

SENATE BILL REPORT

ESSB 5473

As Amended by House, March 5, 2020

Title: An act relating to studying exceptions to provisions disqualifying individuals from receiving unemployment benefits for leaving work voluntarily without good cause.

Brief Description: Studying exceptions to provisions disqualifying individuals from receiving unemployment benefits for leaving work voluntarily without good cause.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Saldaña and Nguyen).

Brief History:

Committee Activity: Labor & Commerce: 2/14/19, 1/16/20, 2/04/20 [DPS-WM, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/13/20, 40-6.

Passed House: 3/05/20, 57-40.

Brief Summary of Engrossed First Substitute Bill

- Requires the Employment Security Department to study the impacts to the unemployment trust fund and employer contributions for unemployment insurance by allowing exceptions to provisions disqualifying individuals from receiving unemployment benefits for leaving work voluntarily without good cause related to: (1) inaccessible care for a child or vulnerable adult; (2) substantial increases in job duties or working conditions without commensurate increase in pay; (3) separation from a minor child.
- Requires ESD to meet at least three times with business and worker representatives to discuss the information gathered by ESD.
- Removes modifications to the term good cause for unemployment purposes for the separation due to inaccessible care for a child or vulnerable adult and related to separation from work related to the death, illness, or disability of a family member.

SENATE COMMITTEE ON LABOR & COMMERCE

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.

Majority Report: That Substitute Senate Bill No. 5473 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Walsh.

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;
- 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 Engrossed First Substitute Bill: ESD must study the impacts to Washington's unemployment insurance trust fund and the contribution rates of employers if the law was amended to allow unemployment insurance benefits for individuals who leave work voluntarily for the following reasons:

- the separation was necessary because care for a child or a vulnerable adult in the claimant's care is inaccessible, so long as the claimant made reasonable efforts to preserve the employment status by requesting a leave of absence or changes in working conditions or work schedule that would accommodate the caregiving inaccessibility, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment;
- the employer, without a commensurate change in pay, substantially increases the individual's job duties; or significantly changes the individual's working conditions; and
- the individual left work to relocate outside the existing labor market because of the geographical location of or proximity to and the separation from a minor child.

ESD may consider:

- the existing and prior Washington laws, rules, and case law governing the disqualification of individuals from receiving unemployment benefits for leaving work voluntarily without good cause;
- the laws and regulations of other states governing the disqualification of individuals from receiving unemployment benefits for leaving work voluntarily without good cause; and
- any other information the employment security department deems relevant.

ESD must meet at least three times with representatives of the largest business association and an organization, which provides low-cost representation or free advice and counsel to people regarding their unemployment benefits, to discuss the information gathered by ESD.

By November 6, 2020, ESD must report to the Governor and the appropriate committees of the Legislature providing the impact described above and any recommendations for how the statutes and rules may be amended to address these circumstances, as fully as practicable,

while limiting adverse impacts to the unemployment trust fund and the contribution rates of employers.

Legislative intent is provided.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill (Regular Session 2019): 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.

Staff Summary of Public Testimony on Proposed Substitute (Regular Session 2020): *The committee recommended a different version of the bill than what was heard.* PRO: A person takes a job with a particular shift and the worker let the employer know that the shift works with the child care or caregiving schedule. Some time during the employment, the employer decides they are no longer to offer that shift. It is not the fault of the worker that the shift changes. The bill allows the worker when they go to workforce to look for work, the worker can limit the hours to provide for the worker's family and take care of children and family. In this 24/7 never ending work cycle, people can still care for their families.

The bill modernizes the unemployment laws to include family caregiving in good cause quits and to reflect today's modern families. UI does not take into account how schedules work for some caregiving schedules. Examples were given about schedule changes that do not work with child care availability. This impacts women the most. Women outnumber men in the workforce but remain the largest percentage of unpaid caregivers. Many workers that need and want to work were barred from UI because of understandable reasons, caregiving needs. This is only a short-term situation not one where paid or unpaid family leave is available. It is a good time to modernize the UI system before the next recession. Before the 1970s, Washington State had broader good cause to quit but that was changed.

CON: The concern is whether the unemployment trust fund is the appropriate place for this kind of benefit. There was a taskforce that ensured benefits were paid and the appropriate charge was to the employer. During the great recession, Washington was one of the few states that did not have to go to the federal government for a loan and actually increased benefits during that time. The system worked. The reason we got into trouble before the taskforce was we kept adding benefits and we did not have a system to work out those difference. The bill adds a new group and potentially large group. This could have an impact on small employers with one claim. We should go back to a taskforce to look at these kind of ideas.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Anne Paxton, Unemployment Law Project; Marilyn Watkins, Economic Opportunity Institute; Maggie Humphreys, MomsRising.

CON: Bruce Beckett, Washington Retail Association.

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

EFFECT OF HOUSE AMENDMENT(S):

- Requires the study include impacts to the unemployment insurance trust fund if employers were not charged for benefits from the potential new categories for voluntary quits.
- Requires the report on impacts break down the separate impacts from each of the potential categories of voluntary quits allowing benefits.