claimant is liable to repay any amount to the agency of
23 another state, the United States, or a foreign government, such amounts
24 may be collected without interest by civil action in the name of the
25 commissioner acting as agent for such agency if the other state, the
26 United States, or the foreign government extends such collection rights
27 to the employment security department of the state of Washington, and
28 provided that the court costs be paid by the governmental agency
29 benefiting from such collection.

1 (5) Any employer who is a party to a back pay award or settlement
2 due to loss of wages shall, within thirty days of the award or
3 settlement, report to the department the amount of the award or
4 settlement, the name and social security number of the recipient of the
5 award or settlement, and the period for which it is awarded. When an
6 individual has been awarded or receives back pay, for benefit purposes
7 the amount of the back pay shall constitute wages paid in the period
8 for which it was awarded. For contribution purposes, the back pay
9 award or settlement shall constitute wages paid in the period in which
10 it was actually paid. The following requirements shall also apply:

11 (a) The employer shall reduce the amount of the back pay award or
12 settlement by an amount determined by the department based upon the
13 amount of unemployment benefits received by the recipient of the award
14 or settlement during the period for which the back pay award or
15 settlement was awarded;

16 (b) The employer shall pay to the unemployment compensation fund,
17 in a manner specified by the commissioner, an amount equal to the
18 amount of such reduction;

19 (c) The employer shall also pay to the department any taxes due for
20 unemployment insurance purposes on the entire amount of the back pay
21 award or settlement notwithstanding any reduction made pursuant to (a)
22 of this subsection;

23 (d) If the employer fails to reduce the amount of the back pay
24 award or settlement as required in (a) of this subsection, the
25 department shall issue an overpayment assessment against the recipient
26 of the award or settlement in the amount that the back pay award or
27 settlement should have been reduced; and

28 (e) If the employer fails to pay to the department an amount equal
29 to the reduction as required in (b) of this subsection, the department
30 shall issue an assessment of liability against the employer which shall

1 be collected pursuant to the procedures for collection of assessments
2 provided herein and in RCW 50.24.110.

3 (6) When an individual fails to repay an overpayment assessment
4 that is due and fails to arrange for satisfactory repayment terms, the
5 commissioner shall impose an interest penalty of one percent of the
6 outstanding balance for each month (~~that payments are not made in a~~
7 ~~timely fashion~~). Interest shall accrue immediately on overpayments
8 assessed pursuant to RCW 50.20.070 and shall be imposed when the
9 assessment becomes final. For any other overpayment, interest shall
10 accrue when the individual has missed two or more of their monthly
11 payments either partially or in full. The interest penalty shall be
12 used to fund detection and recovery of overpayment and collection
13 activities.

14 NEW SECTION. Sec. 4. The employment security overpayment
15 interest account is created in the custody of the state treasurer. All
16 receipts from interest assessed against unemployment insurance
17 claimants shall be deposited into the account. Moneys in the account
18 may be spent only after appropriation. Expenditures from the account
19 may be used only to fund detection and recovery of overpayment and
20 collection activities.

21 NEW SECTION. Sec. 5. Sections 3 and 4 of this act apply to
22 individuals with outstanding overpayment balances on and after July 1,
23 1992.

24 NEW SECTION. Sec. 6. If any part of this act is found to be
25 in conflict with federal requirements that are a prescribed condition
26 to the allocation of federal funds to the state, the conflicting part
27 of this act is inoperative solely to the extent of the conflict and

1 with respect to the agencies directly affected, and this finding does
2 not affect the operation of the remainder of this act in its
3 application to the agencies concerned. The rules under this act shall
4 meet federal requirements that are a necessary condition to the receipt
5 of federal funds by the state.