



National Payroll Reporting Consortium

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February 19, 2018

The Honorable Mike Sells, Chair
The Honorable Gina McCabe, Ranking Minority Member
House Labor & Workplace Standards Committee
267A John L. O'Brien Legislative Building
Olympia, WA 98504-0600

Re: SB 6264 - Regulating contracts by institutions of higher education with private entities – Oppose as Written

Dear Chairman Sells and Ranking Minority Member McCabe, and members of the Committee,

We are writing to express concerns regarding SB 6264, Regulating contracts by institutions of higher education with private entities. This bill is overly broad and would prohibit well-established best practices and arrangements of many Washington colleges and universities, imposing substantial new costs without justification. A more narrow approach is necessary to address the concern while not harming the states' higher education institutions.

The National Payroll Reporting Consortium (“NPRC”) is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. Payroll service providers have long served an important role in our nation’s tax collection system as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government tax collections and reporting through electronic payment and reporting programs, and improve employer compliance.

SB 6264 would prohibit Washington public colleges from contracting with a broad array of private sector companies that act as a third-party payer, a Professional Employer Organization (PEO), or another type of employer representative on behalf of those institutions to the Employment Security Department.

The justification for the bill is relatively narrow. Some public institutions outsource unemployment insurance claims administration, and the Senate Bill report cites instances in which an unemployment insurance claims administration company objected to the unemployment insurance claims of part-time faculty that lacked reasonable assurance of continued work. The individual in question notes that their UI claim was denied by a third-party company three times.

*Automatic Data Processing ★ BenefitMall/CompuPay ★ Ceridian
Fidelity Employer Services Company LLC ★ Gusto ★ Intuit ★ MPay ★ Paychex ★ Paycor
Paycom ★ Paylocity ★ Payroll People ★ PrimePay ★ Ultimate Software*



While we sympathize with the individual's difficulties, this raises concerns with a very narrow outsourcing practice of unemployment insurance claims administration. It is not claimed that Professional Employer Organizations were in any way involved, and there are absolutely no concerns expressed about other forms of outsourcing, such as payroll administration and other human resource-related services.

As written, the bill would prohibit colleges from relying on several entirely unrelated industries that pose no concerns in the justification. It is not clear why third-party payers (which include human resource and payroll administration services) and Professional Employer Organizations are the subjects of this bill. No concerns are expressed regarding these industries.

The bill would only incidentally prohibit outsourcing to the unemployment insurance claims administration industry (the subject of concern) through the added clause "*or any other type of employer representative on behalf of the institution of higher education to the employment security department.*" Unemployment insurance claims administrators are not third-party payers under RCW 50.04.248, or Professional Employer Organizations under RCW 50.04.298. (See attached for definitions).

We strongly recommend that the bill be disapproved as written, or that it be substantially amended. Rather than prohibiting reasonable outsourcing arrangements, it may be more appropriate to amend the unemployment insurance law to clarify that part-time faculty in a public college setting are eligible for unemployment insurance when they are not working and have no guarantee of continued employment.

This bill would impose substantial new costs on Washington Colleges and Universities, and disrupt longstanding administrative arrangements. In the fiscal analysis, the University of Washington notes that:

"If interpreted broadly, (emphasis added) however, this bill would have a significant impact on the UW's international activities in research and public health spheres. For example, the UW partners in other countries may contract with payroll providers who are able to navigate complex tax laws in those countries. Doing this work "in house" would represent significant cost and concerns about financial and legal risk. If this legislation were to impact those activities, the UW would see significant additional costs in ensuring that these activities are not outsourced. We estimate that the cost could be in the millions of dollars, but would certainly exceed the \$50,000 threshold."

As written, we believe that the literal interpretation of the bill would directly prohibit use of payroll service providers; i.e., it would not be a matter of broad interpretation. It is a well-recognized best practice to rely on reputable payroll service providers to help manage



compliance with an ever-expanding array of payroll and employment tax laws and regulations, including preparation and electronic filing of quarterly wage reports to the Employment Security Department,

Well over 36% of the private sector work force is administered through payroll service providers, and countless public colleges nationwide rely on the extensive expertise and experience of such service providers to minimize compliance risks and offer best-in-class features to employees. Payroll service providers handle many diverse requirements beyond calculation and processing of payrolls, such as electronic employment tax payments and tax return filings; filing of Forms W-2 to the Social Security Administration; filing of employee wage reports to the Employment Security Department, compliance with New Hire Reporting, child support and garnishment administration, and an extensive array of human resource services such as employment screening, hiring and other onboarding tasks.

If enacted, many Washington public universities and colleges that currently rely on such services would incur substantial and ongoing costs to manage payroll and employment tax administration internally. The vast majority¹ of Washington public universities and colleges are believed to employ such specialized service providers, and would be adversely affected by the bill.

Similarly, given that no justification is offered for prohibiting use of a Professional Employer Organization, it would be an unjust and arbitrary measure to prohibit such outsourcing. If there are concerns, we would appreciate the opportunity to discuss them and to help craft a more appropriate legislative response.

We would be glad to discuss this further with all interested parties if it would be helpful. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pete Isberg", is positioned to the right of the word "Sincerely,".

Pete Isberg
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¹ Is Outsourcing Part of the Solution to the Higher Education Cost Dilemma? Institute for Higher Education Policy, September 2005



RCW 50.04.248 Employment—Third-party payer.

(1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, an employer who utilizes a third-party payer constitutes employment for the employer. The third-party payer is not considered the employer as defined in RCW 50.04.080.

(2) For purposes of this section, "third-party payer" means an individual or entity that enters into an agreement with one or more employers to provide **administrative, human resource, or payroll administration services**, (emphasis added) but does not provide an employment or coemployment relationship. Temporary staffing services companies, services referral agencies, professional employer organizations, and labor organizations are not third-party payers.

[2007 c 146 § 15.]

RCW 50.04.298 Professional employer organizations—Coemployment—Covered employee.

For the purposes of this title:

(1) "Professional employer organization" means a person or entity that enters into an agreement with one or more client employers to provide professional employer services. "Professional employer organization" includes entities that use the term "staff leasing company," "permanent leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name, when they provide professional employer services to client employers. The following are not classified as professional employer organizations: Independent contractors in RCW 50.04.140; temporary staffing services companies and services referral agencies as defined in RCW 50.04.245; third-party payers as defined in RCW 50.04.248; or labor organizations.

(2) "Client employer" means any employer who enters into a professional employer agreement with a professional employer organization.

(3) "Coemployer" means either a professional employer organization or a client employer that has entered into a professional employer agreement.

(4) "Covered employee" means an individual performing services for a client employer that constitutes employment under this title.

(5) "Professional employer services" means services provided by the professional employer organization to the client employer, which include, but are not limited to, human resource functions, risk management, or payroll administration services, in a coemployment relationship.

(6) "Coemployment relationship" means a relationship that is intended to be ongoing rather than temporary or project-specific, where the rights, duties, and obligations of an employer in an employment relationship are allocated between coemployers pursuant to a professional employer agreement and state law. A coemployment relationship exists only if a majority of the employees performing services to a client employer, or to a division or work unit of a client employer, are covered employees. In determining the allocation of rights and obligations in a coemployment relationship:

(a) The professional employer organization has only those employer rights and is subject only to those obligations specifically allocated to it by the professional employer agreement or state law;

(b) The client employer has those rights and obligations allocated to it by the professional employer agreement or state law, as well as any other right or obligation of an employer that is not specifically allocated by the professional employer agreement or state law.

(7) "Professional employer agreement" means a written contract between a client employer and a professional employer organization that provides for: (a) The coemployment of covered employees; and (b) the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees.

[2007 c 146 § 8.]