
SUBSTITUTE SENATE BILL 6356

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Kohl-Welles, Keiser, McAuliffe,
Franklin, Thibaudeau, Fairley, Prentice and Kline)

READ FIRST TIME 02/06/06.

1 AN ACT Relating to establishing minimum labor standards for certain
2 large employers as related to health care services expenditures; adding
3 a new chapter to Title 49 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) Washington has a long and proud history of establishing minimum
7 labor standards and protecting employee rights. This history is
8 exemplified by the state's industrial welfare, minimum wage, safety and
9 health, and family leave laws, and the state's industrial insurance and
10 unemployment compensation systems;

11 (b) Most working Washingtonians obtain health insurance coverage
12 through their employment, and a substantial majority of very large
13 employers responsibly offer health coverage to their employees in
14 Washington state. However, the failure of some very large employers to
15 offer affordable health coverage to their employees in Washington state
16 has created inappropriate competitive advantages for those employers,
17 and greatly increased the likelihood that their employees will be
18 uninsured or enroll in publicly funded health care programs;

1 (c) Washington state has a long standing tradition and interest in
2 financing and providing access to appropriate health care services for
3 low-income working families. Currently, one in six Washington state
4 residents receive health care coverage through either the medicaid
5 program, the state children's health insurance program, or the
6 Washington basic health plan. Despite this tradition, in 2004, more
7 than six hundred thousand Washingtonians were uninsured. The number of
8 uninsured Washingtonians has grown in the last several years, due in
9 substantial part to erosion in employer-sponsored health benefits; and

10 (d) Most uninsured working-age adults have workers in their family,
11 and low-wage workers are at greatest risk of being uninsured. This
12 situation impacts Washington state, as uninsured low-wage workers seek
13 health coverage through publicly funded programs such as the Washington
14 basic health plan, medicaid, and the state children's health insurance
15 program. In addition, uninsured low-wage workers seek care in hospital
16 emergency rooms and community health clinics when addressing their
17 health problems cannot be delayed any longer. This results in
18 uncompensated care costs that are shifted to health care purchasers,
19 including the state, its taxpayers, and private employers.

20 (2) It is the intent of the legislature to set minimum labor
21 standards for some large employers in Washington state with respect to
22 health benefit expenditures, and to further the state's interest in
23 ensuring that its residents have access to appropriate health care
24 services. Ensuring that employers do not eliminate employer-paid
25 health care is important for minimizing the burden on taxpayers and the
26 public health system, and protecting the health, safety, and well-being
27 of the residents of Washington state.

28 (3) It is not the intent of the legislature to influence the
29 establishment, content, or administration of employee benefit plans.
30 The legislature is neutral as to whether employers covered under this
31 chapter choose to meet the minimum expenditure standard by providing or
32 reimbursing the costs of health care services for their employees or
33 paying to the state the difference between the minimum expenditure and
34 their actual expenditures.

35 NEW SECTION. **Sec. 2.** The definitions in this section apply
36 throughout this chapter unless the context clearly requires otherwise.

1 (1) "Average annual wage" means the average annual wage as defined
2 in RCW 50.04.355.

3 (2) "Director" means the director of labor and industries.

4 (3) "Employee" means any individual employed by an employer.

5 (4) "Employer" means an employer as defined in RCW 49.46.010 who
6 employed a total of five thousand or more employees in any calendar
7 quarter in the preceding calendar year at any and all locations in
8 Washington. Employees of a franchisor's franchisees are not employees
9 of the franchisor.

10 (5) "Health care services expenditures" means amounts paid by an
11 employer for the purpose of providing or reimbursing the cost of health
12 care services, as defined in RCW 48.43.005, for its employees or their
13 dependents in the state of Washington. These amounts include, but are
14 not limited to: Payments by an employer on behalf of its employees or
15 their dependents for medical care, prescription drugs, vision care,
16 dental care, long-term care, and health savings accounts as defined
17 under section 223 of the United States internal revenue code, and
18 reimbursements by such an employer to its employees or their dependents
19 for the cost of health care services when the employees or their
20 dependents had no entitlement to the reimbursement. These amounts do
21 not include: Payments made directly or indirectly for workers'
22 compensation or medicare benefits; any costs of health care services,
23 taxes, or assessments that such an employer is required to pay pursuant
24 to any federal or state law other than section 4 of this act; or any
25 amounts deducted from an employee's wages.

26 (6) "Payroll" means all wages paid by an employer to its employees.

27 (7) "Wage" means wage as defined in RCW 49.46.010.

28 NEW SECTION. **Sec. 3.** (1) On July 1, 2007, and each following July
29 1st, every employer shall report to the director: (a) The employer's
30 health care services expenditures in the preceding calendar year; and
31 (b) the employer's payroll in the preceding calendar year.

32 (2) When reporting the employer's payroll under subsection (1)(b)
33 of this section, the employer may exclude: (a) Wages paid to an
34 employee that are in excess of one hundred fifty percent of the average
35 annual wage; and (b) wages paid to an employee who is enrolled in or
36 eligible for medicare.

1 (3) When reporting the employer's payroll under subsection (1)(b)
2 of this section, the employer shall make the report in the form
3 specified by the director. The employer's chief executive officer or
4 an individual performing a similar function shall sign the report and
5 an affidavit under penalty of perjury. In the affidavit, the signing
6 officer shall affirm that the information in the report:

7 (a) Was reviewed by the signing officer, and is true to the best of
8 the signing officer's knowledge, information, and belief; and

9 (b) Does not contain any untrue statement of a material fact or
10 omit a material fact necessary to make the statement not misleading.

11 (4)(a) An employer that fails to report to the director as required
12 under this section shall be assessed a civil penalty of two hundred
13 fifty dollars for each day that the employer fails to report up to a
14 maximum civil penalty of seven thousand five hundred dollars for thirty
15 days that the employer fails to report. If, after thirty days, the
16 employer continues to fail to report to the director as required under
17 this section, the employer is presumed to have failed to spend any
18 percentage of the employer's payroll on health care services
19 expenditures as required under section 4 of this act, and shall be
20 assessed the amount due, the interest penalty, and the civil penalty
21 specified in section 4 of this act.

22 (b) The employer must be afforded the opportunity for a hearing,
23 upon request to the director made within thirty days after the date of
24 issuance of the notice of assessment. The hearing shall be conducted
25 in accordance with chapter 34.05 RCW.

26 (c) If any employer fails to pay an assessment after it has become
27 a final and unappealable order, or after the court has entered final
28 judgment in favor of the director, the director shall refer the matter
29 to the state attorney general, who shall recover the amount assessed by
30 action in the appropriate superior court. In such an action, the
31 validity and appropriateness of the final order imposing the penalty is
32 not subject to review.

33 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (2) of
34 this section, an employer shall either:

35 (a) Spend at least nine percent of the employer's payroll on health
36 care services expenditures; or

1 (b) Pay to the director an amount equal to the difference between
2 the employer's health care services expenditures and an amount equal to
3 nine percent of the employer's payroll.

4 (2) An employer that is a nonprofit organization or governmental
5 entity shall either:

6 (a) Spend at least seven percent of the employer's payroll on
7 health care services expenditures; or

8 (b) Pay to the director an amount equal to the difference between
9 the employer's health care services expenditures and an amount equal to
10 seven percent of its payroll.

11 (3)(a) An employer that fails to comply with this section shall be
12 assessed for the amount due under this section, plus an interest
13 penalty of one percent per month on the amount due and a civil penalty
14 of two hundred fifty thousand dollars.

15 (b) The employer must be afforded the opportunity for a hearing,
16 upon request to the director made within thirty days after the date of
17 issuance of the notice of assessment. The hearing shall be conducted
18 in accordance with chapter 34.05 RCW.

19 (c) If any employer fails to pay an assessment after it has become
20 a final and unappealable order, or after the court has entered final
21 judgment in favor of the director, the director shall refer the matter
22 to the state attorney general, who shall recover the amount assessed by
23 action in the appropriate superior court. In such an action, the
24 validity and appropriateness of the final order imposing the penalty is
25 not subject to review.

26 NEW SECTION. **Sec. 5.** The director shall:

27 (1) Administer and enforce this chapter;

28 (2) Review reports, inspect records, and conduct investigations and
29 audits of employment, payroll, and health care services expenditures,
30 as the director deems necessary or appropriate, to determine whether an
31 employer has complied with this chapter;

32 (3) Adopt rules necessary to implement this chapter; and

33 (4) Deposit payments required and civil penalties assessed under
34 this chapter into the health services account established under RCW
35 43.72.900.

1 NEW SECTION. **Sec. 6.** This chapter does not apply to workers hired
2 by a business whose purpose is to provide workers to other employers on
3 a temporary basis. For purposes of this section, "temporary" means no
4 more than ninety days.

5 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
6 a new chapter in Title 49 RCW.

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