

SENATE BILL REPORT

SB 5473

As of January 6, 2020

Title: An act relating to making unemployment benefits accessible to persons with family responsibilities and other availability issues and making clarifying changes.

Brief Description: Making unemployment benefits accessible to persons with family responsibilities and other availability issues and making clarifying changes.

Sponsors: Senators Saldaña and Nguyen.

Brief History:

Committee Activity: Labor & Commerce: 2/14/19.

Brief Summary of Bill

- Modifies the unemployment benefits eligibility conditions to require that the claimant be available to accept suitable work.
- Changes the determination of availability for work to require that the claimant be available for at least as many hours per week as the claimant's typical workweek hours.
- Modifies the term good cause to include that the separation from work was necessary because care for a child or vulnerable adult in the claimant's care is inaccessible; or that alteration to the claimant's usual work shifts making care for a child or vulnerable adult inaccessible.
- Adds as a factors considered by the Employment Security Department for suitable work to include the claimant's workweek hours and the availability of caregiving for a child or vulnerable adult.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Unemployment Benefit Eligibility Conditions. An unemployed individual is eligible to receive waiting period credits or benefits with respect to any week in the eligibility period if the individual:

- has registered for work at, and continues to report at, an employment office;

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- has filed an application for an initial determination and made a claim for waiting period credit or for benefits;
- is able to work, and is available for work in any trade, occupation, profession, or business for which the individual is reasonably fitted;
- participates in reemployment services, if so referred; and
- has been unemployed for a waiting period of one week.

To be available for work, an individual must be ready, able, and willing, to accept any suitable work immediately which may be offered and must be actively seeking work pursuant to customary trade practices.

Disqualification for Leaving Work Without Good Cause. An individual will be disqualified from benefits beginning with the first day of the calendar week in which the individual has left work voluntarily without good cause and for the following seven calendar weeks and until the individual has obtained bona fide work in employment and earned wages in that employment equal to seven times the weekly benefit amount.

Good Cause For Leaving Work. There are a number of reasons for leaving work that are considered good cause, including because of the individual's illness or disability, or the death, illness, or disability of a member of the individual's immediate family if the individual took all reasonable precautions to protect the employment status by having promptly notified the employer of the reason for the absence and requested reemployment when the individual is able to assume employment again.

An individual is disqualified from benefits, if the individual has failed without good cause, either to apply for available, suitable work, or to accept suitable work when offered, or to return to the individual's self-employment.

Suitable Work. Suitable work is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform. In determining whether work is suitable, the Employment Security Department (ESD) considers:

- the degree of risk involved to the individual's health, safety, and morals;
- the individual's physical fitness;
- the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and
- the distance of the available work from the individual's residence.

Employer Rating. Unemployment benefits paid are not charged to the experience rating account of any contribution paying employer if the individual qualifies for benefits because: (1) the separation was necessary to protect the claimant or the claimant's immediate family from domestic violence or stalking; or (2) the individual left work to enter an approved apprenticeship program.

Summary of Bill: Unemployment Benefit Eligibility Conditions. The unemployment benefits eligibility conditions regarding availability for work are modified. The unemployed

individual (claimant) must be available to accept suitable work. To be available for work, a claimant must be, for at least as many hours per week as the claimant's typical workweek hours, be ready, able, and willing to accept any suitable work offer with reasonable notice from the employer along with other existing requirements.

Good Cause. The term good cause is modified to include that the separation from work was necessary because care for a child or vulnerable adult in the claimant's care is inaccessible. The claimant must have made reasonable effort to preserve the employment status by requesting leave or changes in working conditions or schedule that would accommodate the situation. Good cause also includes alteration to the claimant's usual work shifts making care for a child or vulnerable adult inaccessible. Good cause separation related to the death, illness, or disability for an immediate family member is changed to a family member.

Suitable Work. The factors for suitable work also include the claimant's typical workweek hours, and the availability of caregiving for a child or vulnerable adult in the claimant's care. Typical workweek hours means:

- the average hours worked per week during the base year, up to 40 hours, for hourly employees; and
- 40 hours for salaried employees.

Rules. ESD must adopt rules to ensure claimants remain attached to the labor force by seeking work in a substantial employment field, and are available for scheduling that is reasonably available in the claimant's local labor market and occupation.

Appropriation: None.

Fiscal Note: Requested on January 31, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: As much as working is really important, many families are facing the decision to take care of their children or working and spending all of the money paying for someone else to take care of their children. The legislature has come to recognize that it is really important to keep families unified. This helps not just in the health outcomes of the families but the community. The legislature needs to look at giving families tools to keep them together.

There is pain to the worker and the worker's family with the loss of a job. This bill goes just a little way to ameliorate some of that loss. There are two main changes. The first is workers who have to leave their job because of a scheduling problem and that scheduling change or problem will result in them not being able to provide care for a child or vulnerable adult in their care. They just may not be able to work those particular hours. The second change is what makes a worker available for work. ESD has to rely on guidance for what is available for work. The bill will give ESD some additional tools related to the work hours. For some work, particularly work that impacts women and caregivers, those requirements are 24/7 hours. That is not practical that someone is available for work 24/7. This would allow the

consideration of their availability and their caregiving needs. There was a case where a woman was allowed UI benefits because she had to leave work related to caregiving after her hours changed. She was then denied benefits because she couldn't work 24/7. The case was appealed and the court said it regretfully had to deny benefits under the law.

Hundreds of thousands of jobs are classified as 24/7 jobs. An example was given of a person who took a job that involved lengthy shifts and quit because it was a problem for childcare. She was denied UI benefits. Her warehouse job required being available for 24/7 shifts. People who are unemployed want to return to the workforce. If work shifts make it impossible to provide caregiving, the unemployment program should not force them to accept that job. Other examples of UI benefit denials included a new mother returning to work with changed hours, a job that required unusual hours, and a swing shift.

The bill would make the UI rules more reflective of the caregiving roles, particularly women, hold in families and to set more reasonable standards for workers who have restrictions on their hours due to childcare. This is an important opportunity to modernize our UI laws.

CON: A fundamental question is whether this is the appropriate role of the unemployment trust fund. About ten years ago, the legislature had about a four to five year review of the trust system. A task force worked on this issue. We ending up with a system where benefits are paid to eligible workers and it evenly distributed the cost between the employers and the workers. It eliminated the wild swings between the cost to the employers and the trust fund. We remained solvent and increase benefits during the recession without going to the federal government for a loan. The most concerning phrase relates to the employer not being able to accommodate the request for a different work schedule or for a leave. Very small businesses that cannot accommodate a request of that nature become incredibly vulnerable under the experience rating schedule. A couple of ideas may be the paid family leave and the advisory committee to discuss and analyze these types of ideas and monitor the trust fund. One of the fears is the one off issues being brought to ESD that caused a lot of issues during that time period. There are different interpretations for charging a good cause quit.

OTHER: ESD is neutral on the bill. This is a long running dialogue. One area to highlight is how one aspect of the bill would impact an employer's tax rates. If the separating reason is attributable to the employer, they are charged to the employer. The voluntary quits would be non-charged to the employer. If the separating reason is attributable to the employer, they are charged to the employer. ESD did not find any federal conformity issues with the bill. Based on ESD analysis, people that generally qualify for paid family and medical leave would not also qualify for UI benefits. There may be some very narrow overlap. For the typical work week, ESD uses an occupational handbook put out by US Department of Labor. The bill attempt to fix the customary work week hours problem. 40 percent of the jobs in the handbook require 24/7 hours. Under current rules, you may be allowed to quit work because it interferes with caregiving but would be ineligible for UI benefits because you are not able and available for the customary work hours. Instead of looking at the customary hours, for availability under the bill, ESD will look at the hours you worked in your base year. We used to have a robust dialogue with the task force. As unemployment went down, attendance went down. ESD would welcome the discussions.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Pamela Crone, Unemployment Law Project; Anne Paxton, Unemployment Law Project; Maggie Humphreys, Moms Rising.

CON: Bruce Beckett, Washington Retail Association.

OTHER: Nick Streuli, Legislative Director, Employment Security Department.

Persons Signed In To Testify But Not Testifying: No one.