

SENATE BILL REPORT

2ESB 6097

As Passed Senate, June 11, 2003

Title: An act relating to revising the unemployment compensation system through creating forty rate classes for determining employer contribution rates.

Brief Description: Revising the unemployment compensation system.

Sponsors: Senators Honeyford and Mulliken.

Brief History:

First Special Session: Passed Senate: 6/10/03, 33-12.

Second Special Session: Passed Senate: 6/11/03, 31-9.

Staff: Jennifer Ziegler (786-7316)

Background: Unemployment Insurance Benefits

Benefit Eligibility. An individual is eligible to receive regular unemployment insurance benefits if he or she: (1) worked at least 680 hours in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for a good cause; and (3) is able to work and is actively searching for work.

Benefit Amount and Duration. Regular benefits are based on the individual's earnings in his or her base year. The maximum weekly benefit equals 70 percent of the average weekly wage. Until July 1, 2004, the maximum rate is \$496. From July 1, 2004 until June 30, 2010, a maximum growth rate of 4 percent is permitted. The maximum duration for benefits is 30 weeks.

Unemployment Insurance Taxes

Washington's unemployment insurance system requires each covered employer to pay contributions on a percentage of his or her taxable payrolls. The contributions of covered employers are held in trust to pay benefits to unemployed workers.

Tax Schedule and Rates. For most covered employers, unemployment insurance contribution rates are determined by the rate in the employer's assigned rate class under the unemployment insurance tax schedule in effect for the calendar year. The employer's position in the tax array depends on the employer's layoff experience relative to the experience of other employers. This relationship is determined by the calculation of a benefit ratio, which is the total benefits charged in the last four years to the employer's experience rating account divided by the employer's taxable payroll in the same period. Based on the relationship of the employer's benefit ratios, employers may be placed in any one of 20 rate classes.

The rates in these classes are determined by the tax schedule in effect. The statute establishes seven different tax schedules, from the lowest schedule of AA through the highest schedule of F. The tax schedule that will be in effect for any given calendar year depends on the fund balance ratio, which compares the unemployment insurance trust fund balance on June 30 of the previous year to the total payroll covered employment in the state for the completed calendar year prior to that June 30.

Some covered employers are not qualified to be assigned a rate class. Unqualified employers include those who do not report enough periods of employment during the previous three years. These employers pay the average industry rate in their industry, as determined by the commissioner of the Employment Security Department, but not less than 1 percent. (Under the Federal Unemployment Tax Act, states must set a 1 percent minimum rate for unqualified employers to maintain the credit that employers in the state may take against their federal unemployment insurance tax.)

The average industry rate also applies to certain successor employers who were not employers at the time of acquiring a business. Until a new successor employer becomes a qualified employer, the rate for these successor employers is the lower of the rate assigned to the predecessor employer or the average industry rate with a 1 percent minimum rate.

Taxable Wage Base. The amount of tax that an employer pays is determined by multiplying the employer's tax rate by the employer's taxable wage base. The taxable wage base is the amount of each employee's wages subject to tax for a given rate year. This amount increases by 15 percent each year with a cap of 80 percent of the state's "average annual wage for contribution purposes." The "average annual wage for contribution purposes" is based on the average of the three previous years' wages.

Experience Rating in the Unemployment Insurance System. Under the experience rating system, most benefits paid to claimants are charged to their former employers' accounts. Some benefits, however, are pooled costs within the system and are generally referred to as socialized costs. One kind of socialized cost is "noncharged benefits." The statutory list of benefits that are not charged to employer accounts include benefits to individuals who are marginally attached to the labor force. A person is marginally attached to the labor force when he or she receives more in benefits than he earned in wages over the same quarter over two years. Other socialized costs include "ineffective charges" that occur when the benefits charged to an employer's account exceed the contributions that the employer pays.

Penalties. Employers who fail to file timely and complete unemployment insurance tax reports must pay a minimum of \$10 per violation.

Administration of Unemployment Insurance Program

The Employment Security Department must verify that every individual who has received five or more weeks of benefits has provided evidence of a search for work. Failure to seek work disqualifies a claimant from benefits for seven weeks.

Claimants must submit their Social Security numbers to receive benefits. If an individual's identity cannot be verified based on work history information, the claimant must submit a verification request form.

Summary of Bill: Unemployment Insurance Benefits

Benefit Eligibility. A part-time worker may receive unemployment benefits if he or she seeks work of 17 hours per less per week. A part-time worker is someone who earns wages in at least 40 weeks of his or her base year and does not earn wages in more than 17 hours per week in more than three weeks of his or her base year.

To receive unemployment insurance benefits, an individual must also separate from employment through no fault of his or her own or quit work for good cause. Effective January 4, 2004, an individual may receive benefits if he or she leaves work for the following reasons:

- (1) leave to accept other work;
- (2) illness or disability of the individual or someone in the individual's immediate family;
- (3) the claimant left work to relocate for the spouse's employment that was the result of a mandatory military transfer and is in a state that does not consider the individual to have left work without good cause;
- (4) domestic violence or stalking;
- (5) reduction of 25 percent or more in compensation or hours;
- (6) change in work site that caused increased distance or difficulty of travel;
- (7) deterioration of work site safety;
- (8) illegal activities in the individual's work site or
- (9) the work violates an individual's religious convictions or sincere moral beliefs.

Misconduct or gross misconduct do not constitute good cause for leaving work. After January 4, 2004, "misconduct" includes the following conduct:

- (1) Willful or wanton disregard of the employer's or a fellow employee's rights, title and interests;
- (2) Deliberate violations or disregard of standards of behavior;
- (3) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or
- (4) Carelessness or negligence to such a degree or recurrence to show intentional or substantial disregard of the employer's interest.

An employee discharged for misconduct is disqualified from benefits for 10 weeks and until he or she earns wages equal to ten times his or her weekly benefit amount.

After January 4, 2004, "gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted, admitted committing, or conduct connected with the individual's work that demonstrates a disregard for the employer or a fellow employee. An individual discharged for gross misconduct must have all hourly wage credits based on that employment, or 680 hours of wage credits, whichever is greater, canceled.

Benefit Amount and Duration. In 2004, the weekly benefit amount must be based on one twenty-fifth of the average wages in the three highest quarters of the base year. In 2005, the weekly benefit rate must be equal to 1 percent of the claimant's total wages in the base year.

On or after January 4, 2004, the maximum weekly wage must be \$496 or 63 percent of the average weekly wage for the previous year. When the unemployment rate reaches six and eight-tenths of a percent, the maximum duration for benefits is 26 weeks.

Unemployment Insurance Taxes

Basic Structure for Qualified Employers. Effective in 2005, the current system of tax array, trust fund triggers and schedules based on the trust fund level are eliminated.

An experience rate is assigned to an employer based on layoff history and allocated into 40 rate classes with rates ranging from 0-5.4 percent. This number is the array calculation factor.

A graduated social cost factor is determined by calculating the flat social cost factor rate and providing for a graduated social cost factor rate that ranges from 78 percent to 120 percent of the flat social cost factor depending on rate class.

If the balance in the unemployment insurance trust fund will provide fewer than six months of benefits, an employer's contribution rate may include a solvency surcharge. The solvency surcharge is based on the lowest rate necessary to provide revenue during a rate year that will fund unemployment benefits for the number of months that is the difference between eight months and the number of months the balance in the fund will provide benefits.

The employer's contribution rate is based on the sum of the array calculation factor, the graduated social cost factor and the solvency surcharge, if any. The sum of the array calculation factor and the graduated social cost factor may not exceed 6.5 percent. The rate for employers in certain seasonal industries is capped at 6 percent.

Nonqualified Employers. A new employer must pay a rate that is equal to the industry average plus 15 percent, but not more than 5.4 percent. The graduated social cost factor rate for new employers is the average industry rate plus 15 percent, but no more than the rate assigned in rate class 40.

Delinquent employers must pay an array calculation factor rate that is two-tenths higher than the rate in rate class 40. Their graduated social cost factor rate is the same rate as the rate assigned to rate class 40.

A successor employer must pay the predecessor's rate for the remainder of the rate year if there is a substantial continuity of ownership or management. The successor must pay a rate based on both the predecessor and the successor's experience during the subsequent year.

Taxable Wage Base. Wages are determined based on wage data from the previous year, rather than the previous three years. After December 31, 2003, wages do not include an employee's income attributable to stock options.

Experience Rating in the Unemployment Insurance System. Benefits may only be charged to the individual's separating employer if the individual left work voluntarily for good cause. Seasonal employee benefits during a seasonal work period may only be charged to the contribution paying seasonal employer.

The noncharging of benefits paid to claimants who are marginally attached to the labor force is eliminated.

Penalties. An employer who fails to file a timely or complete report may be subject to a fine up to \$250 or 10 percent of the quarterly contributions, whichever is less. An employer who knowingly misrepresents the amount of his or her payroll is liable for up to 10 times the amount of the difference in contributions paid and the amount the employer should have paid, plus the costs of auditing. An employer who attempts to evade successorship provisions is liable for the maximum tax rate for five quarters.

Administration of the Unemployment Insurance Program

Current statutory language directing that the Employment Security Act must be liberally construed to reduce involuntary unemployment to the minimum is eliminated.

Effective January 4, 2004, the department must contract with employment security agencies in other states to ensure that individuals residing in those states and receiving Washington benefits are actively searching for work.

The department must undertake the following activities:

- (1) Identify programs funded by special administrative contributions and report expenditures for those contributions to the committee;
- (2) Conduct a review of the type, rate and causes of employer turnover in the unemployment compensation system; and
- (3) Conduct a study of the potential for year-to-year volatility, if any, in rate classes under the new tax array.

The department must report its findings and recommendations to the Legislature by December 1, 2003.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.