

Introduction

Pursuant to RCW 34.05.328, the Employment Security Department (Department) hereby analyzes the costs and benefits of adopting the proposed rules modifying the hours unemployment claimants must be available for work in order to be eligible for unemployment benefits and updating factors used to determine suitable work.

Costs

COSTS FOR THE DEPARTMENT

The Department anticipates a one-time cost of \$80,000 to implement the amended rule. The costs include Information Technology updates, policy manual updates, and staff training.

COSTS FOR THE PUBLIC

Public costs from the proposed rule arise from possible changes to the tax rate assigned to employers. Employer contributions to the Unemployment Insurance Trust Fund (Trust Fund) are based on two factors: Experience Rating and Social Cost. Just as drivers with a history of at-risk behavior pay higher automobile insurance premiums, employers with a history of more benefit claims generally will pay a higher unemployment tax rate. In 2020, employers paid unemployment taxes on the first \$52,700 of each employee's earnings. The average unemployment tax rate in 2020 was 1.03%, down from 1.08% in 2019.

Experience Rating

An employer's experience rating is based on charged benefits to the individual employer. The experience-based tax is based on the amount of unemployment benefits paid to former employees over the previous four years. The four-year rolling average cushions the effect of one bad year for an employer. There are 40 experience-rate classes, and employers move up and down those classes based on their past experience. New businesses are charged an experience rating associated with their respective industry until the business establishes an individual experience rating, with a federal mandated minimum of 1% for new businesses.

In 2020, there were 126,440 Washington employers in experience-rate classes 1 through 5 with an average Unemployment Insurance (UI) tax rate of 0.31%, or an average of \$47.97 per employee per year. This accounted for 70% of total employers. There were 4,591 experience-rate class 40 employers, 2.55% of total employers, with a UI tax rate of 6.03%, or an average of \$933.15 per employee per year.

Social-Cost Tax

The social-cost tax is a secondary assessment that is assessed to all Washington employers. For 2020, the social-cost tax was graduated from 0.1% for rate-class 1 to 0.3% for rate-classes 21 through 40. The social-cost tax covers unemployment costs that cannot be recovered from specific businesses. During economic recessions, when benefits paid far exceed taxes collected, the social-cost tax acts as a brake to slow the decline of the Trust Fund so employers are not hit by sharper, more sudden tax increases.

Hours of Availability Claims Costs

Due to the complexity of contribution calculations, the Department is unable to forecast the costs to individual businesses. The proposed rule will create additional claims that may be charged to employers, but the number of possible variables for claims precludes the Department from making a reliable forecast. The

following analysis is based on central tendencies of UI data from 2020 and hours of availability denials from January 1, 2020 through December 31, 2020.

The following analysis assumes that all previous unemployment claims that were denied because the claimant was unavailable would instead be allowed. In reality, the proposed rule does not state that all persons who file unemployment claims are automatically eligible for unemployment benefits despite availability, and it is highly likely that some number of the previous claims that were denied before would still be denied under the proposed rule. Therefore, the following analysis presents a “worst-case scenario” and overstates the potential economic impacts of the proposed rule.

During 2020, an atypical year due to the extraordinary high volume of unemployment insurance claims filed as a result of the COVID-19 pandemic, the Department denied 15,790 claims for claimants who were *not available during the work hours and days usual for their type of work*. Each claim, on average, represents \$3,868 in charged benefits to an employer. When considering the total denied claims spread across the state-wide employer base, the proposed rule would increase each employers’ average charged benefits by \$80.60 per year. An increase of this size is unlikely to increase the tax liability for many employers. (Table 1).

For individual businesses, certain employers may be greatly impacted by a single claim while a single claim for certain employers will have no impact. For employers in experience-ratings classes 0 through 39, additional charged benefits of \$3,868 will move the employer into a higher experience-class rating. For employers in experience-rate class 40, however, there would be no additional tax liability. (Table 2).

Benefits

Current availability requirements force many Washington workers to make difficult choices between providing care necessary for family members and being available for work during unattainable days and hours. Approximately forty percent of industries in Washington are classified as having customary hours of twenty-four hours a day, seven days a week. This forces claimants to be available morning, afternoons, and overnight, even if the claimant had not previously worked shifts during those time frames. Many claimants are unable to accept work different from previous work schedules due to obligations for providing care for a child or vulnerable adult, which precludes the claimant from receiving unemployment insurance benefits. By removing the requirement that claimants be available for “all of” the customary hours of the industry, claimants are provided flexibility to receive UI benefits while the claimant searches for new suitable employment while meeting obligations for providing care to family members.

Clarifying the definition of suitable work to include previous shifts of employment provides a level of protection for workers. The amended definition of suitable work removes hardships on claimants while protecting charged employers by preventing claimants from imposing undue restrictions on availability.

Conclusion

The rule change supports the Department’s mission to develop the nation’s best and most future-ready workforce with opportunities for all by providing additional benefits and thereby economic stability to claimants while imposing negligible costs across the employer base. Therefore, the Department concludes the probable benefits of the proposed rule are greater than its probable costs.

Appendix

Assumptions

The estimates included in this analysis are based on the following assumptions:

- Employees earned at least \$52,700 during the base year (2020 taxable wage);
- All benefits are charged to a single employer;
- Claims are paid for the average number of weeks per claim from 2020: 15.6 weeks;
- Charged benefits are increased by one-fourth of the estimated additional charged benefits to account for the four-year experience rating cycle; and
- Claims meet all other eligibility requirements.

Table 1 – Statewide aggregate with an additional approved claim

Experience Rate Class	Average Tax able Wages	Yearly Charged Benefits	Benefits + Hours of Availability estimate (state-wide aggregate)	Adjusted Experience Rate Class	Adjusted Tax Rate	Adjusted Tax Rate Variance	Increased Tax Liability per Year
Class 5	\$849,595	\$18,681	\$23,351	6	.63%	+0.13%	\$64.74
Class 20	\$437,489	\$24,164	\$28,834	20	2.65%	-	-
Class 30	\$404,919	\$23,590	\$28,260	30	4.15%	-	-
Class 40	\$197,530	\$24,801	\$29,471	40	5.40%	-	-

Table 2 – Individual business with an additional approved claim

Experience Rate Class	Taxable Wages	Average Yearly Charged Benefits	Benefits + Hours of Availability estimate (individual firm)	Adjusted Experience Rate Class	Adjusted Tax Rate	Adjusted Tax Rate Variance	Increased Tax Liability per Year
Class 5	\$1,122,264	\$16,517	\$23,775	21	2.80%	+2.30%	\$1,145.40
Class 20	\$455,538	\$11,616	\$18,874	31	4.30%	+1.65%	\$821.70
Class 30	\$275,872	\$10,232	\$17,490	40	5.40%	+1.25%	\$622.50
Class 40	\$175,711	\$16,116	\$23,401	40	5.40%	-	-

2020 Experience Rate Classes

Class	Number of Firms	Class	Number of Firms	Class	Number of Firms	Class	Number of Firms	Class	Number of Firms
1	89270	9	3646	17	1272	25	579	33	564
2	13547	10	3189	18	1099	26	523	34	535
3	9140	11	2761	19	1035	27	521	35	498
4	7910	12	2582	20	950	28	464	36	431
5	6573	13	2274	21	830	29	474	37	409
6	5682	14	1927	22	774	30	393	38	330
7	4846	15	1689	23	688	31	366	39	298
8	4205	16	1552	24	684	32	681	40	4591
								Total	179,761

2020 Taxable Wages per Experience-Rate Class

Class	Taxable Wages	Class	Taxable Wages	Class	Taxable Wages	Class	Taxable Wages	Class	Taxable Wages
1	\$6,013,661,296.40	9	\$2,312,662,230.16	17	\$469,086,744.54	25	\$195,864,029.02	33	\$156,791,771.36
2	\$6,195,211,279.01	10	\$1,794,505,782.42	18	\$575,549,382.98	26	\$178,217,979.48	34	\$173,611,192.52
3	\$6,851,001,897.69	11	\$1,421,547,735.45	19	\$387,124,693.15	27	\$232,719,892.81	35	\$116,388,810.65
4	\$6,986,397,637.39	12	\$1,132,241,539.55	20	\$415,614,866.05	28	\$181,091,138.80	36	\$131,781,445.68
5	\$5,584,384,677.59	13	\$953,474,724.72	21	\$351,051,490.42	29	\$149,651,550.67	37	\$175,225,278.59
6	\$4,569,727,912.28	14	\$786,793,109.55	22	\$266,958,474.67	30	\$159,133,053.56	38	\$93,266,387.85
7	\$3,665,046,038.55	15	\$632,059,733.90	23	\$238,102,504.93	31	\$128,052,145.97	39	\$75,408,752.21
8	\$2,750,251,182.43	16	\$788,577,939.86	24	\$275,389,047.91	32	\$206,032,603.93	40	\$906,862,713.55
Total								\$58,676,520,668	