

HOUSE BILL REPORT

SHB 2703

As Passed House:
February 8, 2018

Title: An act relating to clarifying hours and wages for education employee compensation claims.

Brief Description: Clarifying hours and wages for education employee compensation claims.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Sells, McCabe, Doglio, Dolan, Gregerson and Ortiz-Self; by request of Employment Security Department).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/22/18, 1/29/18 [DPS];
Appropriations: 2/3/18, 2/5/18 [DPS(LAWS)].

Floor Activity:

Passed House: 2/8/18, 94-4.

Brief Summary of Substitute Bill

- Changes the eligibility for unemployment benefits for educational employees who have multiple employers.
- Modifies the analysis of whether an educational employee has a contract or reasonable assurance of continued employment for purposes of unemployment benefits.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Sells, Chair; Gregerson, Vice Chair; McCabe, Ranking Minority Member; Doglio, Frame and Manweller.

Minority Report: Do not pass. Signed by 1 member: Representative Pike, Assistant Ranking Minority Member.

Staff: Joan Elgee (786-7106).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Labor & Workplace Standards be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Caldier, Cody, Fitzgibbon, Graves, Haler, Hansen, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan, Tharinger and Wilcox.

Minority Report: Do not pass. Signed by 6 members: Representatives Buys, Condotta, Harris, Schmick, Taylor and Vick.

Staff: Meghan Morris (786-7119).

Background:

Overview.

An individual is eligible to receive unemployment benefits if he or she: (1) worked at least 680 hours in covered employment in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is able to work and is actively searching for suitable work. The base year is generally the first four of the last five completed calendar quarters before the claimant applied for benefits. Eligible unemployed workers receive benefits based on wages received in the base year. The Employment Security Department (Department) administers the unemployment insurance program.

Educational Employees.

Special provisions apply to individuals employed in an instructional, research, or principal administrative capacity for an educational institution. Benefits are not paid for weeks of unemployment which commence during the period between two successive academic years or terms if the individual worked in the first of the years or terms and if there is a contract or reasonable assurance that the individual will work in that capacity in the second academic year or term. Similar provisions apply to employment in any other capacity for an educational institution, if there is a reasonable assurance the individual will work in that capacity in the second academic year or term. For both categories of educational employees, if an individual has a contract (or reasonable assurance in the case of the instructional, research, or principal administrative category) from any educational institution, benefits are not paid.

Reasonable assurance means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. A person is not performing services in the same capacity unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term. An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college.

For individuals employed in an instructional, research, or principal administrative capacity at certain community and technical colleges, an individual is presumed not to have reasonable assurance under an offer that is conditioned on enrollment, funding, or program changes. The college has the burden to overcome this presumption. Reasonable assurance must be determined on a case-by-case basis by the total weight of evidence rather than any one factor, and primary weight must be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes.

Federal Law.

Under the Federal Unemployment Tax Act (FUTA), if a state maintains an unemployment insurance system in conformity with federal law, the state's employers receive a tax credit against their federal unemployment tax. In addition, the state receives a share of the FUTA revenues for administration of its unemployment insurance system.

Federal law establishes standards for payment of unemployment benefits to employees of certain educational institutions. On December 22, 2016, the United States Department of Labor's Employment and Training Administration Advisory System issued guidance regarding the interpretation of the terms "contract" and "reasonable assurance."

Summary of Substitute Bill:

The following requirements must be met before the Employment Security Department (Department) determines whether there is a contract or reasonable assurance:

- the offer of employment may be written, verbal, or implied and must be made by an individual with actual authority to offer employment;
- the offer of employment provides that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term; and
- the economic conditions of the offer of employment may not be considerably less in the following year or term than in the first year or term. "Considerably less" includes the condition that the individual will not earn at least 90 percent of the wages earned in the prior academic year or term.

If all requirements are satisfied, the Department must determine if a contract exists. A contract is an enforceable, noncontingent agreement that provides for compensation for an entire academic year or on an annual basis. If a contract exists, the claimant may be subject to a denial of benefits.

If no contract exists, the Department must determine if the claimant has reasonable assurance. Each factor must be satisfied. These criteria apply to all educational employees, not limited to community and technical college employees. If any contingencies in the employment offer are within the employer's control the claimant will not be considered to have reasonable assurance of employment. Contingencies within the employer's control include course programming, funding allocation decisions, final course offerings, and facility availability. If contingencies are not within the employer's control, the Department must determine whether it is highly probable that the contingencies contained within the offer will be satisfied. Primary weight will be given to the contingent nature of an offer of employment. The determination of reasonable assurance must be determined considering the

totality of circumstances, which must show that it is highly probable that employment will be available in the next academic year or term, and that the contingencies will be satisfied.

If an educational employee has multiple educational institution employers in a year or term, wages from any institution that has not provided a contract or reasonable assurance of employment may be used for claiming unemployment benefits.

Changes are made to the legislative intent provisions. A severability clause is provided.

The act applies to claimed weeks of employment on or after October 1, 2018.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) Educational institutions have different eligibility criteria for unemployment. The goal of the criteria is to determine if the employees will likely be employed, and if the work will be similar. The bill makes the law conform to guidance issued by the United States Department of Labor, which changed the guidance factors. The Department worked with its K-12 and higher education partners.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) Federal law sets the criteria for eligibility for unemployment benefits for educational employees. The guidance the United States Department of Labor issued was effective immediately, so Washington is out of conformity. If the bill does not pass, the state could lose administrative funding and employers could lose the tax credit against federal unemployment taxes.

(Opposed) None.

Persons Testifying (Labor & Workplace Standards): Representative Sells, prime sponsor; and Nick Streuli, Employment Security Department.

Persons Testifying (Appropriations): Nick Streuli, Employment Security Department.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.