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HOUSE BILL 2491

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State of Washington

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By Representatives Upthegrove and Orwall

Read first time 01/16/12. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to specifying when predecessor-successor  
2 relationships do not exist for purposes of unemployment experience  
3 rating; amending RCW 50.29.062; creating new sections; and declaring an  
4 emergency.

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

6 **Sec. 1.** RCW 50.29.062 and 2010 c 25 s 2 are each amended to read  
7 as follows:

8 Except as provided in RCW 50.29.063, predecessor and successor  
9 employer contribution rates shall be computed in the following manner:

10 (1)(a) If the successor is an employer, as defined in RCW  
11 50.04.080, at the time of the transfer of a business, the following  
12 applies:

13 ((+a)) (i) The successor's contribution rate shall remain  
14 unchanged for the remainder of the rate year in which the transfer  
15 occurs(~~(+and)~~).

16 ((+b)) (ii) Beginning January 1st following the transfer, the  
17 successor's contribution rate for each rate year shall be based on a  
18 combination of the following:

1        (~~(i)~~) (A) The successor's experience with payrolls and benefits;  
2 and

3        (~~(ii)~~) (B) Any experience assigned to the predecessor involved in  
4 the transfer. If only a portion of the business was transferred, then  
5 the experience attributable to the acquired portion is assigned to the  
6 successor.

7        (b) A predecessor-successor relationship does not exist for  
8 purposes of this chapter when a significant purpose of the transfer of  
9 a business or its operating assets is for the employer to move or  
10 expand an existing business or for an employer with common ownership to  
11 establish a substantially similar business.

12        (2) If the successor is not an employer at the time of the  
13 transfer, the following applies:

14        (a) For transfers before January 1, 2005:

15        (i) Except as provided in (a)(ii) of this subsection (2)(~~(a)~~),  
16 the successor shall pay contributions at the lowest rate determined  
17 under either of the following:

18        (A) The contribution rate of the rate class assigned to the  
19 predecessor employer at the time of the transfer for the remainder of  
20 that rate year. Any experience relating to the assignment of that rate  
21 class attributable to the predecessor is transferred to the successor.  
22 Beginning with the January 1st following the transfer, the successor's  
23 contribution rate shall be based on a combination of the transferred  
24 experience of the acquired business and the successor's experience  
25 after the transfer; or

26        (B) The contribution rate equal to the average industry rate as  
27 determined by the commissioner, but not less than one percent, and  
28 continuing until the successor qualifies for a different rate in its  
29 own right. Assignment of employers by the commissioner to industrial  
30 classification, for purposes of this subsection, must be in accordance  
31 with established classification practices found in the North American  
32 industry classification system issued by the federal office of  
33 management and budget to the fourth digit provided in the North  
34 American industry classification system.

35        (ii) If the successor simultaneously acquires the business or a  
36 portion of the business of two or more employers in different rate  
37 classes, its rate, from the date the transfer occurred until the end of  
38 that rate year and until it qualifies in its own right for a new rate,

1 shall be the rate of the highest rate class applicable at the time of  
2 the acquisition to any predecessor employer who is a party to the  
3 acquisition, but not less than one percent.

4 (b) For transfers on or after January 1, 2005:

5 (i) Except as provided in (b)(ii) and (iii) of this subsection  
6 (2)((~~b~~)), the successor shall pay contributions:

7 (A) At the contribution rate assigned to the predecessor employer  
8 at the time of the transfer for the remainder of that rate year. Any  
9 experience attributable to the predecessor relating to the assignment  
10 of the predecessor's rate class is transferred to the successor.

11 (B) Beginning January 1st following the transfer, the successor's  
12 contribution rate for each rate year shall be based on an array  
13 calculation factor rate that is a combination of the following: The  
14 successor's experience with payrolls and benefits; and any experience  
15 assigned to the predecessor involved in the transfer. If only a  
16 portion of the business was transferred, then the experience  
17 attributable to the acquired portion is assigned to the successor if  
18 qualified under RCW 50.29.010 by including the transferred experience.  
19 If not qualified under RCW 50.29.010, the contribution rate shall equal  
20 the sum of the rates determined by the commissioner under RCW 50.29.025  
21 (1)(d)(ii) or (2)(d) and 50.29.041, if applicable, and continuing until  
22 the successor qualifies for a different rate, including the transferred  
23 experience.

24 (ii) If there is a substantial continuity of ownership, control, or  
25 management by the successor of the business of the predecessor, the  
26 successor shall pay contributions at the contribution rate determined  
27 for the predecessor employer at the time of the transfer for the  
28 remainder of that rate year. Any experience attributable to the  
29 predecessor relating to the assignment of the predecessor's rate class  
30 is transferred to the successor. Beginning January 1st following the  
31 transfer, the successor's array calculation factor rate shall be based  
32 on a combination of the transferred experience of the acquired business  
33 and the successor's experience after the transfer.

34 (iii) If the successor simultaneously acquires the business or a  
35 portion of the business of two or more employers with different  
36 contribution rates, the successor's rate, from the date the transfer  
37 occurred until the end of that rate year and until it qualifies in its  
38 own right for a new rate, shall be the sum of the rates determined by

1 the commissioner under RCW 50.29.025 (1) (a) and (b) or (2) (a) and  
2 (b), and 50.29.041, applicable at the time of the acquisition, to the  
3 predecessor employer who, among the parties to the acquisition, had the  
4 largest total payroll in the completed calendar quarter immediately  
5 preceding the date of transfer, but not less than the sum of the rates  
6 determined by the commissioner under RCW 50.29.025 (1)(d)(ii) or (2)(d)  
7 and 50.29.041, if applicable.

8 (3) With respect to predecessor employers:

9 (a) The contribution rate on any payroll retained by a predecessor  
10 employer shall remain unchanged for the remainder of the rate year in  
11 which the transfer occurs.

12 (b) In all cases, beginning January 1st following the transfer, the  
13 predecessor's contribution rate or the predecessor's array calculation  
14 factor for each rate year shall be based on its experience with  
15 payrolls and benefits as of the regular computation date for that rate  
16 year excluding the experience of the transferred business or  
17 transferred portion of business as that experience has transferred to  
18 the successor: PROVIDED, That if all of the predecessor's business is  
19 transferred to a successor or successors, the predecessor shall not be  
20 a qualified employer until it satisfies the requirements of a  
21 "qualified employer" as set forth in RCW 50.29.010.

22 (4) For purposes of this section, "transfer of a business" means  
23 the same as RCW 50.29.063(4)(c).

24 NEW SECTION. **Sec. 2.** If any part of this act is found to be in  
25 conflict with federal requirements that are a prescribed condition to  
26 the allocation of federal funds to the state or the eligibility of  
27 employers in this state for federal unemployment tax credits, the  
28 conflicting part of this act is inoperative solely to the extent of the  
29 conflict, and the finding or determination does not affect the  
30 operation of the remainder of this act. Rules adopted under this act  
31 must meet federal requirements that are a necessary condition to the  
32 receipt of federal funds by the state or the granting of federal  
33 unemployment tax credits to employers in this state.

34 NEW SECTION. **Sec. 3.** If any provision of this act or its  
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and takes effect  
6 immediately.

7 NEW SECTION. **Sec. 5.** This act is remedial in nature and shall be  
8 applied retroactively to January 1, 2009.

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