

HOUSE BILL REPORT

SHB 1570

As Passed House:

March 2, 2023

Title: An act relating to social insurance programs managed by the employment security department applicable to transportation network companies, transportation network company drivers, and part-time work.

Brief Description: Concerning social insurance programs applicable to transportation network companies and drivers.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Berry, Ryu, Alvarado, Bateman, Fitzgibbon, Ramel, Doglio, Lekanoff, Reed, Pollet, Macri and Fosse).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/3/23, 2/10/23 [DPS];

Appropriations: 2/22/23, 2/24/23 [DPS(LAWS)].

Floor Activity:

Passed House: 3/2/23, 87-9.

Brief Summary of Substitute Bill

- Provides unemployment insurance to drivers providing services for transportation network companies (TNC).
- Changes the conditions under which an employer may be relieved of benefit charges when the employer continues to provide part-time employment for claimants of unemployment insurance.
- Creates a pilot program in which drivers may elect to pay for Paid Family and Medical Leave coverage, and the TNC pays those drivers an amount equal to the premiums.

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.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Bronoske, Connors, Doglio, Ormsby and Ortiz-Self.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Labor & Workplace Standards be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Dye.

Staff: Jackie Wheeler (786-7125).

Background:

Unemployment Insurance.

The unemployment insurance (UI) system, administered by the Employment Security Department (ESD), is designed to provide partial wage replacement for workers who are unemployed. A claimant is eligible to receive UI benefits if the claimant: (1) worked at least 680 hours in the base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is available to work and is actively searching for work. Regular UI benefits are based on the claimant's earnings in his or her base year, adjusted based on a statutory formula.

Funding for the UI system and UI benefits are sourced from state and federal taxes. At the state level, most employers pay contributions, referred to as payroll taxes, to finance UI benefits. An employer's tax rate is experience-rated, which means the rate is determined, in part, by the UI benefits paid to its employees. In addition, employers pay a social cost factor rate, which is graduated based on their experience rate classes. These state payroll taxes are deposited into a trust fund, which can only be used to pay UI benefits.

In certain circumstances, a business may receive a relief from benefit charges if the claimant continues to be employed on a part-time basis with the employer seeking the relief from charges. The claimant must be employed on a regularly scheduled permanent part-

time basis with that employer for the relief to be applied.

Paid Family and Medical Leave.

The Paid Family and Medical Leave program (PFML), administered by the ESD, provides partial wage replacement for those who meet eligibility requirements when they experience a serious health condition, need time to care for a family member with a serious health condition, need time for the birth or placement of a child, or for certain military-related events.

To be eligible, a person must have worked at least 820 hours in the state during the first four of the last five completed calendar quarters or the last four completed calendar quarters. The amount of leave available is up to: 12 weeks of paid family or medical leave; or 16 weeks of combined family and medical leave, plus an additional two weeks if there is pregnancy or birth complications.

Premiums for medical leave are shared between businesses and employees. Premiums for family leave are paid for by employees.

Self-employed persons may elect PFML coverage. On a quarterly basis, they must report their self-employment wages to the ESD and pay the worker share of the premiums. If they fail to file reports and pay premiums, the ESD may cancel their elective coverage.

With some exceptions, the ESD must keep information regarding individuals and employers under the PFML private and confidential. The ESD may disclose this information in certain instances, such as, to a third party acting on behalf of an individual or employer.

Transportation Network Companies Work Group.

Last year, Engrossed Substitute House Bill 2076 was enacted, which provided, among other things, minimum pay standards and industrial insurance coverage for transportation network company (TNC) drivers. The bill also required the ESD to convene a work group of stakeholders to study the appropriate application of UI, PFML, and long-term care on TNCs and drivers. In December 2022, the ESD issued a report to the Legislature on the work group's recommendations.

Summary of Substitute Bill:

Unemployment Insurance Benefits.

Transportation Network Companies and Drivers.

Unemployment insurance applies to services performed by drivers facilitated through the TNC's digital network. The laws applicable to a relationship meeting the requirements for UI benefits also apply to the relationship between a driver and a TNC.

Benefit Relief for Employers Providing Part-Time Work.

The requirement that the claimant be employed on a "regularly scheduled permanent part-

time basis" with the employer is removed. Instead, an employer may receive relief from benefit charges if the claimant continues to be employed by the employer seeking relief and:

- the employer furnished part-time work to the individual during the base year;
- the individual has become eligible for benefits because of loss of employment with one or more other employers; and
- the employer has continued to furnish or make available part-time work to the individual in substantially the same amount as during the individual's base year.

Paid Family and Medical Leave.

Beginning July 1, 2024, the ESD must develop a pilot program under the PFML focusing on the TNCs and drivers. The pilot program must require that:

- drivers may continue to elect coverage as self-employed individuals;
- the TNCs must report to each driver the total amount of compensation that the driver earned through the TNC in that quarter;
- the ESD must share data with each TNC, on a quarterly basis, on drivers who reported and paid premiums for PFML and drivers who withdrew and canceled coverage; and
- the TNCs must pay each driver who elected coverage an amount equal to the premium paid.

A driver must file with the ESD a written notice of election of coverage. A driver becomes eligible for benefits after working 820 hours in the state during the qualifying period following the date the driver filed written notice.

The requirement to pay premiums under the pilot program ends December 31, 2028, and the section creating the pilot program expires on the same day. The ESD is authorized to continue disclosing information about drivers to TNCs until February 15, 2029.

The ESD must evaluate the pilot program for its impacts on removing barriers to accessing paid family and medical leave and impacts on the PFML insurance account. By September 1, 2027, the ESD must submit a report to the Legislature summarizing its evaluation of the pilot program and making any recommendations.

The ESD may adopt rules to implement the pilot program.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) This bill is a continuation from last year's first-of-its-kind legislation for TNCs and drivers. All parties have agreed on the provisions in this bill. The bill modernizes state programs to accommodate this workforce and makes sure that it is done fairly. It allows drivers to opt into the PFML and does not make any structural changes to the PFML. The PFML benefits make a difference to these workers when they need to care for themselves or loved ones who are sick or when they become new parents. This unique industry requires innovative approaches to provide flexibility and benefits. The bill will make it easier for drivers to access unemployment insurance benefits, which was a life-saver during the pandemic.

(Other) To support the PFML pilot program, the ESD needs to collect data and have time for a third-party administrator to process data. The work group captured the rulemaking that the ESD will need to do in order to implement this bill. The ESD needs a later implementation date to give the ESD time for rulemaking. This bill will impact the PFML fund and it will be important to track that.

Staff Summary of Public Testimony (Appropriations):

(In support) Last session, historical legislation was enacted that provided drivers with important benefits. This bill is an important continuation of that work and the commitment to collaborate with stakeholders on innovative solutions to modernize the state's benefit programs to include rideshare drivers. There has been an exhaustive stakeholder engagement process with the companies and state to come up with the recommendations that are contained in this bill. A lot of lessons have been learned during the pandemic and we are happy that drivers will have easier access to that program going forward. The pilot program under the Paid Family and Medical Leave program will help the Employment Security Department respond to the changing nature of the unique gig economy and allow them to collect data to create a better paid leave program. For some drivers, language proficiency can make navigating state programs a challenge and the bill will help address this.

(Opposed) None.

Persons Testifying (Labor & Workplace Standards): (In support) Representative Liz Berry, prime sponsor; Julia Gorton, Washington Hospitality Association; Allison Ford, Uber Technologies; Nick Johnson, Lyft; Noel Mendoza; Peter Kuel; Don Creery; and Jennifer Heinlein.

(Other) Caitlyn Jekel and Daniel Zeitlin, Washington State Employment Security Department.

Persons Testifying (Appropriations): Allison Ford, Uber; Nicholas Johnson, Lyft, Incorporated; and Brenda Wiest, Teamsters 117.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards):
None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.