
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-3145.1/95

ATTY/TYPIST: RJS:rmh

BRIEF TITLE:

2 **ESHB 1821** - CONF REPT
3 By Conference Committee

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 50.04.320 and 1986 c 21 s 1 are each amended to read
8 as follows:

9 (1) For the purpose of payment of contributions, "wages" means the
10 remuneration paid by one employer during any calendar year to an
11 individual in its employment under this title or the unemployment
12 compensation law of any other state in the amount specified in RCW
13 50.24.010. If an employer (hereinafter referred to as a successor
14 employer) during any calendar year acquires substantially all the
15 operating assets of another employer (hereinafter referred to as a
16 predecessor employer) or assets used in a separate unit of a trade or
17 business of a predecessor employer, and immediately after the
18 acquisition employs in the individual's trade or business an individual
19 who immediately before the acquisition was employed in the trade or
20 business of the predecessor employer, then, for the purposes of
21 determining the amount of remuneration paid by the successor employer
22 to the individual during the calendar year which is subject to
23 contributions, any remuneration paid to the individual by the
24 predecessor employer during that calendar year and before the
25 acquisition shall be considered as having been paid by the successor
26 employer.

27 (2) For the purpose of payment of benefits, "wages" means the
28 remuneration paid by one or more employers to an individual for
29 employment under this title during his base year: PROVIDED, That at
30 the request of a claimant, wages may be calculated on the basis of
31 remuneration payable. The department shall notify each claimant that
32 wages are calculated on the basis of remuneration paid, but at the
33 claimant's request a redetermination may be performed and based on
34 remuneration payable.

35 (3) For the purpose of payment of benefits and payment of
36 contributions, the term "wages" includes tips which are received after

1 January 1, 1987, while performing services which constitute employment,
2 and which are reported to the employer for federal income tax purposes.

3 (4)(a) "Remuneration" means all compensation paid for personal
4 services including commissions and bonuses and the cash value of all
5 compensation paid in any medium other than cash. The reasonable cash
6 value of compensation paid in any medium other than cash and the
7 reasonable value of gratuities shall be estimated and determined in
8 accordance with rules prescribed by the commissioner. Remuneration
9 does not include payments to members of a reserve component of the
10 armed forces of the United States, including the organized militia of
11 the state of Washington, for the performance of duty for periods not
12 exceeding seventy-two hours at a time.

13 (b) Previously accrued compensation, other than severance pay or
14 payments received pursuant to plant closure agreements, when assigned
15 to a specific period of time by virtue of a collective bargaining
16 agreement, individual employment contract, customary trade practice, or
17 request of the individual compensated, shall be considered remuneration
18 for the period to which it is assigned. Assignment clearly occurs when
19 the compensation serves to make the individual eligible for all regular
20 fringe benefits for the period to which the compensation is assigned.

21 (c) Settlements or other proceeds received by an individual as a
22 result of a negotiated settlement for termination of an employment
23 contract with a public agency prior to its expiration date shall be
24 considered remuneration. The proceeds shall be deemed assigned in the
25 same intervals and in the same amount for each interval as compensation
26 was allocated under the contract.

27 (d) Except as provided in (c) of this subsection, the provisions of
28 this ((section)) subsection (4) pertaining to the assignment of
29 previously accrued compensation shall not apply to individuals subject
30 to RCW 50.44.050.

31 **Sec. 2.** RCW 50.44.050 and 1990 c 33 s 587 are each amended to read
32 as follows:

33 Except as otherwise provided in subsections (1) through (4) of this
34 section, benefits based on services in employment covered by or
35 pursuant to this chapter shall be payable on the same terms and subject
36 to the same conditions as compensation payable on the basis of other
37 service subject to this title.

1 (1) Benefits based on service in an instructional, research or
2 principal administrative capacity for an educational institution shall
3 not be paid to an individual for any week of unemployment which
4 commences during the period between two successive academic years or
5 between two successive academic terms within an academic year (or, when
6 an agreement provides instead for a similar period between two regular
7 but not successive terms within an academic year, during such period)
8 if such individual performs such services in the first of such academic
9 years or terms and if there is a contract or reasonable assurance that
10 such individual will perform services in any such capacity for any
11 educational institution in the second of such academic years or terms.
12 Any employee of a common school district who is presumed to be
13 reemployed pursuant to RCW 28A.405.210 shall be deemed to have a
14 contract for the ensuing term.

15 (2) Benefits shall not be paid based on services in any other
16 capacity for an educational institution for any week of unemployment
17 which commences during the period between two successive academic years
18 or between two successive academic terms within an academic year, if
19 such individual performs such services in the first of such academic
20 years or terms and there is a reasonable assurance that such individual
21 will perform such services in the second of such academic years or
22 terms: PROVIDED, That if benefits are denied to any individual under
23 this subsection and that individual was not offered an opportunity to
24 perform such services for the educational institution for the second of
25 such academic years or terms, the individual is entitled to a
26 retroactive payment of benefits for each week for which the individual
27 filed a timely claim for benefits and for which benefits were denied
28 solely by reason of this subsection.

29 (3) Benefits shall not be paid based on any services described in
30 subsections (1) and (2) of this section for any week of unemployment
31 which commences during an established and customary vacation period or
32 holiday recess if such individual performs such services in the period
33 immediately before such vacation period or holiday recess, and there is
34 a reasonable assurance that such individual will perform such services
35 in the period immediately following such vacation period or holiday
36 recess.

37 (4) Benefits shall not be paid (as specified in subsections (1),
38 (2), or (3) of this section) based on any services described in
39 subsections (1) or (2) of this section to any individual who performed

1 such services in an educational institution while in the employ of an
2 educational service district which is established pursuant to chapter
3 28A.310 RCW and exists to provide services to local school districts.

4 (5) As used in subsection (1) of this section, "academic year"
5 means, with respect to services described in subsection (1) of this
6 section performed by part-time faculty at community colleges and
7 technical colleges: Fall, winter, spring, and summer quarters or
8 comparable semesters unless, based upon objective criteria including
9 enrollment and staffing, the quarter or comparable semester is not in
10 fact a part of the academic year for the particular institution.

11 **Sec. 3.** RCW 50.44.053 and 1985 ex.s. c 5 s 9 are each amended to
12 read as follows:

13 The term "reasonable assurance," as used in RCW 50.44.050, means a
14 written, verbal, or implied agreement that the employee will perform
15 services in the same capacity during the ensuing academic year or term
16 as in the first academic year or term. However, with respect to
17 services described in RCW 50.44.050(1) performed by part-time faculty
18 for community colleges and technical colleges, the term "reasonable
19 assurance" does not include an agreement that is contingent on
20 enrollment, funding, or program changes. A person shall not be deemed
21 to be performing services "in the same capacity" unless those services
22 are rendered under the same terms or conditions of employment in the
23 ensuing year as in the first academic year or term.

24 NEW SECTION. **Sec. 4.** The legislature finds that, as a general
25 rule with limited exceptions, employees of educational institutions
26 expect to be employed for no more than a nine or ten-month school year
27 with a break between school years for the traditional summer vacation.

28 Because of the decision in *Evans v. Employment Security Department*,
29 72 Wn. App. 862 (1994), the legislature finds it necessary to clarify
30 legislative intent with regard to unemployment compensation for
31 employees of educational institutions. The 1995 c . . . s 2 (section
32 2 of this act) amendment to RCW 50.44.050 is intended to clarify that
33 for the part-time faculty at two-year institutions of higher education,
34 summer quarter may be expected to be a time of employment, unless
35 otherwise shown. However, the 1995 c . . . s 2 (section 2 of this act)
36 amendment to RCW 50.44.050 is not intended to change the general rules
37 used by the employment security department prior to the *Evans* decision

1 regarding unemployment compensation for other employees of educational
2 institutions.

3 NEW SECTION. **Sec. 5.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
8 conflict with federal requirements that are a prescribed condition to
9 the allocation of federal funds to the state or the eligibility of
10 employers in this state for federal unemployment tax credits, the
11 conflicting part of this act is hereby declared to be inoperative
12 solely to the extent of the conflict, and such finding or determination
13 shall not affect the operation of the remainder of this act. The rules
14 under this act shall meet federal requirements that are a necessary
15 condition to the receipt of federal funds by the state or the granting
16 of federal unemployment tax credits to employers in this state.

17 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and shall take
20 effect immediately."

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24 On page 1, line 2 of the title, after "contracts;" strike the
25 remainder of the title and insert "amending RCW 50.04.320, 50.44.050,
26 and 50.44.053; creating new sections; and declaring an emergency."

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