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HOUSE BILL 1184

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State of Washington

57th Legislature

2001 Regular Session

By Representatives Conway, Clements, B. Chandler and Kenney; by request of Employment Security Department

Read first time 01/19/2001. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to use of school hours and wages for unemployment  
2 compensation claims for educational employees; amending RCW 50.44.050;  
3 creating new sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
6 clarify requirements related to the use of base year hours and wages  
7 for certain employees at educational institutions, for the purpose of  
8 determining eligibility for unemployment insurance benefits.

9 The legislature finds that, unless clarified, Washington's  
10 unemployment compensation law may be out of conformity with the federal  
11 unemployment tax act, which poses a significant economic risk to the  
12 state's private employers, the state's general fund, and to the  
13 administration of the state's unemployment insurance system. It is the  
14 intent of the legislature to change Washington's unemployment law only  
15 to the extent necessary to ensure it conforms with federal law  
16 governing the use of base year hours and wages earned at educational  
17 institutions.

18 The legislature finds that the United States department of labor  
19 will rely on state law and its application as interpreted in state

1 court decisions, especially *Pechman v. Employment Security*, to  
2 determine if Washington state law conforms to federal guidelines in  
3 this area. Therefore, it is the intent of the legislature to clearly  
4 communicate to the courts that the purpose for the section 2, chapter  
5 . . . , Laws of 2001 amendment to RCW 50.44.050 (section 2 of this act)  
6 is to interpret state law in a manner that conforms to federal  
7 guidelines.

8 The legislature finds that federal law requires that school hours  
9 and wages in the base year must be restricted from use to establish  
10 eligibility for an unemployment compensation claim for employees of  
11 educational institutions during specified times. Further, federal law  
12 specifies that when required to restrict base year school hours and  
13 wages, it must be any and all hours and wages from any and all  
14 educational institutions, not just the hours and wages from  
15 institutions where there is a reasonable assurance of returning to work  
16 following a customary nonwork period. Therefore, it is the intent of  
17 the legislature to restrict hours worked and wages earned as required  
18 by federal law.

19 Customary nonwork periods for educational institutions include:

- 20 (1) The period between two successive academic years;  
21 (2) The period between two successive academic terms within an  
22 academic year;  
23 (3) A similar period between two regular but not successive terms  
24 within an academic year; or  
25 (4) An established and customary vacation period or holiday recess.

26 Restricted use of base year hours and wages from educational  
27 institutions shall occur only in the circumstances described in RCW  
28 50.44.050 (as amended by this act) and in RCW 50.44.053, and as further  
29 defined in rules promulgated by the employment security department.

30 **Sec. 2.** RCW 50.44.050 and 1998 c 233 s 2 are each amended to read  
31 as follows:

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

- 37 (1) Benefits based on any and all service in an instructional,  
38 research, or principal administrative capacity for ((an)) any and all

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

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

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

36 (4) Benefits shall not be paid (as specified in subsections (1),  
37 (2), or (3) of this section) based on any services described in  
38 subsections (1) or (2) of this section to any individual who performed  
39 such services in (~~an~~) any educational institution while in the employ

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

4 (5) As used in this section, "academic year" means: Fall, winter,  
5 spring, and summer quarters or comparable semesters unless, based upon  
6 objective criteria including enrollment and staffing, the quarter or  
7 comparable semester is not in fact a part of the academic year for the  
8 particular institution.

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

19 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and takes effect  
22 immediately.

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