
HOUSE BILL 1518

State of Washington

66th Legislature

2019 Regular Session

By Representatives Reeves, Walen, Kirby, Frame, Robinson, Tarleton, Ryu, Pollet, and Macri

Read first time 01/23/19. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to assessing employers for their employees'
2 health care costs paid by the state; reenacting and amending RCW
3 74.09.053; adding a new section to chapter 49.60 RCW; adding a new
4 chapter to Title 74 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that an
7 important part of a comprehensive approach to providing appropriate
8 health care for all Washington citizens involves participation by
9 employers in providing access to health care services for their
10 workers and their families. While most Washington citizens obtain
11 health care services through their employment or the employment of a
12 family member, some employers with adequate resources fail to offer
13 affordable access to health care services to their employees in
14 Washington state. This creates inappropriate competitive advantages
15 for those employers and greatly increases the likelihood that their
16 employees will not have access to affordable health care services or
17 will receive health care services through publicly funded health care
18 programs.

19 (2)(a) It is the intent of the legislature to establish, as part
20 of its comprehensive approach to expanding access to appropriate
21 health care services, a mechanism to reimburse the state for its

1 costs of providing access to appropriate health care services to
2 Washington workers. Employer participation in this comprehensive
3 approach allows the state to improve its financing of public health
4 care programs and prioritize those resources on populations not
5 served through employment. It also reduces the burden on taxpayers
6 and the public health care system, and protects the health, safety,
7 and well-being of all the state's residents.

8 (b) In establishing this program, it is not the intent of the
9 legislature to influence the establishment, content, or
10 administration of employee benefit plans. The legislature is neutral
11 regarding whether employers choose to provide access to affordable
12 health care coverage for their employees or pay an assessment to
13 reimburse the state's costs for health care services for their
14 employees.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires
17 otherwise.

18 (1) "Assessment" means an amount equal to the per capita cost of
19 providing health benefits under the medical assistance program.

20 (2) "Authority" means the health care authority.

21 (3) "Employee" means any individual employed by an employer, but
22 does not include:

23 (a) An employee employed by the employer for fewer than ninety
24 days;

25 (b) During the first twelve months of employment with the
26 employer, an employee who was employed through the job placement
27 activities of the department of social and health services, the
28 employment security department, or organizations contracting with
29 these agencies to provide job placement services;

30 (c) An employee of a franchisor's franchisees. Such employees are
31 employees of the franchisee; or

32 (d) An employee who is receiving disability benefits under the
33 federal old-age, survivors, and disability insurance act.

34 (4) "Employer" means an employer as defined in RCW 49.46.010 who
35 employed a total of one thousand or more employees at any and all
36 locations in Washington in the completed calendar quarter for which a
37 report is made in section 3 of this act, but does not include:

38 (a) An employer that makes payments for the purpose of providing
39 or reimbursing the cost of health care services, as defined in RCW

1 48.43.005, for all of its employees who are enrolled in the medical
2 assistance program; or

3 (b) A seasonal employer.

4 (5) "Medical assistance program" means the same as the definition
5 in RCW 74.09.010.

6 (6) "Seasonal employer" means an employer in an industry, other
7 than the construction industry, that the agencies determine, upon
8 application by the employer:

9 (a) Customarily operates only during regularly recurring periods
10 of twenty-six weeks or less in any fifty-two consecutive week period;
11 or

12 (b) Customarily employs fifty percent or more of its employees
13 for regularly recurring periods of twenty-six weeks or less within a
14 period of fifty-two consecutive weeks.

15 NEW SECTION. **Sec. 3.** (1) Beginning with the calendar quarter
16 ending June 30, 2020:

17 (a) Every employer shall report to the authority, within thirty
18 days after the completion of a calendar quarter, the employees
19 employed by the employer during the immediately preceding calendar
20 quarter, including such information as the authority requires and in
21 the form specified by the authority. The employer's chief executive
22 officer or an individual performing a similar function shall verify
23 the report and submit an affidavit under penalty of perjury. In the
24 affidavit, the signing officer shall affirm that the information in
25 the report:

26 (i) Was reviewed by the signing officer, and is true to the best
27 of the signing officer's knowledge, information, and belief; and

28 (ii) Does not contain any untrue statement of a material fact or
29 omit a material fact necessary to make the statement not misleading.

30 (b) The authority must identify the employees of each employer
31 reporting under this subsection (1) who are under sixty-five years
32 old and enrolled during a calendar quarter in the medical assistance
33 program. The authority must make an actual comparison of records
34 furnished by the employer under this subsection (1) with records of
35 the authority and the employment security department. The authority
36 may not disclose the names of employees identified, but must provide
37 the employer with the number of employees identified as enrolled and
38 other information that provides a profile of information about the
39 characteristics of enrolled employees generally. The authority must,

1 within sixty days after the completion of a calendar quarter, notify
2 every employer who has employees enrolled in the medical assistance
3 program that the employer must either:

4 (i) Pay an assessment specified in the notice for each employee
5 under age sixty-five who is enrolled in the medical assistance
6 program; or

7 (ii) Enter into an agreement with the authority with respect to
8 each employee under age sixty-five who is enrolled in the medical
9 assistance program to reimburse the authority, up to one hundred
10 percent of the cost, for the authority's contribution to the purchase
11 of health care coverage for the employee. The authority may require
12 the employee to enroll in available employer-sponsored coverage when
13 it is cost-effective for the state to do so. Any contribution made by
14 the authority must be cost-effective for the state and consistent
15 with Title XIX of the federal social security act.

16 (2) Within thirty days of receiving the notice under subsection
17 (1)(b) of this section, the employer must either:

18 (a) Pay the full amount of the assessment required under
19 subsection (1)(b)(i) of this section or enter into a payment
20 agreement with the authority to allow the employer to make payments
21 for the full amount of the assessment on either a quarterly,
22 semiannual, or annual basis. All payments for a particular quarter
23 must be made within a three calendar quarters of the notification
24 from the authority for that calendar quarter; or

25 (b) Enter into an agreement with the authority pursuant to
26 subsection (1)(b)(ii) of this section.

27 (3) An employer that fails:

28 (a) To file a timely and complete report as required under
29 subsection (1) of this section is subject to a penalty of up to two
30 hundred fifty dollars for each offense; and

31 (b) Within the time period required by subsection (2) of this
32 section, to pay the assessment provided for in subsection (1)(b)(i)
33 of this section or enter into an agreement provided for in subsection
34 (1)(b)(ii) of this section is subject to:

35 (i) A civil penalty of five percent of the assessment due for the
36 first month or part thereof, ten percent of the assessment due for
37 the second month or part thereof, and twenty percent of the
38 assessment due for the third month or part thereof;

39 (ii) An interest penalty of one percent per month on the
40 assessment due; and

1 (iii) The suspension of eligibility for any tax preference under
2 Title 82 or 84 RCW and any state funds for up to five years. The
3 authority shall notify the department of revenue and the department
4 of enterprise services of any employer that has had its eligibility
5 suspended under this subsection.

6 (4) (a) An employer may request a hearing by filing a request with
7 the authority within thirty days after the date on which the employer
8 received the notice required in subsection (1)(b) of this
9 section. The hearing must be conducted in accordance with chapter
10 34.05 RCW.

11 (b) If any employer fails to pay an assessment after it has
12 become a final and unappealable order, or after the court has entered
13 final judgment in favor of the authority, the authority shall refer
14 the matter to the state attorney general, who shall recover the
15 amount assessed, and any penalties and interest, by action in the
16 superior court. In such an action, the validity and appropriateness
17 of the final order imposing the penalty is not subject to review.

18 NEW SECTION. **Sec. 4.** (1) An enrollee or prospective enrollee
19 has a right to be free of interference, coercion, discrimination, or
20 reprisal from an employer for exercising his or her rights under
21 chapter 74.09 RCW. The remedies provided in this section are not
22 exclusive, and an enrollee or prospective enrollee has all other
23 rights and remedies afforded by law.

24 (2) (a) An employer may not discriminate in any manner against an
25 employee or job applicant because the person has:

26 (i) Made inquiries about enrollment or his or her rights to
27 enrollment in the medical assistance program or assisted another in
28 regard to rights to such enrollment;

29 (ii) Applied for or enrolled in, or communicated an intent to
30 enroll in, the medical assistance program, caused any proceeding
31 related to such enrollment to be instituted, or testified in any
32 proceeding so commenced; or

33 (iii) Cooperated with the authority with respect to becoming
34 enrolled in the medical assistance program or for purposes of section
35 3 of this act.

36 (b) Any discrimination or attempt to discriminate against an
37 employee within ninety days after notification of the employer under
38 section 3 of this act that the employer has employees enrolled in the

1 medical assistance program establishes a rebuttable presumption that
2 such action was in violation of this section.

3 (3) A person who believes that he or she has been discriminated
4 against in violation of this section:

5 (a) May, within six months after the alleged act of
6 discrimination, file a complaint with the human rights commission
7 alleging discrimination. Upon receipt of such complaint, the human
8 rights commission shall cause an investigation to be made as the
9 commission deems appropriate. Within sixty days after the receipt of
10 a complaint filed under this section, the human rights commission
11 shall notify the complainant of his or her determination. If, after
12 such investigation, the human rights commission determines that this
13 section has been violated, the commission shall bring an action in
14 the superior court of the county in which the violation is alleged to
15 have occurred. If the human rights commission determines that this
16 section has not been violated, the employee may institute the action
17 on his or her own behalf as provided in (b) of this subsection, but
18 this subsection does not require a complainant to file a complaint
19 with the human rights commission before pursuing remedies under (b)
20 of this subsection; and

21 (b) Has a civil cause of action for damages against the employer.

22 (4) In any action brought under this section, the court shall
23 award a prevailing plaintiff costs, including expert witness costs,
24 and reasonable attorneys' fees and actual damages, or statutory
25 damages of five thousand dollars, whichever is greater, to be awarded
26 to the aggrieved employee or job applicant. The court has
27 jurisdiction, for cause shown, to restrain violations of this section
28 and to order all appropriate relief including reinstatement of an
29 employee, or hiring of a job applicant, with back pay.

30 (5) For the purposes of this section, "discrimination" includes,
31 but is not limited to:

32 (a) Refusal to employ, reemploy, or promote;

33 (b) Discharge from employment or demotion or suspension;

34 (c) Reduction in hours of work, compensation, or other adverse
35 changes in the conditions of employment; and

36 (d) Involuntary transfer to another position or other duties.

37 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.60
38 RCW to read as follows:

1 Any person claiming to be aggrieved by a violation of section 4
2 of this act may file a complaint with the commission. The commission
3 shall promptly investigate and take other appropriate action as
4 provided in section 4 of this act.

5 NEW SECTION. **Sec. 6.** The authority shall:

6 (1) Administer and enforce this chapter including, but not
7 limited to, sending notices required in section 3 of this act,
8 determining the amount of employer assessments, entering into
9 negotiations and agreements with employers, and collecting employer
10 assessments, including penalties and interest, using the procedures
11 authorized under chapter 74.09 RCW;

12 (2) Have authority to inspect records and conduct investigations
13 and audits of employment and payroll, as the agencies deem necessary
14 or appropriate, to determine whether an employer has complied with
15 this chapter;

16 (3) Adopt rules necessary to implement this chapter; and

17 (4) Deposit assessments and interest and civil penalties
18 collected under this chapter into the general fund.

19 NEW SECTION. **Sec. 7.** If any part of this act is found to be in
20 conflict with federal requirements that are a prescribed condition to
21 the allocation of federal funds to the state, the conflicting part of
22 this act is inoperative solely to the extent of the conflict and with
23 respect to the agencies directly affected, and this finding does not
24 affect the operation of the remainder of this act in its application
25 to the agencies concerned. Rules adopted under this act must meet
26 federal requirements that are a necessary condition to the receipt of
27 federal funds by the state.

28 NEW SECTION. **Sec. 8.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 9.** This act may be known and cited as the
33 taxpayer health care fairness act.

34 **Sec. 10.** RCW 74.09.053 and 2009 c 568 s 6 and 2009 c 479 s 62
35 are each reenacted and amended to read as follows:

1 (1) Beginning in November 2012, the (~~department of social and~~
2 ~~health services, in coordination with the~~) health care
3 authority(~~(r)~~) shall by November 15th of each year report to the
4 legislature:

5 (a) The number of medical assistance recipients who: (i) Upon
6 enrollment or recertification had reported being employed, and
7 beginning with the 2008 report, the month and year they reported
8 being hired; or (ii) upon enrollment or recertification had reported
9 being the dependent of someone who was employed, and beginning with
10 the 2008 report, the month and year they reported the employed person
11 was hired. For recipients identified under (a)(i) and (ii) of this
12 subsection, the (~~department~~) authority shall report the basis for
13 their medical assistance eligibility, including but not limited to
14 family medical coverage, transitional medical assistance, children's
15 medical coverage, aged coverage, or coverage for persons with
16 disabilities; member months; and the total cost to the state for
17 these recipients, expressed as general fund-state and general fund-
18 federal dollars. Beginning with the 2021 report, the report must
19 include a list of the employers that are either subject to the
20 payment of an assessment under section 3(1)(b)(i) of this act or have
21 entered into an agreement with the authority under section
22 3(1)(b)(ii) of this act and which of those employers are subject to
23 the penalties in section 3(3)(b) of this act for noncompliance with
24 section 3(2) of this act. The information shall be reported by
25 employer size for employers having more than fifty employees as
26 recipients or with dependents as recipients. This information shall
27 be provided for the preceding January and June of that year.

28 (b) The following aggregated information: (i) The number of
29 employees who are recipients or with dependents as recipients by
30 private and governmental employers; (ii) the number of employees who
31 are recipients or with dependents as recipients by employer size for
32 employers with fifty or fewer employees, fifty-one to one hundred
33 employees, one hundred one to one thousand employees, one thousand
34 one to five thousand employees and more than five thousand employees;
35 and (iii) the number of employees who are recipients or with
36 dependents as recipients by industry type.

37 (2) For each aggregated classification, the report will include
38 the number of hours worked, the number of (~~department of social and~~
39 ~~health services~~) authority covered lives, and the total cost to the

1 state for these recipients. This information shall be for each
2 quarter of the preceding year.

3 NEW SECTION. **Sec. 11.** Sections 1 through 4, 6, 7, and 9 of this
4 act constitute a new chapter in Title 74 RCW.

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