

HOUSE BILL REPORT

ESSB 5702

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to unemployment insurance.

Brief Description: Regulating unemployment insurance.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Prentice, Wojahn and Franklin; by request of Employment Security Department).

Brief History:

Reported by House Committee on:
Commerce & Labor, April 2, 1993, DP.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members:
Representatives Heavey, Chair; Conway; King; Springer; and
Veloria.

Minority Report: Do not pass. Signed by 3 members:
Representatives Lisk, Ranking Minority Member; Chandler,
Assistant Ranking Minority Member; and Horn.

Staff: Chris Cordes (786-7117).

Background:

Disqualification from unemployment insurance benefits

To be eligible for unemployment compensation, an unemployed person must register for work at an employment office, be able and willing to accept suitable work, and be actively searching for work. The claimant will be disqualified for benefits if he or she voluntarily quits a job without good cause or was terminated for misconduct connected with work. The employee is disqualified until the employee has returned to work and earned wages at least equal to his or her weekly benefit amount in five different weeks.

Employees who quit work for good cause are not disqualified from benefits. Good cause includes accepting a bona fide offer of work or quitting work because of the employee's illness or disability, or the illness, disability, or death of a family member. In other cases, to determine whether an

individual has left work without good cause, the commissioner of the Employment Security Department must consider only work-connected factors, such as the degree of risk to health, safety, and morals, the employee's physical fitness for the work and ability to perform the work, and other factors deemed pertinent. However, good cause is not established for leaving because of (1) the distance to work when the distance was known at the time of accepting employment, and the distance is customarily traveled by employees in that job classification and labor market; or (2) the presence of other significant work factors generally known and present at the time of accepting employment.

Special requalification provisions apply if the reason for leaving work involves marital status or domestic responsibilities, such as following a spouse to another location. In this case, the employee may either work and earn the weekly benefit amount in five different weeks or report to the Employment Security Department for 10 weeks while searching for work.

"Misconduct" is not defined in the statute, but has been interpreted through court cases. The Washington Supreme Court has used the following test for on-the-job misconduct: (1) the employer's rule that was violated is reasonable; (2) the rule is connected with work and compliance with rule is consistent with legitimate expectations; and (3) the employee's conduct violated the rule.

If the claimant was terminated because of a felony or gross misdemeanor conviction, or because of admitting the commission of a felony or gross misdemeanor to a competent authority, the claimant may not receive any benefits based on base year wage credits earned before the termination.

Until 1988, the Employment Security Department determined a claimant's benefit eligibility under the "last employer rule." The rule requires the department to review only the reasons the claimant left his or her last job. In a 1988 court decision, the Washington Court of Appeals disapproved the department's policy based on the last employer rule. The court found that a hospital employee who had been discharged for theft of hospital property, and who had been subsequently employed and terminated from other jobs, could not base eligibility on the wage credits accrued during employment with the hospital even though the job termination for theft was not the employee's last job separation. The department's determination that benefit charges would be made against the hospital was overturned.

After the Othello case was decided, the department began reviewing all of a claimant's separations from employment

during the base year for potentially disqualifying separations. The department determined that this procedure created administrative difficulties. The department now reviews previous job separations if a felony or gross misdemeanor is involved or if the last job would not have requalified the claimant for benefits if a disqualification had been applied.

Social security pension deduction

An unemployment compensation claimant's benefits are reduced by 50 percent of the amount of the federal social security retirement pension that the claimant receives. Although federal law requires that most pensions based on prior employment be deducted from unemployment benefits, it no longer requires any deduction for social security pensions.

Temporary disability

To be eligible for unemployment insurance benefits, a claimant must have worked at least 680 hours in his or her base year - the first four of the last five completed calendar quarters preceding his or her application for benefits. For claimants who have left work because of temporary total disability resulting from a work-related injury or a crime victim injury, a special base year may be established that consists of the first four of the last five completed calendar quarters immediately preceding the start of the disability. This special base year allows the claimant to use wage credits that were earned before the disability began. However, the claimant must use the wage credits within six years of the start of the disability.

Unemployment insurance information access

The unemployment insurance system has confidentiality requirements for release of employer and claimant information. Claimant information is available only to the claimant's last employer or a base year employer.

Employment Security Department compliance and audit resolution

Federal compliance audits of federal programs administered by the Employment Security Department may result in charges to the state that must be repaid from nonfederal sources. The department's main source of nonfederal funds is the administrative contingency fund.

Maximum weekly benefits

Unemployment insurance benefits are calculated according to a statutory formula, but a claimant may not receive a weekly benefit of more than 60 percent of the state average weekly wage (currently \$273).

Interest on unemployment insurance fraud overpayments

Overpayment assessments are subject to an interest penalty of 1 percent for each month that payments are delinquent. If the overpayment resulted from fraud, the interest on the delinquent account accrues immediately. For other overpayments, the interest is imposed when the individual owing the payment has missed two or more payments.

Federal-state extended benefits program

The federal-state extended benefits program permits the state to "trigger on" for additional weeks of unemployment during high unemployment periods. The unemployment rate that is used to determine whether these benefits are payable is established in federal law. The required trigger is an insured unemployment rate of at least 5 percent that is at least equal to 120 percent of the average rate over a specified corresponding earlier period. Federal law also permits the states to adopt an optional trigger.

To qualify for these benefits, a claimant must have base year wages of at least 40 times his or her weekly benefit amount. An alternative test is also permitted under federal law.

The federal-state extended benefits program requires claimants to meet special eligibility criteria, including requirements for applying for and accepting suitable work, and for making work search efforts. These special criteria were suspended under the 1992 federal amendments for weeks of unemployment beginning March 6, 1993, and ending before January 1, 1995.

Charging benefits to experience rating accounts

Employers covered under the unemployment compensation system have an experience rating account. Benefits paid to claimants are charged to the account of their base year employers. Certain benefit payments, however, are not charged to an employer's account.

Tax schedule

The unemployment insurance contribution rate for employers is determined by a tax schedule. The schedule includes

schedules A through F, with 20 rate classes in each schedule. The rates range from 5.4 percent to 0.48 percent.

The lowest tax schedule, schedule A, is in effect if the fund balance ratio is 3.4 or higher.

Tax rate for delinquent employers

Employers who are delinquent in paying unemployment contributions are not qualified to be in the tax schedule. These employers pay basic contributions at a rate of 5.4 percent.

Summary of Bill:

Disqualification from unemployment insurance benefits

The following changes for disqualifying and requalifying for unemployment insurance benefits apply to job separations that occur after July 3, 1993:

The provisions that disqualify an employee because of voluntarily quitting work, because of work-connected misconduct, or because of a felony or gross misdemeanor conviction are amended to apply only to the claimant's most recent job separation. An employee who leaves work to relocate for employment outside the existing labor market with his or her spouse is not considered to have left work without good cause.

"Misconduct" is defined as an employee's act in willful disregard of employer's interest where the effect is to harm the business.

To requalify for unemployment insurance benefits, a person who voluntarily quits work without good cause, who refuses to apply for or accept suitable work, or who is discharged for misconduct is disqualified for five weeks and must obtain bona fide work and earn wages of not less than five times his or her weekly benefit amount.

The standard for determining when an individual has left work without good cause is amended. In addition to other work-connected factors, the distance to work and transportation available must be considered. Good cause is established if the employee quits because the hours of work offered, the pay, the distance to be traveled to work, or any other significant work factor has deteriorated by more than 10 percent, unless the reduction has been specifically agreed to in writing.

The provision that disqualifies an employee from receiving base year credits because of a work-connected felony or gross misdemeanor is amended to:

(1) delete the provision that disqualifies the employee from receiving any benefits for which base year credits are earned in employment prior to the discharge and substitute a provision requiring cancellation of the hourly wage credits based on the employment from which discharge occurred;

(2) add requirements that the employer report the felony or gross misdemeanor admission or conviction within six months and that the employee disclose, when applying for benefits, any felony or gross misdemeanor conviction occurring in the previous two years; and

(3) delete the provision defining the period when the employee's disqualification begins and substitute a provision permitting the recovery of benefits paid in error based on wage credits that should have been removed from the base year.

Social security pension deductions

For weeks claimed after July 3, 1993, no deduction will be made from unemployment compensation benefits because of the claimant's federal social security pension to take into account the claimant's contribution to the social security pension program.

Temporary disability

Effective January 1, 1994, persons who are reentering the work force after an absence of 13 weeks or more resulting from temporary total physical disability because of a nonwork-related injury or illness are allowed to establish a special base year using the wage credits that were earned in the first four of the last five completed calendar quarters before the start of the disability. The claimant must file an application with the Employment Security Department within 26 weeks after the disability commenced. A statement from the attending physician may be used to satisfy the filing requirement. The department may examine medical information related to the disability and, in case of appeal, the base year employer may also examine the medical information and require a second opinion from a health care provider selected by the employer.

Unemployment insurance information access

An employer is entitled to information relating to a decision to allow or deny benefits if the decision is based on employment or an offer of employment with the employer or on material information provided by the employer.

Employment Security Department compliance and audit resolution

Money from the administrative contingency fund may be spent to resolve federal claims arising from compliance and audit issues requiring payment from state resources. In the following priority, federal claims may be resolved by: (1) providing services to eligible participants within the state; (2) providing substitute services or program support; or (3) making direct payment to the federal government.

Maximum weekly benefits

For new claims filed after July 3, 1993, the maximum weekly benefit that a claimant may receive is changed from 60 percent of the state average weekly wage to 70 percent of the state average weekly wage.

Interest on unemployment insurance fraud overpayments

Beginning January 1, 1994, an interest penalty of 1 percent per month is imposed on overpayment balances that result from fraud, without regard to whether the payments are delinquent. Interest is imposed when the overpayment assessment becomes final.

All money collected as interest on overpayment assessments will be deposited in the administrative contingency account. The money may be used only for overpayment activities.

Federal-state extended benefits program

For benefits for weeks of unemployment beginning after March 3, 1993 (effective for new extended benefit claims filed after October 2, 1993), an optional trigger for the federal-state unemployment benefits program is adopted. The seasonally adjusted total unemployment rate (SATUR) must average at least 6.5 percent for the most recent three months and be at least 110 percent of the SATUR for a specified corresponding earlier period. Under this trigger, up to 13 weeks of extended benefits are payable. If the SATUR is 8 percent or more in the same circumstances, up to 20 weeks of extended benefits are payable.

For extended benefit claims filed after October 2, 1993, an additional method for qualifying for benefits is added. A claimant may also qualify if he or she has base year wages that are 1.5 times the wages in the base year quarter with the highest wages.

The special eligibility requirements for the federal-state extended unemployment benefits do not apply to weeks of

unemployment beginning after March 6, 1993, and before January 1, 1995.

Charging benefits to experience rating accounts

For employers requesting relief from benefit charging after July 3, 1993, the following apply: (1) the requirement for not charging benefits to an employer's experience rating account because of termination of the employee for misconduct is changed to clarify that the termination was not a result of inability of the employee to meet the minimum job requirements; and (2) the provision permitting noncharging related to part-time employment is changed to clarify that the employer requesting relief continues to employ the claimant after the claimant is separated from another base year employer.

Tax schedule

Beginning with tax year 1994, a new tax schedule AA is created with lower rates for 16 of the 20 rate classes. Tax schedule AA will be in effect if the fund balance ratio is 3.9 or higher.

Tax rate for delinquent employers

Beginning with tax year 1994, the basic tax rate for employers who are delinquent in making contribution payments is changed from 5.4 percent to 5.6 percent.

Joint task force on unemployment insurance

A Joint Task Force on Unemployment Insurance is created with up to 16 members representing the Legislature, business, and labor. The task force is to study and make recommendations by December 31, 1993, on financing and administration of unemployment insurance, costs, experience rating systems, tax rates, trust fund adequacy, accountability in programs, and other issues deemed appropriate.

The task force is funded by a surcharge on employer contributions of 0.01 percent for the first calendar quarter of 1994.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect July 3, 1993, except for the following sections: provisions relating the optional triggers for the federal-state extended benefit program take effect October 2, 1993; provisions authorizing a special base year for claimants with nonwork-related disabilities take effect

January 2, 1994; provisions allowing employer access to claim information, determining audit priorities, and creating the Joint Task Force on Unemployment Insurance take effect 90 days after adjournment of the session in which the bill is passed; provisions changing interest on fraudulent claims take effect January 1, 1994; provisions suspending the special eligibility requirements for the federal-state extended benefits program takes effect immediately; and the special surcharge to fund the task force and the change in the tax schedule apply to tax year 1994.

Testimony For: This state is going to experience another "Boeing" cycle. Previous cycles have shown that unemployment benefits help moderate the effect of the downturn because families are still able to make payments and purchase goods. The system was intended to provide an economic stimulus during downturns. The changes made in the tax structure will enable the fund to withstand these costs. The eligibility restrictions enacted during previous recessions have not been eased even though the tax structure protects the fund. The tax increase that may be caused by increased benefits is not expected to affect employers until after the economy is recovering. An increase in the maximum benefit amount is needed for the workers who now get less than 50 percent wage replacement when receiving unemployment benefits.

Testimony Against: The cumulative cost of this bill to employers is huge. The issues in this bill should be studied to understand all the impacts. This state is already one of the highest tax states for unemployment insurance. For a small business, the increase in unemployment taxes may make it unprofitable to operate the business. Some employers will have to reduce employees' hours or positions to pay the extra tax. The fiscal impacts are not fairly distributed across the employer groups, because small employers tend to bear more of the burden. Although some of the bill's provisions could be supported, others are ambiguous and may cause more litigation. Some provisions will increase administrative difficulties for the department.

Witnesses: (In favor) Jeff Johnson, Washington State Labor Council; David Clay, International Union of Aerospace Machinists; and Steven Aldrich, Hotel and Restaurant Employees Union. (Opposed) Clif Finch, Association of Washington Business; Ray Gonzalez, The Boeing Company; Norm Raffaell, Weyerhaeuser Company; Paul Fountain; Gail Seyl; John Morrish; and Tony Meinhardt, Independent Business Association. (No position) Graeme Sackrison, Employment Security Department.