
SENATE BILL 5373

State of Washington 60th Legislature 2007 Regular Session

By Senators Kohl-Welles, Prentice, Keiser, Franklin and Kline; by request of Employment Security Department

Read first time 01/18/2007. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to reporting, penalty, and corporate officer
2 provisions of the unemployment insurance system; amending RCW
3 50.12.070, 50.29.021, 50.12.220, 50.04.165, 50.04.310, 50.12.070,
4 50.20.070, 50.04.245, 50.24.170, and 50.04.080; adding a new section to
5 chapter 50.12 RCW; adding new sections to chapter 50.04 RCW; adding a
6 new section to chapter 50.24 RCW; creating new sections; prescribing
7 penalties; and providing an effective date.

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

9 **Sec. 1.** RCW 50.12.070 and 1997 c 54 s 2 are each amended to read
10 as follows:

11 (1)(a) Each employing unit shall keep true and accurate work
12 records, containing such information as the commissioner may prescribe.
13 Such records shall be open to inspection and be subject to being copied
14 by the commissioner or his or her authorized representatives at any
15 reasonable time and as often as may be necessary. The commissioner may
16 require from any employing unit any sworn or unsworn reports with
17 respect to persons employed by it, which he or she deems necessary for
18 the effective administration of this title.

1 (b) An employer who contracts with another person or entity for
2 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a
3 record of the unified business identifier account number for the person
4 or entity performing the work. Failure to obtain or maintain the
5 record is subject to RCW 39.06.010 and to a penalty determined by the
6 commissioner, but not to exceed two hundred fifty dollars, to be
7 collected as provided in RCW 50.24.120.

8 (2)(a) Each employer shall make periodic reports at such intervals
9 as the commissioner may by regulation prescribe, setting forth the
10 remuneration paid for employment to workers in its employ, the full
11 names and social security numbers of all such workers, and ((~~until~~
12 ~~April 1, 1978, the number of weeks for which the worker earned the~~
13 ~~"qualifying weekly wage", and beginning July 1, 1977,~~) the total hours
14 worked by each worker and such other information as the commissioner
15 may by regulation prescribe.

16 (b) If the employing unit fails or has failed to report the number
17 of hours in a reporting period for which a worker worked, such number
18 will be computed by the commissioner and given the same force and
19 effect as if it had been reported by the employing unit. In computing
20 the number of such hours worked, the total wages for the reporting
21 period, as reported by the employing unit, shall be divided by the
22 dollar amount of the state's minimum wage in effect for such reporting
23 period and the quotient, disregarding any remainder, shall be credited
24 to the worker: PROVIDED, That although the computation so made will
25 not be subject to appeal by the employing unit, monetary entitlement
26 may be redetermined upon request if the department is provided with
27 credible evidence of the actual hours worked. Benefits paid using
28 computed hours are not considered an overpayment and are not subject to
29 collections when the correction of computed hours results in an invalid
30 or reduced claim; however:

31 (i) A contribution paying employer who fails to report the number
32 of hours worked will have its experience rating account charged for all
33 benefits paid that are based on hours computed under this subsection;
34 and

35 (ii) An employer who reimburses the trust fund for benefits paid to
36 workers and fails to report the number of hours worked shall reimburse
37 the trust fund for all benefits paid that are based on hours computed
38 under this subsection.

1 **Sec. 2.** RCW 50.29.021 and 2006 c 13 s 6 are each amended to read
2 as follows:

3 (1) This section applies to benefits charged to the experience
4 rating accounts of employers for claims that have an effective date on
5 or after January 4, 2004.

6 (2)(a) An experience rating account shall be established and
7 maintained for each employer, except employers as described in RCW
8 50.44.010 and 50.44.030 who have properly elected to make payments in
9 lieu of contributions, taxable local government employers as described
10 in RCW 50.44.035, and those employers who are required to make payments
11 in lieu of contributions, based on existing records of the employment
12 security department.

13 (b) Benefits paid to an eligible individual shall be charged to the
14 experience rating accounts of each of such individual's employers
15 during the individual's base year in the same ratio that the wages paid
16 by each employer to the individual during the base year bear to the
17 wages paid by all employers to that individual during that base year,
18 except as otherwise provided in this section.

19 (c) When the eligible individual's separating employer is a covered
20 contribution paying base year employer, benefits paid to the eligible
21 individual shall be charged to the experience rating account of only
22 the individual's separating employer if the individual qualifies for
23 benefits under:

24 (i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed
25 after having worked and earned wages in the bona fide work; or

26 (ii) RCW 50.20.050(2)(b) (v) through (x).

27 (3) The legislature finds that certain benefit payments, in whole
28 or in part, should not be charged to the experience rating accounts of
29 employers except those employers described in RCW 50.44.010 and
30 50.44.030 who have properly elected to make payments in lieu of
31 contributions, taxable local government employers described in RCW
32 50.44.035, and those employers who are required to make payments in
33 lieu of contributions, as follows:

34 (a) Benefits paid to any individual later determined to be
35 ineligible shall not be charged to the experience rating account of any
36 contribution paying employer. However, when a benefit claim becomes
37 invalid due to an amendment or adjustment of a report where the
38 employer failed to report or inaccurately reported hours worked or

1 remuneration paid, or both, all benefits paid will be charged to the
2 experience rating account of the contribution paying employer or
3 employers that originally filed the incomplete or inaccurate report or
4 reports. An employer who reimburses the trust fund for benefits paid
5 to workers and who fails to report or inaccurately reported hours
6 worked or remuneration paid, or both, shall reimburse the trust fund
7 for all benefits paid that are based on the originally filed incomplete
8 or inaccurate report or reports.

9 (b) Benefits paid to an individual filing under the provisions of
10 chapter 50.06 RCW shall not be charged to the experience rating account
11 of any contribution paying employer only if:

12 (i) The individual files under RCW 50.06.020(1) after receiving
13 crime victims' compensation for a disability resulting from a nonwork-
14 related occurrence; or

15 (ii) The individual files under RCW 50.06.020(2).

16 (c) Benefits paid which represent the state's share of benefits
17 payable as extended benefits defined under RCW 50.22.010(6) shall not
18 be charged to the experience rating account of any contribution paying
19 employer.

20 (d) In the case of individuals who requalify for benefits under RCW
21 50.20.050 or 50.20.060, benefits based on wage credits earned prior to
22 the disqualifying separation shall not be charged to the experience
23 rating account of the contribution paying employer from whom that
24 separation took place.

25 (e) Individuals who qualify for benefits under RCW
26 50.20.050(2)(b)(iv), as applicable, shall not have their benefits
27 charged to the experience rating account of any contribution paying
28 employer.

29 (f) With respect to claims with an effective date on or after the
30 first Sunday following April 22, 2005, benefits paid that exceed the
31 benefits that would have been paid if the weekly benefit amount for the
32 claim had been determined as one percent of the total wages paid in the
33 individual's base year shall not be charged to the experience rating
34 account of any contribution paying employer.

35 (4)(a) A contribution paying base year employer, not otherwise
36 eligible for relief of charges for benefits under this section, may
37 receive such relief if the benefit charges result from payment to an
38 individual who:

1 (i) Last left the employ of such employer voluntarily for reasons
2 not attributable to the employer;

3 (ii) Was discharged for misconduct or gross misconduct connected
4 with his or her work not a result of inability to meet the minimum job
5 requirements;

6 (iii) Is unemployed as a result of closure or severe curtailment of
7 operation at the employer's plant, building, worksite, or other
8 facility. This closure must be for reasons directly attributable to a
9 catastrophic occurrence such as fire, flood, or other natural disaster;
10 or

11 (iv) Continues to be employed on a regularly scheduled permanent
12 part-time basis by a base year employer and who at some time during the
13 base year was concurrently employed and subsequently separated from at
14 least one other base year employer. Benefit charge relief ceases when
15 the employment relationship between the employer requesting relief and
16 the claimant is terminated. This subsection does not apply to shared
17 work employers under chapter 50.06 RCW.

18 (b) The employer requesting relief of charges under this subsection
19 must request relief in writing within thirty days following mailing to
20 the last known address of the notification of the valid initial
21 determination of such claim, stating the date and reason for the
22 separation or the circumstances of continued employment. The
23 commissioner, upon investigation of the request, shall determine
24 whether relief should be granted.

25 **Sec. 3.** RCW 50.12.220 and 2006 c 47 s 3 are each amended to read
26 as follows:

27 (1)~~((a))~~ If an employer fails to file ~~((in))~~ a timely ~~((and~~
28 ~~complete manner a))~~ report as required by RCW 50.12.070, or the rules
29 adopted pursuant thereto, the employer ~~((shall be))~~ is subject to a
30 penalty ~~((to be determined by the commissioner, but not to exceed two~~
31 ~~hundred fifty dollars or ten percent of the quarterly contributions for~~
32 ~~each such offense, whichever is less))~~ of twenty-five dollars per
33 violation, unless the penalty is waived by the commissioner.

34 ~~((b))~~ (2) An employer who files an incomplete or incorrectly
35 formatted tax and wage report as required by RCW 50.12.070 must receive
36 a warning letter for the first occurrence. Except as provided in

1 subsections (3) and (4) of this section, for subsequent occurrences,
2 the employer is subject to a penalty as follows:

3 (a) When no contributions are due: For the second occurrence, the
4 penalty is seventy-five dollars; for the third occurrence, the penalty
5 is one hundred fifty dollars; and for the fourth occurrence and for
6 each occurrence thereafter, the penalty is two hundred fifty dollars.

7 (b) When contributions are due: For the second occurrence, the
8 penalty is ten percent of the quarterly contributions due, but not less
9 than seventy-five dollars and not more than two hundred fifty dollars;
10 for the third occurrence, the penalty is ten percent of the quarterly
11 contributions due, but not less than one hundred fifty dollars and not
12 more than two hundred fifty dollars; and for the fourth occurrence and
13 each occurrence thereafter, the penalty is two hundred fifty dollars.

14 (3) If an employer knowingly misrepresents to the employment
15 security department the amount of his or her payroll upon which
16 contributions under this title are based, the employer shall be liable
17 to the state for up to ten times the amount of the difference in
18 contributions paid, if any, and the amount the employer should have
19 paid and for the reasonable expenses of auditing his or her books and
20 collecting such sums. Such liability may be enforced in the name of
21 the department.

22 ~~((+2))~~ (4) If contributions are not paid on the date on which they
23 are due and payable as prescribed by the commissioner, there shall be
24 assessed a penalty of five percent of the amount of the contributions
25 for the first month or part thereof of delinquency; there shall be
26 assessed a total penalty of ten percent of the amount of the
27 contributions for the second month or part thereof of delinquency; and
28 there shall be assessed a total penalty of twenty percent of the amount
29 of the contributions for the third month or part thereof of
30 delinquency. No penalty so added shall be less than ten dollars.
31 These penalties are in addition to the interest charges assessed under
32 RCW 50.24.040.

33 ~~((+3))~~ (5) Penalties shall not accrue on contributions from an
34 estate in the hands of a receiver, executor, administrator, trustee in
35 bankruptcy, common law assignee, or other liquidating officer
36 subsequent to the date when such receiver, executor, administrator,
37 trustee in bankruptcy, common law assignee, or other liquidating
38 officer qualifies as such, but contributions accruing with respect to

1 employment of persons by a receiver, executor, administrator, trustee
2 in bankruptcy, common law assignee, or other liquidating officer shall
3 become due and shall be subject to penalties in the same manner as
4 contributions due from other employers.

5 ~~((+4))~~ (6) Where adequate information has been furnished to the
6 department and the department has failed to act or has advised the
7 employer of no liability or inability to decide the issue, penalties
8 shall be waived by the commissioner. Penalties may also be waived for
9 good cause if the commissioner determines that the failure to
10 ~~((timely))~~ file timely, complete, and correctly formatted reports or
11 pay timely contributions was not due to the employer's fault.

12 ~~((+5))~~ (7) Any decision to assess a penalty as provided by this
13 section shall be made by the chief administrative officer of the tax
14 branch or his or her designee.

15 ~~((+6))~~ (8) Nothing in this section shall be construed to deny an
16 employer the right to appeal the assessment of any penalty. Such
17 appeal shall be made in the manner provided in RCW 50.32.030.

18 **Sec. 4.** RCW 50.04.165 and 1993 c 290 s 2 are each amended to read
19 as follows:

20 Services performed by a person appointed as an officer of a
21 corporation under RCW 23B.08.400(~~(, other than those covered by chapter~~
22 ~~50.44 RCW, shall not be))~~ are considered services in employment.
23 ~~((However, a corporation may elect to cover not less than all of its~~
24 ~~corporate officers under RCW 50.24.160. If an employer does not elect~~
25 ~~to cover its corporate officers under RCW 50.24.160, the employer must~~
26 ~~notify its corporate officers in writing that they are ineligible for~~
27 ~~unemployment benefits. If the employer fails to notify any corporate~~
28 ~~officer, then that person shall not be considered to be a corporate~~
29 ~~officer for the purposes of this section.))~~

30 **Sec. 5.** RCW 50.04.310 and 1984 c 134 s 1 are each amended to read
31 as follows:

32 (1) An individual ~~((shall be deemed to be))~~ is "unemployed" in any
33 week during which the individual performs no services and with respect
34 to which no remuneration is payable to the individual, or in any week
35 of less than full time work, if the remuneration payable to the
36 individual with respect to such week is less than one and one-third

1 times the individual's weekly benefit amount plus five dollars. The
2 commissioner shall prescribe regulations applicable to unemployed
3 individuals making such distinctions in the procedures as to such types
4 of unemployment as the commissioner deems necessary.

5 (2) An individual (~~((shall be deemed))~~) is not (~~((to be))~~) "unemployed"
6 during any week which falls totally within a period during which the
7 individual, pursuant to a collective bargaining agreement or individual
8 employment contract, is employed full time in accordance with a
9 definition of full time contained in the agreement or contract, and for
10 which compensation for full time work is payable. This subsection may
11 not be applied retroactively to an individual who had no guarantee of
12 work at the start of such period and subsequently is provided
13 additional work by the employer.

14 (3) An officer of a corporation who has more than a five percent
15 equity or debt interest in the corporation, whose claim for benefits is
16 based on any wages with that corporation is:

17 (a) Not "unemployed" in any week during the individual's term of
18 office or ownership in the corporation;

19 (b) "Unemployed" in any week upon dissolution of the corporation or
20 if the officer permanently resigns or is permanently removed from their
21 appointment and responsibilities with that corporation in accordance
22 with its bylaws.

23 **Sec. 6.** RCW 50.12.070 and 1997 c 54 s 2 are each amended to read
24 as follows:

25 (1)(a) Each employing unit shall keep true and accurate work
26 records, containing such information as the commissioner may prescribe.
27 Such records shall be open to inspection and be subject to being copied
28 by the commissioner or his or her authorized representatives at any
29 reasonable time and as often as may be necessary. The commissioner may
30 require from any employing unit any sworn or unsworn reports with
31 respect to persons employed by it, which he or she deems necessary for
32 the effective administration of this title.

33 (b) An employer who contracts with another person or entity for
34 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a
35 record of the unified business identifier account number for the person
36 or entity performing the work. Failure to obtain or maintain the

1 record is subject to RCW 39.06.010 and to a penalty determined by the
2 commissioner, but not to exceed two hundred fifty dollars, to be
3 collected as provided in RCW 50.24.120.

4 (2)(a) Each employer shall register with the department and obtain
5 an employment security account number. Registration must include the
6 names and social security numbers of the owners, partners, members, or
7 corporate officers of the business, as well as their mailing addresses
8 and telephone numbers and other information the commissioner may by
9 regulation prescribe. Any changes of the owners, partners, members, or
10 corporate officers of the business must be reported within thirty days
11 to the department.

12 (b) Each employer shall make periodic reports at such intervals as
13 the commissioner may by regulation prescribe, setting forth the
14 remuneration paid for employment to workers in its employ, the names of
15 all such workers, and until April 1, 1978, the number of weeks for
16 which the worker earned the "qualifying weekly wage", and beginning
17 July 1, 1977, the hours worked by each worker and such other
18 information as the commissioner may by regulation prescribe.

19 ~~((b))~~ (c) If the employing unit fails or has failed to report the
20 number of hours in a reporting period for which a worker worked, such
21 number will be computed by the commissioner and given the same force
22 and effect as if it had been reported by the employing unit. In
23 computing the number of such hours worked the total wages for the
24 reporting period, as reported by the employing unit, shall be divided
25 by the dollar amount of the state's minimum wage in effect for such
26 reporting period and the quotient, disregarding any remainder, shall be
27 credited to the worker: PROVIDED, That although the computation so
28 made will not be subject to appeal by the employing unit, monetary
29 entitlement may be redetermined upon request if the department is
30 provided with credible evidence of the actual hours worked.

31 **Sec. 7.** RCW 50.20.070 and 1973 1st ex.s. c 158 s 5 are each
32 amended to read as follows:

33 ~~((Irrespective of any other provisions of this title))~~ (1) With
34 respect to determinations delivered or mailed before January 1, 2008,
35 an individual ~~((shall be))~~ is disqualified for benefits for any week
36 ~~((with respect to which))~~ he or she has knowingly made a false
37 statement or representation involving a material fact or knowingly

1 failed to report a material fact and (~~has thereby~~), as a result, has
2 obtained or attempted to obtain any benefits under the provisions of
3 this title, and for an additional twenty-six weeks (~~commencing~~)
4 beginning with the first week for which he or she completes an
5 otherwise compensable claim for waiting period credit or benefits
6 following the date of the delivery or mailing of the determination of
7 disqualification under this section(~~(:—PROVIDED, That))~~). However,
8 such disqualification shall not be applied after two years have elapsed
9 from the date of the delivery or mailing of the determination of
10 disqualification under this section(~~(, but)~~).

11 (2) With respect to determinations delivered or mailed on or after
12 January 1, 2008:

13 (a) An individual is disqualified for benefits for any week he or
14 she has knowingly made a false statement or representation involving a
15 material fact or knowingly failed to report a material fact and, as a
16 result, has obtained or attempted to obtain any benefits under the
17 provisions of this title;

18 (b) An individual disqualified for benefits under this subsection
19 for the first time is also disqualified for an additional twenty-six
20 weeks beginning with the Sunday of the week in which the determination
21 is mailed or delivered;

22 (c) An individual disqualified for benefits under this subsection
23 for the second time is also disqualified for an additional fifty-two
24 weeks beginning with the Sunday of the week in which the determination
25 is mailed or delivered, and is subject to an additional penalty of
26 twenty-five percent of the amount of benefits overpaid or deemed
27 overpaid;

28 (d) An individual disqualified for benefits under this subsection
29 a third time and any time thereafter is also disqualified for an
30 additional one hundred four weeks beginning with Sunday of the week in
31 which the determination is mailed or delivered, and is subject to an
32 additional penalty of fifty percent of the amount of benefits overpaid
33 or deemed overpaid.

34 (3) All penalties collected under this section must be expended for
35 the proper administration of this title as authorized under RCW
36 50.16.010 and for no other purposes.

37 (4) All overpayments and penalties established by such

1 determination of disqualification ((shall)) must be collected as
2 otherwise provided by this title.

3 NEW SECTION. Sec. 8. A new section is added to chapter 50.12 RCW
4 to read as follows:

5 (1) Third party payers as defined in section 9 of this act may not
6 establish joint accounts under RCW 50.24.170.

7 (2) A third party payer must:

8 (a) Register with the department as provided in RCW 50.12.070;

9 (b) Provide the department with the names, addresses, and
10 employment security account numbers of its client companies employing
11 Washington state employees at the time of registration and at other
12 times when requested by the department, and provide the names and
13 addresses of its client companies not employing Washington state
14 employees at the time of registration and at other times when requested
15 by the department;

16 (c) Notify the department within thirty days each time it adds or
17 terminates a client company;

18 (d) Provide a power of attorney or confidential information
19 authorization completed by the client company as required by the
20 department for each client company, authorizing it to act on behalf of
21 the client company for unemployment insurance purposes;

22 (e) File separate quarterly wage and contribution reports with the
23 department for each client company, using the employer account number
24 and experience rate assigned to each client company; and

25 (f) Maintain accurate payroll records for each client company and
26 make these records available in Washington state for review or
27 inspection upon request of the department.

28 NEW SECTION. Sec. 9. A new section is added to chapter 50.04 RCW
29 to read as follows:

30 (1) Personal services performed for, or for the benefit of, a
31 client under an agreement with a third party payer is employment for
32 the client company. The client is considered both the employer as
33 defined in RCW 50.04.080 and the employing unit as defined in RCW
34 50.04.090.

35 (2) For the purposes of this section:

1 (a)(i) "Third party payer" means an individual or business entity
2 that enters into an agreement with one or more clients to provide
3 professional employer services, human resource functions, or other
4 payroll administration services that may or may not establish a
5 coemployment relationship. "Professional employer services" means the
6 service of entering into a coemployment relationship in which at least
7 a majority of the employees providing services to a client or to a
8 division or work unit of a client are covered employment as defined in
9 RCW 50.04.100. A "coemployment relationship" means an ongoing
10 relationship where the rights, duties, and obligations of an employer
11 in an employment relationship are allocated between coemployers under
12 a professional employer agreement and state law. "Professional
13 employer agreement" means a written contract between a client and a
14 professional employer organization that provides for: (A) The
15 coemployment of covered employees; and (B) the allocation of employer
16 rights and obligations between the client and the professional employer
17 organization with respect to the covered employees.

18 (ii) "Third party payer" includes entities defined in this
19 subsection that use the title "professional employer organization,"
20 "PEO," "staff leasing company," "registered staff leasing company,"
21 "employee leasing company," "administrative employer," "employer
22 representative," or any other name.

23 (iii) "Third party payer" does not include temporary staffing
24 services companies or services referral agencies as defined in RCW
25 50.04.245, or labor organizations.

26 (b) "Client" means an individual or entity that enters into a
27 professional employer agreement with a third party payer for
28 professional employer services, human resource functions, or other
29 payroll administration services.

30 (3) A third party payer is not considered a successor employer
31 under RCW 50.29.062. Each client retains its experience rate as
32 determined by RCW 50.29.020 and 50.29.021. The experience rate of a
33 third party payer is determined solely on its own unemployment
34 experience with its own nonclient company employees.

35 **Sec. 10.** RCW 50.04.245 and 1995 c 120 s 1 are each amended to read
36 as follows:

37 (1) Subject to the other provisions of this title, personal

1 services performed for, or for the benefit of, a third party pursuant
2 to a contract with a temporary staffing services ((agency, employee
3 leasing agency)) company, services referral agency, or other entity
4 ((shall be deemed to be)) not defined as a third party payer in section
5 9 of this act, constitutes employment for the temporary staffing
6 services ((agency, employee leasing agency)) company, services referral
7 agency, or other entity when the agency is responsible, under contract
8 or in fact, for the payment of wages in remuneration for the services
9 performed.

10 (2) The temporary staffing services company, services referral
11 agency, or other such entity is considered an employer as defined in
12 RCW 50.04.080.

13 (3) For the purposes of this section:

14 (a) "Temporary staffing services ((agency)) company" means an
15 individual or entity ((that is engaged in the business of furnishing
16 individuals to perform services on a part time or temporary basis for
17 a third party)) other than a third party payer as defined in section 9
18 of this act, that engages in: Recruiting and hiring its own employees;
19 finding other organizations that need the services of those employees;
20 and assigning those employees on a temporary basis to perform work at
21 or services for a client to support or supplement the client's work
22 forces, or to provide assistance in special work situations, such as
23 employee absences, skill shortages, and seasonal workloads, or to
24 perform special assignments or projects, all under the direction and
25 supervision of the client. "Temporary staffing services" does not
26 include permanent employee leasing or permanent employee placement
27 services.

28 (b) (("Employee leasing agency" means an individual or entity that
29 for a fee places the employees of a client onto its payroll and leases
30 such employees back to the client.

31 (c)) "Services referral agency" means an individual or entity
32 other than a third party payer as defined in section 9 of this act that
33 is engaged in the business of offering the services of an individual to
34 perform specific tasks for a third party.

35 NEW SECTION. Sec. 11. A new section is added to chapter 50.04 RCW
36 to read as follows:

1 (1) A common pay agent or common paymaster is not an employer as
2 defined in RCW 50.04.080 or an employing unit as defined in RCW
3 50.04.090.

4 (2) For the purposes of this section:

5 (a) A common pay agent is an independent third party who contracts
6 with and represents two or more employers and who files a combined tax
7 report for those employers.

8 (b) A common paymaster is two or more employers in which one of the
9 employers is designated to disburse wages to concurrently employed
10 individuals of any of the related companies.

11 **Sec. 12.** RCW 50.24.170 and 1945 c 35 s 105 are each amended to
12 read as follows:

13 (1) The commissioner shall prescribe regulations for the
14 establishment, maintenance, and dissolution of joint accounts by two or
15 more employers, and shall, in accordance with such regulations and upon
16 application by two or more employers to establish such account, or to
17 merge their several individual accounts in a joint account, maintain
18 such joint account as if it constituted a single employer's account.

19 (2) Joint accounts may not be established for individuals or
20 entities described under section 9 or 11 of this act.

21 NEW SECTION. **Sec. 13.** A new section is added to chapter 50.24 RCW
22 to read as follows:

23 (1) Upon termination, dissolution, or abandonment of a corporate or
24 limited liability company business, any officer, member, manager, or
25 other person having control or supervision of payment of unemployment
26 tax contributions under RCW 50.24.010 or 50.24.014, or who is
27 responsible for the filing of reports or the payment of contributions
28 or payments in lieu of contributions, is personally liable for any
29 unpaid contributions and interest and penalties on those contributions
30 if such officer or other person willfully fails to pay or to cause to
31 be paid any contributions due to the department from the corporation or
32 limited liability company business under this title. For purposes of
33 this section, "willfully fails to pay or to cause to be paid" means
34 that the failure is the result of an intentional, conscious, and
35 voluntary course of action.

1 (2) Persons liable under subsection (1) of this section are liable
2 only for contributions that became due during the period he or she had
3 the control, supervision, responsibility, or duty to act for the
4 corporation or limited liability company, plus interest and penalties
5 on those contributions.

6 (3) Persons liable under subsection (1) of this section are exempt
7 from liability if the nonpayment of contributions was beyond their
8 control as determined by the employment security department by rule.
9 In making this determination, the department shall consider, but not be
10 limited to, such factors as the death, illness, or personal financial
11 situation of the person liable under subsection (1) of this section.

12 (4) Persons liable under subsection (1) of this section are exempt
13 from liability if all of the assets of the corporation or limited
14 liability company have been applied to its debts through bankruptcy or
15 receivership.

16 (5) Any person having been issued a notice of assessment under this
17 section is entitled to the appeal procedures under chapter 50.32 RCW.

18 (6) This section applies only when the employment security
19 department determines that there is no reasonable means of collecting
20 the contributions owed directly from the corporation or limited
21 liability company.

22 (7) This section does not relieve the corporation or limited
23 liability company of other tax liabilities under this title or impair
24 other tax collection remedies afforded by law.

25 (8) Collection authority and procedures described in this chapter
26 apply to collections under this section.

27 **Sec. 14.** RCW 50.04.080 and 1985 c 41 s 1 are each amended to read
28 as follows:

29 "Employer" means any individual or type of organization, including
30 any partnership, association, trust, estate, joint stock company,
31 insurance company, limited liability company, or corporation, whether
32 domestic or foreign, or the receiver, trustee in bankruptcy, trustee,
33 or the legal representative of a deceased person, having any person in
34 employment or, having become an employer, has not ceased to be an
35 employer as provided in this title.

36 For the purposes of collection remedies available under chapter
37 50.24 RCW, "employer," in the case of a corporation or limited

1 liability company, includes persons found personally liable for any
2 unpaid contributions and interest and penalties on those contributions
3 under section 13 of this act.

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

14 NEW SECTION. **Sec. 16.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 17.** Section 3 of this act applies for penalties
19 assessed on reports and contributions due beginning October 1, 2007.

20 NEW SECTION. **Sec. 18.** Sections 1, 2, 4 through 6, and 8 through
21 12 of this act take effect January 1, 2008.

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