

The Honorable Lori Chavez-DeRemer
Secretary, United States Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

October 1, 2025

Dear Secretary Chavez-DeRemer:

Please accept this letter as a request that the United States Department of Labor notify Washington Governor Bob Ferguson, the Washington State Legislature, and the Washington Employment Security Department of conformity and compliance concerns with respect to SB 5041 as enacted and signed into law by Governor Ferguson.

The amendment language included in SB 5041 recognized that there may be federal issues with the bill and specifically provided in part in new Section 5 that:

If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act.

There was good reason to believe that the provisions of SB 5041 as enacted would be in conflict with federal requirements, and the Secretary of Labor should notify officials in the State of Washington of conformity and compliance issues well before the January 1, 2026 effective date of the Act to avoid confusion and avoid the improper payment of unemployment compensation to striking workers.

The Act assumes that an individual who is unemployed due to a strike is eligible to be paid unemployment compensation despite the fact that they have left employment by going on strike and are by definition not available to

work for weeks during the period of the strike. SB 5041 specifically limits the disqualification, providing:

(3)(a) Any disqualification imposed under this section shall end on the earlier of:

- (i) The second Sunday following the first date of the strike, provided that the strike is not found to be prohibited by federal or state law in a final judgment. If a final judgment finds that a strike is prohibited by state or federal law, any benefits paid are liable for repayment as set forth in RCW 50.20.190; or**
- (ii) The date the strike (or lockout) is terminated.**

(b) When the disqualification ends, the individual is subject to the one week waiting period as provided in RCW 50.20.010 and any benefits must be calculated in accordance with this chapter. However, if an individual is unemployed due to a strike at the separating employer's factory, establishment, or other premises at which the individual is or was last employed, the individual may receive weekly benefits for no more than six calendar weeks, subject to other limitations provided in this title. Any weekly benefits received unrelated to the individual's unemployment due to a strike may not be counted toward the six calendar weeks.

Clearly, this provision is designed to permit payment to workers who are not available to work contrary to federal law, and such payments will be charged to the separating employer and the unemployment trust fund.

The federal/state unemployment insurance system provides for the financing of the system by employers paying the Federal Unemployment Tax and the payment of contributions to states to provide funds to pay unemployment compensation to individuals meeting the terms of state law conforming and complying with federal Law.

Employer FUTA tax payments are deposited into unemployment trust funds maintained under Title IX of the Social Security Act. Regulation of these trust

fund accounts is provided by the US Department of Labor and the US Treasury.

State laws must meet the requirements of Section 303(a) of the Social Security Act to be certified to receive federal funding for state administration.

This language in SB 5041 as enacted appears to create an exception to the available to work and actively seeking work requirement and is contrary to Section 303(a)(12) of the Social Security Act. It removes the disqualification of striking workers before the end of the strike and assumes that striking workers are eligible to be paid unemployment compensation for weeks during which they are not available to work.

This is flatly contrary to federal law. It is axiomatic that a state law permitting payment of unemployment compensation to individuals who are not able to work, available to work and actively seeking work is contrary to federal law that prohibits individuals from being paid unemployment compensation for a week or weeks if the individual is not able to work, available to work and actively seeking work.

SB 5041 as enacted also raises an issue with 26 USC 3304(a)(4) of the Social Security Act as it permits the payment of unemployment compensation from the unemployment trust fund to individuals who are prohibited from being paid unemployment compensation from the unemployment trust fund.

We therefor respectfully request that the Secretary of Labor notify Governor Bob Ferguson, the Washington State Legislature, and the State of Washington Employment Security Department of these concerns and require as a condition of meeting federal law that the State of Washinton take the following steps.

1. The State of Washington Employment Security Department provide written assurances that the provisions in SB 5041 as enacted permitting individuals who become unemployed voluntarily due to a strike, and the provisions that permit claimants to be paid unemployment

compensation for weeks in which they are not able to work, available to work and actively seeking work, shall not be administered as effective, and

2. The State of Washington shall amend the non-conforming and non-complying provisions in SB 5041 as enacted before the end of the next legislative session of the Washington State Legislature.

Sincerely,

Arkansas State Chamber of Commerce

Associated Industries of Arkansas

Associated General Contractors of Washington

AGC Oregon-Columbia Chapter

Associated General Contractors of America

Association of Washington Business

Association of Unemployment Tax Organizations

California Chamber of Commerce

Connecticut Business and Industry Association

Experian Employer Services

Florida Chamber of Commerce

HR Policy Association

Illinois Manufacturers' Association

Illinois Retail Merchants Association

Indiana Chamber of Commerce

Indiana Manufacturers Association

Inland Northwest AGC

Iowa Association of Business & Industry

Retailers Association of Massachusetts

Michigan Chamber of Commerce

Michigan Hospital Association Unemployment Compensation Program

Michigan Manufacturers Association

Associated Industries of Missouri

National Retail Federation
National Utility Contractors Association
New Jersey Business & Industry Association
New Jersey Chamber of Commerce
North Carolina Chamber
Northwest Grocery Retail Association
Ohio Chamber of Commerce
State Chamber of Oklahoma
Oregon Business & Industry
Society for Human Resource Management (SHRM)
Tennessee Chamber of Commerce & Industry
Unemployment Tax Management Corporation
UWC – Strategic Services on Unemployment & Workers' Compensation
Washington Food Industry Association
Washington Retail Association
Wisconsin Manufacturers & Commerce