
SUBSTITUTE HOUSE BILL 2352

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Hudgins, Romero, O'Brien, Conway, G. Simpson, Moeller and Morrell)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to workers required to train successors; amending
2 RCW 50.20.050; adding a new section to chapter 49.12 RCW; adding a new
3 section to chapter 50.04 RCW; creating a new section; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12 RCW
7 to read as follows:

8 (1) An employer may not order a layoff of workers who were required
9 to train other persons to perform their job duties within ninety days
10 of the date on which the workers began training the other persons
11 unless, ten days before the date on which the workers began training
12 the other persons, the employer gave written notice of the layoff to:
13 (a) The workers affected by the layoff; and (b) the department.

14 (2) The written notice must specify: (a) The number of affected
15 positions; (b) the number of affected positions being relocated or
16 outsourced to a different location one hundred miles or more away; (c)
17 the job titles and wages of the affected positions; (d) the locations
18 to which the affected positions are being relocated or outsourced; and
19 (e) any additional information specified in rule by the department.

1 (3)(a) An employer who fails to give notice as required by
2 subsection (1) of this section is liable to each employee entitled to
3 notice who lost his or her employment for:

4 (i) The value of wages at the average regular rate of compensation
5 received by the employee during the last three years of his or her
6 employment, or the employee's final rate of compensation, whichever is
7 higher; and

8 (ii) The value of any benefits to which the employee would have
9 been entitled had his or her employment not been lost, including, but
10 not limited to: (A) The value of any sick leave or other paid time off
11 as defined in RCW 49.12.265; (B) the value of any pension, profit
12 sharing, stock bonus, stock purchase, and stock option plans; and (C)
13 the cost of any medical expenses incurred by the employee that would
14 have been covered under an employee benefit plan.

15 (b) Liability under this subsection (3) is calculated for the
16 period of the employer's violation, up to a maximum of ninety days, or
17 one-half the number of days that the employee was employed by the
18 employer, whichever period is smaller.

19 (4) An employer who fails to give notice as required by subsection
20 (1) of this section is also subject to a civil penalty of not more than
21 one hundred dollars per employee entitled to notice for each day of the
22 employer's violation. Civil penalties collected under this section
23 shall be paid into the unemployment trust fund.

24 (5) The department shall administer and investigate violations of
25 this section. In an investigation or proceeding under this section,
26 the director has, in addition to all other powers granted by law, the
27 authority to examine the books and records of an employer. The
28 department shall adopt rules necessary to carry out this section.

29 (6) A person, including an employee representative, seeking to
30 establish liability against an employer may bring a civil action on
31 behalf of the person, other persons similarly situated, or both, in any
32 court of competent jurisdiction. The court may award reasonable
33 attorneys' fees as part of costs to a plaintiff who prevails in a civil
34 action brought under this section.

35 (7) For the purposes of this section:

36 (a) "Employer" means an employer that has one hundred or more
37 workers.

1 (b) "Layoff" means a separation from employment of a person engaged
2 in the employment of an employer or a termination of a person who is
3 working under an independent contract, the essence of which is his or
4 her personal labor.

5 (c) "Worker" has the meaning provided in RCW 51.08.180.

6 **Sec. 2.** RCW 50.20.050 and 2003 2nd sp.s. c 4 s 4 are each amended
7 to read as follows:

8 (1) With respect to claims that have an effective date before
9 January 4, 2004:

10 (a) An individual shall be disqualified from benefits beginning
11 with the first day of the calendar week in which he or she has left
12 work voluntarily without good cause and thereafter for seven calendar
13 weeks and until he or she has obtained bona fide work in employment
14 covered by this title and earned wages in that employment equal to
15 seven times his or her weekly benefit amount.

16 The disqualification shall continue if the work obtained is a mere
17 sham to qualify for benefits and is not bona fide work. In determining
18 whether work is of a bona fide nature, the commissioner shall consider
19 factors including but not limited to the following:

20 (i) The duration of the work;

21 (ii) The extent of direction and control by the employer over the
22 work; and

23 (iii) The level of skill required for the work in light of the
24 individual's training and experience.

25 (b) An individual shall not be considered to have left work
26 voluntarily without good cause when:

27 (i) He or she has left work to accept a bona fide offer of bona
28 fide work as described in (a) of this subsection;

29 (ii) The separation was because of the illness or disability of the
30 claimant or the death, illness, or disability of a member of the
31 claimant's immediate family if the claimant took all reasonable
32 precautions, in accordance with any regulations that the commissioner
33 may prescribe, to protect his or her employment status by having
34 promptly notified the employer of the reason for the absence and by
35 having promptly requested reemployment when again able to assume
36 employment: PROVIDED, That these precautions need not have been taken

1 when they would have been a futile act, including those instances when
2 the futility of the act was a result of a recognized labor/management
3 dispatch system;

4 (iii) He or she has left work to relocate for the spouse's
5 employment that is due to an employer-initiated mandatory transfer that
6 is outside the existing labor market area if the claimant remained
7 employed as long as was reasonable prior to the move; or

8 (iv) The separation was necessary to protect the claimant or the
9 claimant's immediate family members from domestic violence, as defined
10 in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

11 (c) In determining under this subsection whether an individual has
12 left work voluntarily without good cause, the commissioner shall only
13 consider work-connected factors such as the degree of risk involved to
14 the individual's health, safety, and morals, the individual's physical
15 fitness for the work, the individual's ability to perform the work, and
16 such other work connected factors as the commissioner may deem
17 pertinent, including state and national emergencies. Good cause shall
18 not be established for voluntarily leaving work because of its distance
19 from an individual's residence where the distance was known to the
20 individual at the time he or she accepted the employment and where, in
21 the judgment of the department, the distance is customarily traveled by
22 workers in the individual's job classification and labor market, nor
23 because of any other significant work factor which was generally known
24 and present at the time he or she accepted employment, unless the
25 related circumstances have so changed as to amount to a substantial
26 involuntary deterioration of the work factor or unless the commissioner
27 determines that other related circumstances would work an unreasonable
28 hardship on the individual were he or she required to continue in the
29 employment.

30 (d) Subsection (1)(a) and (c) of this section shall not apply to an
31 individual whose marital status or domestic responsibilities cause him
32 or her to leave employment. Such an individual shall not be eligible
33 for unemployment insurance benefits beginning with the first day of the
34 calendar week in which he or she left work and thereafter for seven
35 calendar weeks and until he or she has requalified, either by obtaining
36 bona fide work in employment covered by this title and earning wages in
37 that employment equal to seven times his or her weekly benefit amount
38 or by reporting in person to the department during ten different

1 calendar weeks and certifying on each occasion that he or she is ready,
2 able, and willing to immediately accept any suitable work which may be
3 offered, is actively seeking work pursuant to customary trade
4 practices, and is utilizing such employment counseling and placement
5 services as are available through the department. This subsection does
6 not apply to individuals covered by (b)(ii) or (iii) of this
7 subsection.

8 (2) With respect to claims that have an effective date on or after
9 January 4, 2004:

10 (a) An individual shall be disqualified from benefits beginning
11 with the first day of the calendar week in which he or she has left
12 work voluntarily without good cause and thereafter for seven calendar
13 weeks and until he or she has obtained bona fide work in employment
14 covered by this title and earned wages in that employment equal to
15 seven times his or her weekly benefit amount.

16 The disqualification shall continue if the work obtained is a mere
17 sham to qualify for benefits and is not bona fide work. In determining
18 whether work is of a bona fide nature, the commissioner shall consider
19 factors including but not limited to the following:

- 20 (i) The duration of the work;
21 (ii) The extent of direction and control by the employer over the
22 work; and
23 (iii) The level of skill required for the work in light of the
24 individual's training and experience.

25 (b) An individual is not disqualified from benefits under (a) of
26 this subsection when:

- 27 (i) He or she has left work to accept a bona fide offer of bona
28 fide work as described in (a) of this subsection;
29 (ii) The separation was necessary because of the illness or
30 disability of the claimant or the death, illness, or disability of a
31 member of the claimant's immediate family if:

32 (A) The claimant pursued all reasonable alternatives to preserve
33 his or her employment status by requesting a leave of absence, by
34 having promptly notified the employer of the reason for the absence,
35 and by having promptly requested reemployment when again able to assume
36 employment. These alternatives need not be pursued, however, when they
37 would have been a futile act, including those instances when the

1 futility of the act was a result of a recognized labor/management
2 dispatch system; and

3 (B) The claimant terminated his or her employment status, and is
4 not entitled to be reinstated to the same position or a comparable or
5 similar position;

6 (iii) He or she: (A) Left work to relocate for the spouse's
7 employment that, due to a mandatory military transfer: (I) Is outside
8 the existing labor market area; and (II) is in Washington or another
9 state that, pursuant to statute, does not consider such an individual
10 to have left work voluntarily without good cause; and (B) remained
11 employed as long as was reasonable prior to the move;

12 (iv) The separation was necessary to protect the claimant or the
13 claimant's immediate family members from domestic violence, as defined
14 in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

15 (v) The individual's usual compensation was reduced by twenty-five
16 percent or more;

17 (vi) The individual's usual hours were reduced by twenty-five
18 percent or more;

19 (vii) The individual's worksite changed, such change caused a
20 material increase in distance or difficulty of travel, and, after the
21 change, the commute was greater than is customary for workers in the
22 individual's job classification and labor market;

23 (viii) The individual's worksite safety deteriorated, the
24 individual reported such safety deterioration to the employer, and the
25 employer failed to correct the hazards within a reasonable period of
26 time;

27 (ix) The individual left work because of illegal activities in the
28 individual's worksite, the individual reported such activities to the
29 employer, and the employer failed to end such activities within a
30 reasonable period of time; (~~or~~)

31 (x) The individual's usual work was changed to work that violates
32 the individual's religious convictions or sincere moral beliefs; or

33 (xi) The individual left work because:

34 (A) He or she received written notice of a layoff as described in
35 section 1 of this act; or

36 (B) He or she was required to train other persons to perform his or
37 her job duties, he or she reasonably expected to be laid off within

1 ninety days of the date on which he or she began training the other
2 persons, and his or her position was relocated or outsourced to a
3 different location one hundred miles or more away.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 50.04 RCW
5 to read as follows:

6 Payments to a person under section 1 of this act may not be
7 construed as wages or used to deny or reduce benefits under this title.

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

12 NEW SECTION. **Sec. 5.** If any part of this act is found to be in
13 conflict with federal requirements that are a prescribed condition to
14 the allocation of federal funds to the state, the conflicting part of
15 this act is inoperative solely to the extent of the conflict and with
16 respect to the agencies directly affected, and this finding does not
17 affect the operation of the remainder of this act in its application to
18 the agencies concerned. Rules adopted under this act must meet federal
19 requirements that are a necessary condition to the receipt of federal
20 funds by the state.

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