
HOUSE BILL 1339

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2009 Regular Session

By Representatives Conway, Wood, Armstrong, Hunt, Condotta, Green, Williams, Crouse, Moeller, and Chandler; by request of Employment Security Department

Read first time 01/19/09. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to correcting statutory references in the
2 calculation of predecessor and successor employer contribution rates;
3 amending RCW 50.29.062 and 50.29.063; and creating a new section.

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

5 **Sec. 1.** RCW 50.29.062 and 2006 c 47 s 2 are each amended to read
6 as follows:

7 Except as provided in RCW 50.29.063, predecessor and successor
8 employer contribution rates shall be computed in the following manner:

9 (1) If the successor is an employer, as defined in RCW 50.04.080,
10 at the time of the transfer of a business, the following applies:

11 (a) The successor's contribution rate shall remain unchanged for
12 the remainder of the rate year in which the transfer occurs; and

13 (b) Beginning January 1st following the transfer, the successor's
14 contribution rate for each rate year shall be based on a combination of
15 the following:

16 (i) The successor's experience with payrolls and benefits; and

17 (ii) Any experience assigned to the predecessor involved in the
18 transfer. If only a portion of the business was transferred, then the

1 experience attributable to the acquired portion is assigned to the
2 successor.

3 (2) If the successor is not an employer at the time of the
4 transfer, the following applies:

5 (a) For transfers before January 1, 2005:

6 (i) Except as provided in (ii) of this subsection (2)(a), the
7 successor shall pay contributions at the lowest rate determined under
8 either of the following:

9 (A) The contribution rate of the rate class assigned to the
10 predecessor employer at the time of the transfer for the remainder of
11 that rate year. Any experience relating to the assignment of that rate
12 class attributable to the predecessor is transferred to the successor.
13 Beginning with the January 1st following the transfer, the successor's
14 contribution rate shall be based on a combination of the transferred
15 experience of the acquired business and the successor's experience
16 after the transfer; or

17 (B) The contribution rate equal to the average industry rate as
18 determined by the commissioner, but not less than one percent, and
19 continuing until the successor qualifies for a different rate in its
20 own right. Assignment of employers by the commissioner to industrial
21 classification, for purposes of this subsection, must be in accordance
22 with established classification practices found in the North American
23 industry classification system issued by the federal office of
24 management and budget to the fourth digit provided in the North
25 American industry classification system.

26 (ii) If the successor simultaneously acquires the business or a
27 portion of the business of two or more employers in different rate
28 classes, its rate, from the date the transfer occurred until the end of
29 that rate year and until it qualifies in its own right for a new rate,
30 shall be the rate of the highest rate class applicable at the time of
31 the acquisition to any predecessor employer who is a party to the
32 acquisition, but not less than one percent.

33 (b) For transfers on or after January 1, 2005:

34 (i) Except as provided in (ii) and (iii) of this subsection (2)(b),
35 the successor shall pay contributions:

36 (A) At the contribution rate assigned to the predecessor employer
37 at the time of the transfer for the remainder of that rate year. Any

1 experience attributable to the predecessor relating to the assignment
2 of the predecessor's rate class is transferred to the successor.

3 (B) Beginning January 1st following the transfer, the successor's
4 contribution rate for each rate year shall be based on an array
5 calculation factor rate that is a combination of the following: The
6 successor's experience with payrolls and benefits; and any experience
7 assigned to the predecessor involved in the transfer. If only a
8 portion of the business was transferred, then the experience
9 attributable to the acquired portion is assigned to the successor if
10 qualified under RCW 50.29.010(6) by including the transferred
11 experience. If not qualified under RCW 50.29.010(6), the contribution
12 rate shall equal the sum of the rates determined by the commissioner
13 under RCW 50.29.025(2) (~~((c)(ii) and~~) (d)(ii)(~~(7)~~) and 50.29.041, if
14 applicable, and continuing until the successor qualifies for a
15 different rate, including the transferred experience.

16 (ii) If there is a substantial continuity of ownership, control, or
17 management by the successor of the business of the predecessor, the
18 successor shall pay contributions at the contribution rate determined
19 for the predecessor employer at the time of the transfer for the
20 remainder of that rate year. Any experience attributable to the
21 predecessor relating to the assignment of the predecessor's rate class
22 is transferred to the successor. Beginning January 1st following the
23 transfer, the successor's array calculation factor rate shall be based
24 on a combination of the transferred experience of the acquired business
25 and the successor's experience after the transfer.

26 (iii) If the successor simultaneously acquires the business or a
27 portion of the business of two or more employers with different
28 contribution rates, the successor's rate, from the date the transfer
29 occurred until the end of that rate year and until it qualifies in its
30 own right for a new rate, shall be the sum of the rates determined by
31 the commissioner under RCW 50.29.025(2) (a) and (b), and 50.29.041,
32 applicable at the time of the acquisition, to the predecessor employer
33 who, among the parties to the acquisition, had the largest total
34 payroll in the completed calendar quarter immediately preceding the
35 date of transfer, but not less than the sum of the rates determined by
36 the commissioner under RCW 50.29.025(2) (~~((c)(ii) and~~) (d)(ii)(~~(7)~~)
37 and 50.29.041, if applicable.

38 (3) With respect to predecessor employers:

1 (a) The contribution rate on any payroll retained by a predecessor
2 employer shall remain unchanged for the remainder of the rate year in
3 which the transfer occurs.

4 (b) In all cases, beginning January 1st following the transfer, the
5 predecessor's contribution rate or the predecessor's array calculation
6 factor for each rate year shall be based on its experience with
7 payrolls and benefits as of the regular computation date for that rate
8 year excluding the experience of the transferred business or
9 transferred portion of business as that experience has transferred to
10 the successor: PROVIDED, That if all of the predecessor's business is
11 transferred to a successor or successors, the predecessor shall not be
12 a qualified employer until it satisfies the requirements of a
13 "qualified employer" as set forth in RCW 50.29.010.

14 (4) For purposes of this section, "transfer of a business" means
15 the same as RCW 50.29.063(4)(c).

16 **Sec. 2.** RCW 50.29.063 and 2007 c 327 s 3 are each amended to read
17 as follows:

18 (1) If it is found that a significant purpose of the transfer of a
19 business was to obtain a reduced array calculation factor rate, then
20 the following applies:

21 (a) If the successor was an employer at the time of the transfer,
22 then the experience rating accounts of the employers involved shall be
23 combined into a single account and the employers assigned the higher of
24 the predecessor or successor array calculation factor rate to take
25 effect as of the date of the transfer.

26 (b) If the successor was not an employer at the time of the
27 transfer, then the experience rating account of the acquired business
28 must not be transferred and, instead, the sum of the rate determined by
29 the commissioner under RCW 50.29.025(2) (~~((c)(ii) and~~) (d)(ii)(~~(7)~~)
30 and 50.29.041, if applicable, shall be assigned.

31 (2) If any part of a delinquency for which an assessment is made
32 under this title is due to an intent to knowingly evade the
33 successorship provisions of RCW 50.29.062 and this section, then with
34 respect to the employer, and to any business found to be knowingly
35 promoting the evasion of such provisions:

36 (a) The commissioner shall, for the rate year in which the
37 commissioner makes the determination under this subsection and for each

1 of the three consecutive rate years following that rate year, assign to
2 the employer or business the total rate, which is the sum of the
3 recalculated array calculation factor rate and a civil penalty
4 assessment rate, calculated as follows:

5 (i) Recalculate the array calculation factor rate as the array
6 calculation factor rate that should have applied to the employer or
7 business under RCW 50.29.025 and 50.29.062; and

8 (ii) Calculate a civil penalty assessment rate in an amount that,
9 when added to the array calculation factor rate determined under (a)(i)
10 of this subsection for the applicable rate year, results in a total
11 rate equal to the maximum array calculation factor rate under RCW
12 50.29.025 plus two percent, which total rate is not limited by any
13 maximum array calculation factor rate established in RCW
14 50.29.025(2)(b)(ii);

15 (b) The employer or business may be prosecuted under the penalties
16 prescribed in RCW 50.36.020; and

17 (c) The employer or business must pay for the employment security
18 department's reasonable expenses of auditing the employer's or
19 business's books and collecting the civil penalty assessment.

20 (3) If the person knowingly evading the successorship provisions,
21 or knowingly attempting to evade these provisions, or knowingly
22 promoting the evasion of these provisions, is not an employer, the
23 person is subject to a civil penalty assessment of five thousand
24 dollars per occurrence. In addition, the person is subject to the
25 penalties prescribed in RCW 50.36.020 as if the person were an
26 employer. The person must also pay for the employment security
27 department's reasonable expenses of auditing his or her books and
28 collecting the civil penalty assessment.

29 (4) For purposes of this section:

30 (a) "Knowingly" means having actual knowledge of or acting with
31 deliberate ignorance or reckless disregard for the prohibition involved
32 and includes, but is not limited to, intent to evade,
33 misrepresentation, or willful nondisclosure.

34 (b) "Person" means and includes an individual, a trust, estate,
35 partnership, association, company, or corporation.

36 (c) "Transfer of a business" includes the transfer or acquisition
37 of substantially all or a portion of the operating assets, which may
38 include the employer's workforce.

1 (5) Any decision to assess a penalty under this section shall be
2 made by the chief administrative officer of the tax branch or his or
3 her designee.

4 (6) Nothing in this section shall be construed to deny an employer
5 the right to appeal the assessment of a penalty in the manner provided
6 in RCW 50.32.030.

7 (7) The commissioner shall engage in prevention, detection, and
8 collection activities related to evasion of the successorship
9 provisions of RCW 50.29.062 and this section, and establish procedures
10 to enforce this section.

11 NEW SECTION. **Sec. 3.** If any part of this act is found to be in
12 conflict with federal requirements that are a prescribed condition to
13 the allocation of federal funds to the state or the eligibility of
14 employers in this state for federal unemployment tax credits, the
15 conflicting part of this act is inoperative solely to the extent of the
16 conflict, and the finding or determination does not affect the
17 operation of the remainder of this act. Rules adopted under this act
18 must meet federal requirements that are a necessary condition to the
19 receipt of federal funds by the state or the granting of federal
20 unemployment tax credits to employers in this state.

21 NEW SECTION. **Sec. 4.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

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