

SENATE BILL REPORT

SB 6234

As Reported by Senate Committee On:
Labor & Commerce, February 3, 2020

Title: An act relating to the use of third parties by employers to dispute unemployment claims.

Brief Description: Concerning the use of third parties by employers to dispute unemployment claims.

Sponsors: Senators Kuderer, Nguyen, Lovelett, Hasegawa, Das, McCoy and Wilson, C.

Brief History:

Committee Activity: Labor & Commerce: 1/28/20, 2/03/20 [DPS-WM, w/oRec, DNP].

Brief Summary of First Substitute Bill

- Prohibits the state and institutions of higher education, as an employer, from contracting with a private entity to (1) respond to written requests by the Employment Security Department (ESD) for information relating to unemployment insurance (UI) claims; (2) file appeals and petitions for review regarding an individual's right to benefits; or (3) represent the employer in UI claim appeals.
- Provides for employer penalties of: (1) \$1,000 for failing to respond to an ESD request for information and allowing a third-party payer to file a related appeal; and (2) an additional \$1,000 if the appeal does not result in a denial of benefits.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6234 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: That it be referred without recommendation.

Signed by Senator Walsh.

Minority Report: Do not pass.

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

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.

Staff: Susan Jones (786-7404)

Background: An unemployed individual is eligible to receive waiting period credits or benefits with respect to any week in the individual's eligibility period only if ESD finds that the individual:

- has registered for work at, and continued 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; and
- is able to work, and is available for work in any trade, occupation, profession, or business for which the individual is reasonably fitted.

An individual is disqualified from benefits beginning with the first day of the calendar week if the individual left work voluntarily without good cause and thereafter for 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 individual's weekly benefit amount.

An applicant/claimant or the most recent employer may file an appeal from any determination or redetermination with the appeal tribunal within 30 days after the date of notification or mailing, whichever is earlier, of such determination or redetermination.

Summary of Bill (First Substitute): The state and institutions of higher education, may not contract with a private entity to:

- respond on behalf of the employer to ESD's written requests for information relating to an individual's UI claim;
- file appeals and petitions for review on behalf of the employer regarding an individual's right to benefits; or
- represent the employer before the appeal tribunal and the commissioner in appeals involving an individual's right to benefits.

An employer must pay penalty of:

- \$1,000 if the employer or its agent fails to respond or inadequately responds to a written request from ESD for information relating to an individual's UI claim, and a third-party payer files an appeal with the appeal tribunal on the employer's behalf, and the appeal concerns the same legal or factual issue of concern in the request for information; and
- an additional \$1,000 if the appeal does not result in a final decision denying benefits to the individual.

Inadequately means failing to provide accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute): Limits the prohibition on the use of a private entity to handle certain matters in unemployment claims to the state and institutions of higher education.

Appropriation: None.

Fiscal Note: Requested on January 14, 2020.

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

Effective Date: The bill takes effect on March 1, 2021.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There is a connection between unemployment and potential homelessness. Sixty percent of the appeals involving third-party managers are found to be in favor of the unemployed worker. This has become a common delay tactic to use third-party administrators and to not respond to ESD's request for information. ESD starts paying the benefits because they only have one side of the story, then they appeal. It costs us in clogging the court system. This eliminates third-party managers for public agencies and provide disincentive to take these actions. These benefit managers clog the system and there is no advantage. People are not getting their benefits. They can not pay their expenses and some end up homeless. We are paying for the third-party managers and if the appeals are unsuccessful in 60 percent of the cases, we are not getting the bang for our buck.

This solves two problems. The first is the failure of the employer to promptly respond to requests for information from ESD. When they do not respond, ESD may stop paying or not grant benefits. The employee may not have the money to pay bills. A substantial fine may disincentive employers from doing this. The major third party entities' business model is to reduce employers' taxes by fighting the UI benefits. Third-party representation has ballooned in recent years. They use certain tactics. Government agencies should not use these tactics by using these representatives. UI benefits are not a gift. They were earned.

CON: We provide this service for 30 public rural hospitals and have for many years. If the bill passes, they would have to take this on themselves. They do not have the staff to do it and it is a complex issue. There were 362 claims, 42 appeals with only 6 employer initiated claim and 60 percent rejection of benefits. Look at amending Section 1 regarding rural hospitals.

We generally believe public employers should be under same rules as private employers. Many schools are self-insured. Many schools do not have staff familiar with dealing with UI. Those school districts that do not have big sophisticated staff; under the bill, they can not hire a lawyer to understand and help with that contested process.

With respect to section 2, there is a misunderstanding. You may see 64 percent of appeals in Washington but that is true across the board. The argument is not accurate that third parties are trying to stack the administrative hearings with frivolous appeals. The penalty is disproportionate to what is happening. Appeals are expensive for the third-party agents and the employers. Employers and their staff have to be pulled from work. There is one main system that 90 percent of the third parties use. It ensures, compliance, integrity, accuracy and timeliness. UI is complicated. People will have to be trained at the various agencies. It could drive up overpayment and improper payment. ESD has received corrective action for its numbers on these payments. The state could be held out of compliance with the federal government.

This would take away the ability to hire third party, it will not take away the ability to appeal. It just change who will do the work. For small business, it is often daunting process and the penalty may feel like a warning not use a third party.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Anne Paxton, Unemployment Law Project.

CON: William Rudnick, Association of Unemployment Tax Organizations; Mark Johnson, Washington Retail Association; Brian Sims, Washington State School Directors Association; Robert Battles, Association of Washington Business.

OTHER: Beth Zborowski, Senior Vice President, Washington State Hospital Association.

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