
HOUSE BILL 1227

State of Washington

68th Legislature

2023 Regular Session

By Representatives Reeves, Morgan, Ramel, and Fosse

Read first time 01/11/23. Referred to Committee on Labor & Workplace Standards.

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 90 days;

24 (b) During the first 12 months of employment with the employer,
25 an employee who was employed through the job placement activities of
26 the department of social and health services, the employment security
27 department, or organizations contracting with these agencies to
28 provide job placement services;

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

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

33 (4) "Employer" means an employer as defined in RCW 49.46.010 who
34 employed a total of 1,000 or more employees at any and all locations
35 in Washington in the completed calendar quarter for which a report is
36 made in section 3 of this act, but does not include:

37 (a) An employer that makes payments for the purpose of providing
38 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 26 weeks or less in any 52 consecutive week period; or

11 (b) Customarily employs 50 percent or more of its employees for
12 regularly recurring periods of 26 weeks or less within a period of 52
13 consecutive weeks.

14 NEW SECTION. **Sec. 3.** (1) Beginning with the calendar quarter
15 ending June 30, 2024:

16 (a) Every employer shall report to the authority, within 30 days
17 after the completion of a calendar quarter, the employees employed by
18 the employer during the immediately preceding calendar quarter,
19 including such information as the authority requires and in the form
20 specified by the authority. The employer's chief executive officer or
21 an individual performing a similar function shall verify the report
22 and submit an affidavit under penalty of perjury. In the affidavit,
23 the signing officer shall affirm that the information in the report:

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

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

28 (b) The authority must identify the employees of each employer
29 reporting under this subsection (1) who are under 65 years old and
30 enrolled during a calendar quarter in the medical assistance program.
31 The authority must make an actual comparison of records furnished by
32 the employer under this subsection (1) with records of the authority
33 and the employment security department. The authority may not
34 disclose the names of employees identified, but must provide the
35 employer with the number of employees identified as enrolled and
36 other information that provides a profile of information about the
37 characteristics of enrolled employees generally. The authority must,
38 within 60 days after the completion of a calendar quarter, notify

1 every employer who has employees enrolled in the medical assistance
2 program that the employer must either:

3 (i) Pay an assessment specified in the notice for each employee
4 under age 65 who is enrolled in the medical assistance program; or

5 (ii) Enter into an agreement with the authority with respect to
6 each employee under age 65 who is enrolled in the medical assistance
7 program to reimburse the authority, up to 100 percent of the cost,
8 for the authority's contribution to the purchase of health care
9 coverage for the employee. The authority may require the employee to
10 enroll in available employer-sponsored coverage when it is cost-
11 effective for the state to do so. Any contribution made by the
12 authority must be cost-effective for the state and consistent with
13 Title XIX of the federal social security act.

14 (2) Within 30 days of receiving the notice under subsection
15 (1)(b) of this section, the employer must either:

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

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

25 (3) An employer that fails:

26 (a) To file a timely and complete report as required under
27 subsection (1) of this section is subject to a penalty of up to \$250
28 for each offense; and

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

33 (i) A civil penalty of five percent of the assessment due for the
34 first month or part thereof, 10 percent of the assessment due for the
35 second month or part thereof, and 20 percent of the assessment due
36 for the third month or part thereof;

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

39 (iii) The suspension of eligibility for any tax preference under
40 Title 82 or 84 RCW and any state funds for up to five years. The

1 authority shall notify the department of revenue and the department
2 of enterprise services of any employer that has had its eligibility
3 suspended under this subsection.

4 (4) (a) An employer may request a hearing by filing a request with
5 the authority within 30 days after the date on which the employer
6 received the notice required in subsection (1)(b) of this
7 section. The hearing must be conducted in accordance with chapter
8 34.05 RCW.

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

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

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

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

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

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

34 (b) Any discrimination or attempt to discriminate against an
35 employee within 90 days after notification of the employer under
36 section 3 of this act that the employer has employees enrolled in the
37 medical assistance program establishes a rebuttable presumption that
38 such action was in violation of this section.

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

3 (a) May, within six months after the alleged act of
4 discrimination, file a complaint with the human rights commission
5 alleging discrimination. Upon receipt of such complaint, the human
6 rights commission shall cause an investigation to be made as the
7 commission deems appropriate. Within 60 days after the receipt of a
8 complaint filed under this section, the human rights commission shall
9 notify the complainant of his or her determination. If, after such
10 investigation, the human rights commission determines that this
11 section has been violated, the commission shall bring an action in
12 the superior court of the county in which the violation is alleged to
13 have occurred. If the human rights commission determines that this
14 section has not been violated, the employee may institute the action
15 on his or her own behalf as provided in (b) of this subsection, but
16 this subsection does not require a complainant to file a complaint
17 with the human rights commission before pursuing remedies under (b)
18 of this subsection; and

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

20 (4) In any action brought under this section, the court shall
21 award a prevailing plaintiff costs, including expert witness costs,
22 and reasonable attorneys' fees and actual damages, or statutory
23 damages of \$5,000, whichever is greater, to be awarded to the
24 aggrieved employee or job applicant. The court has jurisdiction, for
25 cause shown, to restrain violations of this section and to order all
26 appropriate relief including reinstatement of an employee, or hiring
27 of a job applicant, with back pay.

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

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

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

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

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

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

37 Any person claiming to be aggrieved by a violation of section 4
38 of this act may file a complaint with the commission. The commission

1 shall promptly investigate and take other appropriate action as
2 provided in section 4 of this act.

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

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

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

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

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

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

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

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

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

34 (1) Beginning in November 2012, the (~~department of social and~~
35 ~~health services, in coordination with the~~) health care

1 authority(~~(r)~~) shall by November 15th of each year report to the
2 legislature:

3 (a) The number of medical assistance recipients who: (i) Upon
4 enrollment or recertification had reported being employed, and
5 beginning with the 2008 report, the month and year they reported
6 being hired; or (ii) upon enrollment or recertification had reported
7 being the dependent of someone who was employed, and beginning with
8 the 2008 report, the month and year they reported the employed person
9 was hired. For recipients identified under (a)(i) and (ii) of this
10 subsection, the (~~department~~) authority shall report the basis for
11 their medical assistance eligibility, including but not limited to
12 family medical coverage, transitional medical assistance, children's
13 medical coverage, aged coverage, or coverage for persons with
14 disabilities; member months; and the total cost to the state for
15 these recipients, expressed as general fund-state and general fund-
16 federal dollars. Beginning with the 2025 report, the report must
17 include a list of the employers that are either subject to the
18 payment of an assessment under section 3(1)(b)(i) of this act or have
19 entered into an agreement with the authority under section
20 3(1)(b)(ii) of this act and which of those employers are subject to
21 the penalties in section 3(3)(b) of this act for noncompliance with
22 section 3(2) of this act. The information shall be reported by
23 employer size for employers having more than fifty employees as
24 recipients or with dependents as recipients. This information shall
25 be provided for the preceding January and June of that year.

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

35 (2) For each aggregated classification, the report will include
36 the number of hours worked, the number of (~~department of social and~~
37 ~~health services~~) authority covered lives, and the total cost to the
38 state for these recipients. This information shall be for each
39 quarter of the preceding year.

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

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