

LEGISLATIVE REPORT

# Work search flexibilities

DECEMBER 2022

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# Contents

Contents .....	2
Executive summary .....	1
Highlights.....	1
Background.....	1
Bill overview .....	1
Improper UI payments and work search errors .....	2
Effect of updates to work search.....	3
Benefits of continued flexibility .....	4
Example: COVID-19 pandemic .....	4
Federal requirements for reemployment.....	5

# Executive summary

In 2018, the Employment Security Department (ESD) had a high improper-payment rate in the Unemployment Insurance (UI) program, with 60% or more of improper payments attributable to work search errors. After 2018, ESD implemented a number of reforms to reduce these. One reform was [Substitute House Bill \(SHB\) 1493](#). From July 4, 2021, to Dec. 31, 2023, the legislation gives ESD discretion to change the number or type of weekly job search activities claimants must complete to receive unemployment benefits. The previous standard had been to document three job searches or in-person WorkSource activities each week.

Since July 4, 2021, when ESD used discretion to set flexible job search requirements, only 25% of improper payments were attributable to work search errors. The flexibility offered by Substitute House Bill 1493, if allowed to continue, would enable ESD to responsively adjust work search expectations and adapt to changing economic conditions. ESD would also create more individualized and relevant reemployment plans for people who are likely to run out of unemployment benefits before they can return to work.

## Highlights

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The previous, standard job search requirements resulted in two-thirds of improper unemployment benefit payments attributable to job search errors.

Since July 4, 2021, the new, flexible requirements have resulted in only 25% of errors attributable to job search errors.

## Background

### Bill overview

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In 2021, the Legislature passed and the governor signed Substitute House Bill (SHB) 1493: “An act relating to job search monitoring.” Before the bill passed, state statute required people claiming unemployment benefits to conduct at least three job search activities each week in order to be eligible for benefits.<sup>i</sup> After the bill passed, ESD could direct claimants to do more or

fewer job search activities each week. ESD could also require different types of work search activities, so long as they met “the intent of rigorous reemployment efforts.”<sup>ii</sup>

This added flexibility expires on Dec. 31, 2023. Starting Jan. 1, 2024, claimants will again be held to the state statutory standard of conducting three job search activities per week.<sup>iii</sup> In conjunction with giving ESD temporary flexibility in setting job search standards, the bill required ESD to write a report “that details the impacts of any flexibilities utilized in claimant job search methods, monitoring and outcomes.”<sup>iv</sup>

## Improper UI payments and work search errors

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Federal law requires state agencies to make certain that, out of all the unemployment benefit payments made each year, less than 10% are improper.<sup>v</sup> This improper payment rate is measured through a federally mandated audit program administered by ESD. It is known as Benefit Accuracy Measurement (BAM), which reviews a small sample of claims each year.<sup>1</sup>

Between 2016 and 2018, 13.5 to 19% of all UI benefits were improperly paid to claimants. Of those improper payments, approximately two-thirds were caused by claimant errors in work search. This high error rate garnered attention from ESD and the U.S. Department of Labor (USDOL). As the majority of Washington’s improper payments were attributable to work search errors, work search became a key focus. ESD launched an initiative, which combined the agency’s larger goal of helping unemployed people become reemployed, with an enterprise-wide effort to find the root causes of these improper payments.<sup>vi</sup> Employment Security sought to change agency processes and positively influence customer behaviors, with an eye toward reducing improper payments while still serving customers in the best way possible.<sup>vii</sup>

**Reporting job search activities.** ESD began asking claimants to list their job search activities when they filed their weekly claim. Previously, ESD asked claimants only to produce evidence of their job search when their claim was being audited.<sup>viii</sup>

**Allowing claimants to schedule their own appointments.** Instead of ESD setting the date and time for claimants to receive mandatory reemployment services, the department permitted claimants to self-schedule their appointments. .<sup>ix</sup>

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<sup>1</sup> Washington is only required to sample a minimum of 480 paid claims each year. U.S. Department of Labor, *Benefit Accuracy Measurement State Operations Handbook*, ET Handbook No. 395, p. VI-11 (5th Ed., Nov. 2009). In contrast, in the 2019 calendar year, Washington had a total of 347,570 initial unemployment claims filed. See U.S. Department of Labor, *Unemployment Insurance Data*, available at [https://oui.doleta.gov/unemploy/data\\_summary/DataSum.asp](https://oui.doleta.gov/unemploy/data_summary/DataSum.asp).

**Comprehensive, third-party review of ESD policies and practices.** ESD contracted with the National Association of State Workforce Agencies (NASWA)<sup>2</sup> to conduct an independent, confidential review of departmental policies and practices. The goal of this review was to reduce improper payments.<sup>x</sup> One of the recommendations from this review was to increase flexibility in state statute and rules governing work search requirements. To implement this recommendation, ESD consulted stakeholders representing both workers and employers and found broad support for the requested flexibility provided in SHB 1493. ESD then amended the administrative rules that define what counts as job search activities. The new rules:

- Include a more expansive list of approved job search activities that is also easier to adjust as technology and the economy continuously evolve.<sup>xi</sup>
- Permit claimants to remotely or virtually access job search services from their local WorkSource office, as opposed to requiring in-person, physical attendance.<sup>xii</sup>

## Effect of updates to work search

ESD continues to track improper payments and their causes through several methods, including BAM audits. However, ESD has encountered significant obstacles that hamper the department's ability to fully gauge the impacts of this increased flexibility on improper payments.

First, due to the COVID-19 pandemic, Gov. Inslee suspended state statutes requiring claimants to perform job search activities.<sup>xiii</sup> So, from March 8, 2020, to July 4, 2021, no payment errors could be attributable to work search activities. Second, because work search requirements were suspended for 16 months, ESD expects an adjustment period for claimants as they learn to follow the requirement and for staff as they work to reimpose it. Third, as multiple reforms occurred just before and also during the pandemic, it is exceedingly difficult to trace any improvements in work search error rates to any one specific reform.

Nonetheless, the most recent internal data shows that work search errors accounted for only 25% of the improper payments discovered since work search requirements were reinstated on

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<sup>2</sup> The National Association of State Workforce Agencies is a national organization representing all state workforce agencies across the country that “provides policy expertise, shares promising state practices, and promotes state innovation and leadership in workforce development.” National Association of State Workforce Agencies, *About NASWA*, available at <https://www.naswa.org/about>.

Jul. 4, 2021.<sup>3</sup> This is a significant reduction from previous years, where work search errors accounted for 60% or more of improper payments. So far, the data strongly indicate that efforts made to reduce work search errors have been successful, leading to more positive outcomes for claimants and the integrity of Washington’s UI program.

It will take another 6 to 24 months before ESD can adequately measure the true impact of improvements to work search requirements. This should provide enough distance from the emergency changes made to UI while also allowing time for normalizing the changes made to work search requirements.

## Benefits of continued flexibility

SHB 1493 gave ESD the ability — in consultation with stakeholders — to make timely adjustments to work search requirements that best meet claimants’ needs. This flexibility has the potential to offer many benefits to employers, job seekers and other stakeholders.

Examples of what ESD could do include:

- Encouraging (and enforcing, when necessary) more rigorous job search requirements to reduce the length of time claimants receive UI benefits.
- Adjusting work search requirements to meet the current state of the job market at the state, regional or local levels.
- Adapting more nimbly to special circumstances, such as when a public health emergency, natural disaster or localized catastrophe significantly impacts the job market and number of available jobs.
- Creating individualized paths to reemployment for people who face barriers accessing the job market, such as people with disabilities.

### Example: COVID-19 pandemic

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In the spring of 2020, as the COVID-19 pandemic brought shutdowns and stay-home orders across the state, ESD did not have the legal flexibility to adjust work search requirements to

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<sup>3</sup> These numbers are based only on BAM audits conducted since July 2021. When all internal audits are completed and the results are validated by the U.S. Department of Labor, they will be published on the U.S. Department of Labor’s website for Unemployment Insurance Performance Management at <https://oui.doleta.gov/unemploy/bqc.asp>.

the realities of the moment. For example, it made little sense to require unemployed people to conduct three job search activities per week when they needed to stay at home to limit the transmission of the virus. Ultimately, the only option was for the governor to completely suspend the statutes requiring a job search, effectively changing the number of job search activities required each week from three to zero.

While this was intended as a short-term measure to allow for the realities of the time, the proclamation stayed in effect for more than 15 months, in part, because of how rigid the standard was. As the economy gradually reopened, ESD did not have the authority to gradually increase job search requirements. But the combination of suspending the statute, implementing the reforms in SHB 1493 and expanding the list of work search activities gave ESD the flexibility needed to create a gradual reentry for UI claimants into reemployment services.

## Federal requirements for reemployment

Another thing that ESD is eager to improve is the connection between state-required work search efforts and federally mandated reemployment programs. Continuing the flexibility afforded in SHB 1493 allows ESD to partner with the WorkSource system and strengthen this pairing into a unified and coherent reemployment strategy for claimants.

Federal law requires ESD to:

- Identify UI claimants who are statistically likely to claim all of their available benefits before they become re-employed.
- Require those claimants to receive mandatory job search assistance and reemployment services.<sup>xiv</sup>

USDOL offers Reemployment Services and Eligibility Assessment (RESEA) grants to states to help these individuals.<sup>xv</sup> The goals of these grants are to:

- Improve employment outcomes.
- Reduce the average duration these claimants receive benefits.
- Better integrate these claimants into reemployment services offered by state WorkSource offices.<sup>xvi</sup>

Washington is a recipient of an RESEA grant. States that are grant recipients are required to use evidence-based interventions shown to reduce the number of weeks a claimant receives unemployment benefits before they become reemployed.<sup>xvii</sup>

When ESD first meets with claimants who have been identified as likely to exhaust all of their unemployment benefits before they return to work, an agent must:

- Review the work search activities the claimant conducted.
- Provide the claimant with customized labor market and career information.
- Help create an individualized reemployment plan specifically tailored to the claimant's needs.<sup>xviii</sup>

ESD staff then schedule follow-up meetings with claimants so they can review claimants' work search activities and adjust their individualized reemployment plan.<sup>xix</sup> During these meetings, staff can also connect claimants with available reemployment services, such as classes teaching interviewing skills and training programs, including on-the-job training programs.<sup>xx</sup>

Permitting flexibility in job search activity standards allows ESD to better tailor reemployment plans to individual claimants, with the ultimate goal of successfully and expeditiously returning them to work. As the job market constantly evolves, this increased flexibility allows ESD to keep pace.

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<sup>i</sup> Laws of 2021, ch. 82, Sec. 1(1)(b).

<sup>ii</sup> *Id.*

<sup>iii</sup> *Id.*

<sup>iv</sup> *Id.* at Sec. 2.

<sup>v</sup> 31 U.S.C. §§ 3351(2)(F), 3353(a)(1)(A); U.S. Department of Labor, Unemployment Insurance Program Letter No. 24-21, p. 14 (Aug. 20, 2021).

<sup>vi</sup> Employment Security Department, *Guiding Claimants to Reemployment*, Meeting of Employment Security Advisory Committee (June 22, 2019) available at <https://esdorhardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/ESAC-files/July-2019/Improper-payments.pptx>

<sup>vii</sup> *Id.*

<sup>viii</sup> *Id.*

<sup>ix</sup> *Id.* See also WSR 19-12-091 (June 4, 2019).

<sup>x</sup> Employment Security Department, *UI Work Search Requirements*, Unemployment Insurance Advisory Committee Presentation (Oct. 28, 2020) available at <https://esdorhardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/newsroom/ui-advisory-committee/UIAC-Work-Search.pdf>

<sup>xi</sup> WSR 21-14-035 (June 29, 2021).

<sup>xii</sup> *Id.*

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<sup>xiii</sup> Gov. Jay Inslee, Proclamation by the Governor 20-30, *et seq.*

<sup>xiv</sup> 42 U.S.C. § 503(j).

<sup>xv</sup> U.S. Department of Labor, Reemployment Services and Eligibility Assessments (RESEA) Grants: Facilitating Reemployment and Increasing Program Integrity, available at [https://oui.doleta.gov/unemploy/docs/factsheet/RESEA\\_FactSheet.pdf](https://oui.doleta.gov/unemploy/docs/factsheet/RESEA_FactSheet.pdf).

<sup>xvi</sup> 42 U.S.C. § 506(b).

<sup>xvii</sup> 42 U.S.C. § 506(c).

<sup>xviii</sup> U.S. Department of Labor, Training and Employment Guidance Letter No. 5-21, pp. 3-4 (Jan. 21, 2022).

<sup>xix</sup> *Id.* at pp. 4-5.

<sup>xx</sup> *Id.* at pp. 5-6.