

FINAL BILL REPORT

ESSB 5061

C 2 L 21

Synopsis as Enacted

Brief Description: Concerning unemployment insurance.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Keiser, Conway, Billig, Dhingra, King, Nguyen, Saldaña, Stanford and Wilson, C.; by request of Office of the Governor).

Senate Committee on Labor, Commerce & Tribal Affairs

Background: Unemployment Benefit Eligibility Conditions. An unemployed individual (claimant) is eligible to receive unemployment insurance benefits (UI benefits) if the individual: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of the claimant's or quit work for good cause; and (3) is able to work, available to work, and is actively searching for suitable work. The Employment Security Department (ESD) administers Washington State's unemployment insurance program.

Waiting Period. A claimant must be unemployed for a one-week waiting period before being eligible for UI benefits. Under the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and until the end of 2020, the federal government reimbursed the states for 100 percent of the UI benefits paid for the first week of unemployment. During most of COVID-19, the one-week waiting period in the state was waived. Under the federal Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act), for week of unemployment after 2020 through March 14, 2021, the federal reimbursement for the one-week waiting period is 50 percent.

Weekly Benefit Amounts. A claimant's weekly benefit amount (WBA) is 3.85 percent of the average quarterly wages of the individual's total wages during the two highest quarters of the individual's base year. The maximum WBA is the greater of \$496 or 63 percent of the average weekly wage (AWW), calculated annually by ESD. The minimum WBA is 15 percent of AWW. Beginning July 1, 2020, the maximum and minimum WBAs were \$844 and \$201.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Unemployment Insurance Contributions—Payroll Taxes; Benefit Ratio Calculation. Most employers pay contributions—payroll taxes—to finance unemployment benefits. A contribution paying employer's tax rate is experience-rated so that the rate is determined, in part, by the benefits paid to its employees. A benefit ratio is computed for each qualified employer by dividing the total amount of benefits charged to the account of the employer by the taxable payrolls over a four year period.

In addition to the experience-rated tax, employers may pay a social cost factor rate (social tax). The social tax is generally calculated by dividing the total social costs, the total UI benefits paid less the contributions paid, by the total payroll. The maximum social tax is 1.22 percent. The social tax is graduated for employers based on their experience rate classes. There is also a solvency surcharge that applies if there are fewer than seven months of UI benefits in the UI trust fund, which may not exceed 0.2 percent.

Some nonprofit organizations, states and political subdivisions of the state, and Indian tribes may qualify as reimbursable employers. Reimbursable employers reimburse ESD for UI benefits actually paid to separated employees instead of paying unemployment contributions.

Charging UI Benefits Paid. Benefits paid are charged to the experience-rating of base year employers on a pro rata basis according to the amount of wages paid to the claimant by the employer in the claimant's base year compared to the wages paid by all employers. Some benefits, such as those paid for certain good cause quits, are charged only to the separating employer, or are not charged to any employer.

Voluntary Contribution Program. By February 15th of the rate year, an employer may make a voluntary contribution of part or all of the benefits charged to the employer's account during the two most recent years ending on June 30th. There is a 10 percent voluntary contribution program (VCP) surcharge on the amount of the contributions. Upon receiving the contributions and the surcharge, the benefits charges are cancelled and a new benefit ratio is calculated for the employer. The minimum amount of a voluntary contribution must result in a recomputed benefit ratio that is in a rate class at least four rate classes lower than the rate class that included the employer's original benefit ratio. The VCP is only available to employers who have moved up at least 12 rate classes from the previous tax rate year.

Shared Work Compensation Plan. A shared work compensation plan allows employers to reduce employee hours by as much as 50 percent and their shared work employees are eligible for partial UI benefits to replace a portion of their lost wages. ESD approves plans, which must include at least one employee; reduce the shared work employees weekly hours by at least 10 percent and not more than 50 percent; and certify that the employer will continue providing the employees any health and retirement benefits.

Under the CARES Act and the Continued Assistance Act, the federal government has been and will continue to reimburse the states for 100 percent of the shared work UI benefits paid through March 14, 2021. During most of COVID-19, the statutory requirement to charge the shared work UI benefits to contribution paying or reimbursable employers was waived.

Lump Sum Retirement Payment Deduction. Lump sum retirement payments are prorated over the life expectancy of a claimant. The prorated amount is deducted from the WBA.

Trade Adjustment Assistance Program. The Trade Adjustment Assistance program (TAA) is a federal re-employment program. The program helps U.S. workers become re-employed after losing their jobs due to international trade. Certified workers can receive help looking for and relocating to a new job, as well as training for a new occupation. Through a combination of UI benefits and trade readjustment allowances, participants may receive benefits for up to 130 weeks. New federal rules for the program were finalized and effective September 21, 2020.

Summary: Benefit Eligibility for High-Risk Individuals. After April 4, 2021 and during the weeks of a public health emergency (PHE), an unemployed individual, who left work voluntarily and who is high risk or resides with an individual who is high risk, is eligible for UI benefits. In addition, the unemployed individual may meet the able and available for work requirements if the individual is able to perform, available to perform, and is actively seeking suitable work which can be performed for an employer from the individual's home and the individual or another individual residing with the unemployed individual is high risk. ESD must consider the degree of risk to the health of those residing with the individual for the suitable work requirement.

High risk individuals include an individual that was in an age category defined as high risk for the disease that is the subject of the PHE, or has an underlying health condition identified as a risk factor for the disease. The determination for the age categories and health conditions is made by the federal Centers for Disease Control and Prevention, the Department of Health, or the equivalent agency in the state where the individual resides.

Public Health Emergency Definition. PHE means a declaration or order that covers the jurisdiction where the unemployed individual was working on the date the individual became unemployed concerning any dangerous, contagious, or infectious diseases, including a pandemic, and is issued as follows:

- the President has declared a national or regional emergency;
- the Governor declared a state of emergency; or
- the Governor or state executive of another state where the unemployed individual was working at the time of the declaration declared a state of emergency.

Waiting Period. For any weeks when the one-week waiting period is fully paid or fully reimbursed by the federal government, the waiting period is waived. When the waiting period is partially paid or partially reimbursed by the federal government, ESD may waive

the waiting period.

Minimum Weekly Benefit Amount Increases. For claims on or after July 1, 2021, the minimum WBA increases to 20 percent of the AWW for preceding June 30th. An individual may not receive a WBA that exceeds the individual's weekly wage for claims with an effective date on or after January 2, 2022, or such subsequent date by ESD rule to continue eligibility of claimants in this state for federal unemployment benefits or receipt of federal funds under the CARES Act, the Continued Assistance for Unemployed Workers Act, or other act extending such benefits or funds.

Noncharging of UI Benefits Paid. UI benefits paid for the one-week waiting period are not charged to contribution paying employers' experience rating account or to certain reimbursable employers when the waiting period is fully paid or fully reimbursed by the federal government. If the waiting period is partially paid or partially reimbursed ESD may, by rule, elect not to charge the benefits paid.

UI benefits paid for all weeks starting with the week ending March 28, 2020 through May 30, 2020 are not be charged to the experience rating account of any contribution paying employer.

A contribution paying employer may request that benefits paid not be charged to the employer's experience rating when the benefits paid are a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility and the closure resulted from the presence of any dangerous, contagious, or infectious disease that is the subject of a PHE at the plant, building, worksite, or other facility.

UI Taxes: Social and Solvency Surcharge. The maximum social tax for the following rate years is:

- 0.50 percent for 2021;
- 0.75 percent for 2022;
- 0.80 percent for 2023;
- 0.85 percent for 2024; and
- 0.90 percent for 2025.

The solvency surcharge is suspended for 2021 to 2025.

Voluntary Contribution Program. From the effective date and until May 31, 2026, the 10 percent VCP surcharge is not charged; the VCP payment deadline is extended to March 31st; the minimum amount of a voluntary contribution must result in a recomputed benefit ratio at least two rate classes lower than the original rate class; and only employers who have moved up at least eight rate classes may use the program.

Shared Work Program. Shared work employers must have at least two employees covered in the program. Shared work benefits paid or reimbursed by the federal government are not charged to contribution paying or reimbursable employers. Shared work employees may

participate in training, including employer-sponsored training or ESD approved training funded under the Workforce Innovation and Opportunity Act, to enhance job skills.

Lump Sum Retirement Payment Deduction. A lump sum payment from certain retirement plans is not deducted from the WBA.

Trade Adjustment Assistance Program. Changes are made to the provisions related to an adversely affected worker's benefit eligibility related to enrollment in an approved training to reflect the new federal rules under the TAA.

ESD Report. Annually beginning on December 1, 2021 through 2025, ESD, in consultation with the Unemployment Insurance Advisory Committee, must provide a report to the Legislature and the Governor that provides the status of the trust fund and any federal advances; and analyzes the impact of the minimum WBA increase.

By December 1, 2021, ESD must provide a report to the Legislature and the Governor that reviews the amount of wages subject to tax, including an analysis of the equitable treatment of employers and a comparison of the percentage of wages subject to tax for small, medium, and large businesses and how changes to the taxable wages would impact trust fund balances and employer contributions.

Votes on Final Passage:

Senate	42	7
House	89	8

Effective: February 8, 2021