
SENATE BILL 5355

State of Washington

63rd Legislature

2013 Regular Session

By Senators Holmquist Newbry, Conway, Kohl-Welles, and Keiser; by request of Employment Security Department

Read first time 01/28/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to implementing the unemployment insurance
2 integrity provisions of the federal trade adjustment assistance
3 extension act of 2011; amending RCW 50.16.010, 50.20.070, and
4 50.29.021; creating a new section; and providing an effective date.

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

6 **Sec. 1.** RCW 50.16.010 and 2012 c 198 s 11 are each amended to read
7 as follows:

8 (1) There shall be maintained as special funds, separate and apart
9 from all public moneys or funds of this state an unemployment
10 compensation fund and an administrative contingency fund, which shall
11 be administered by the commissioner exclusively for the purposes of
12 this title, and to which RCW 43.01.050 shall not be applicable.

13 (2)(a) The unemployment compensation fund shall consist of:

14 (i) All contributions collected under RCW 50.24.010 and payments in
15 lieu of contributions collected pursuant to the provisions of this
16 title;

17 (ii) Any property or securities acquired through the use of moneys
18 belonging to the fund;

19 (iii) All earnings of such property or securities;

1 (iv) Any moneys received from the federal unemployment account in
2 the unemployment trust fund in accordance with Title XII of the social
3 security act, as amended;

4 (v) All money recovered on official bonds for losses sustained by
5 the fund;

6 (vi) All money credited to this state's account in the unemployment
7 trust fund pursuant to section 903 of the social security act, as
8 amended;

9 (vii) All money received from the federal government as
10 reimbursement pursuant to section 204 of the federal-state extended
11 compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304);
12 (~~and~~)

13 (viii) The portion of the additional penalties as provided in RCW
14 50.20.070(2) that is fifteen percent of the amount of benefits overpaid
15 or deemed overpaid; and

16 (ix) All moneys received for the fund from any other source.

17 (b) All moneys in the unemployment compensation fund shall be
18 commingled and undivided.

19 (3)(a) Except as provided in (b) of this subsection, the
20 administrative contingency fund shall consist of:

21 (i) All interest on delinquent contributions collected pursuant to
22 this title;

23 (ii) All fines and penalties collected pursuant to the provisions
24 of this title, except the portion of the additional penalties as
25 provided in RCW 50.20.070(2) that is fifteen percent of the amount of
26 benefits overpaid or deemed overpaid;

27 (iii) All sums recovered on official bonds for losses sustained by
28 the fund; and

29 (iv) Revenue received under RCW 50.24.014.

30 (b) All fees, fines, forfeitures, and penalties collected or
31 assessed by a district court because of the violation of this title or
32 rules adopted under this title shall be remitted as provided in chapter
33 3.62 RCW.

34 (c) Except as provided in (d) of this subsection, moneys available
35 in the administrative contingency fund, other than money in the special
36 account created under RCW 50.24.014, shall be expended upon the
37 direction of the commissioner, with the approval of the governor,

1 whenever it appears to him or her that such expenditure is necessary
2 solely for:

3 (i) The proper administration of this title and that insufficient
4 federal funds are available for the specific purpose to which such
5 expenditure is to be made, provided, the moneys are not substituted for
6 appropriations from federal funds which, in the absence of such moneys,
7 would be made available.

8 (ii) The proper administration of this title for which purpose
9 appropriations from federal funds have been requested but not yet
10 received, provided, the administrative contingency fund will be
11 reimbursed upon receipt of the requested federal appropriation.

12 (iii) The proper administration of this title for which compliance
13 and audit issues have been identified that establish federal claims
14 requiring the expenditure of state resources in resolution. Claims
15 must be resolved in the following priority: First priority is to
16 provide services to eligible participants within the state; second
17 priority is to provide substitute services or program support; and last
18 priority is the direct payment of funds to the federal government.

19 (d)(i) During the 2007-2009 fiscal biennium, moneys available in
20 the administrative contingency fund, other than money in the special
21 account created under RCW 50.24.014(1)(a), shall be expended as
22 appropriated by the legislature for: (A) The cost of the job skills or
23 worker retraining programs at the community and technical colleges and
24 administrative costs at the state board for community and technical
25 colleges; and (B) reemployment services such as business and project
26 development assistance, local economic development capacity building,
27 and local economic development financial assistance at the department
28 of commerce. The remaining appropriation may be expended as specified
29 in (c) of this subsection.

30 (ii) During the 2009-2011 fiscal biennium, moneys available in the
31 administrative contingency fund, other than money in the special
32 account created under RCW 50.24.014(1)(a), shall be expended by the
33 department of social and health services as appropriated by the
34 legislature for employment and training services and programs in the
35 WorkFirst program, and for the administrative costs of state agencies
36 participating in the WorkFirst program. The remaining appropriation
37 may be expended as specified in (c) of this subsection.

1 (4) Money in the special account created under RCW 50.24.014(1)(a)
2 may only be expended, after appropriation, for the purposes specified
3 in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014,
4 50.44.053, and 50.22.010.

5 **Sec. 2.** RCW 50.20.070 and 2007 c 146 s 7 are each amended to read
6 as follows:

7 (1) With respect to determinations delivered or mailed before
8 January 1, 2008, an individual is disqualified for benefits for any
9 week he or she has knowingly made a false statement or representation
10 involving a material fact or knowingly failed to report a material fact
11 and, as a result, has obtained or attempted to obtain any benefits
12 under the provisions of this title, and for an additional twenty-six
13 weeks beginning with the first week for which he or she completes an
14 otherwise compensable claim for waiting period credit or benefits
15 following the date of the delivery or mailing of the determination of
16 disqualification under this section. However, such disqualification
17 shall not be applied after two years have elapsed from the date of the
18 delivery or mailing of the determination of disqualification under this
19 section.

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

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

27 (b) An individual disqualified for benefits under this subsection
28 for the first time is also:

29 (i) Disqualified for an additional twenty-six weeks beginning with
30 the Sunday of the week in which the determination is mailed or
31 delivered; and

32 (ii) With respect to determinations delivered or mailed on or after
33 October 20, 2013, subject to an additional penalty of fifteen percent
34 of the amount of benefits overpaid or deemed overpaid;

35 (c) An individual disqualified for benefits under this subsection
36 for the second time is also disqualified for an additional fifty-two
37 weeks beginning with the Sunday of the week in which the determination

1 is mailed or delivered, and is subject to an additional penalty of
2 twenty-five percent of the amount of benefits overpaid or deemed
3 overpaid;

4 (d) An individual disqualified for benefits under this subsection
5 a third time and any time thereafter is also disqualified for an
6 additional one hundred four weeks beginning with the Sunday of the week
7 in which the determination is mailed or delivered, and is subject to an
8 additional penalty of fifty percent of the amount of benefits overpaid
9 or deemed overpaid.

10 (3) All penalties collected under this section must be expended for
11 the proper administration of this title as authorized under RCW
12 50.16.010 and for no other purposes.

13 (4) All overpayments and penalties established by such
14 determination of disqualification must be collected as otherwise
15 provided by this title.

16 **Sec. 3.** RCW 50.29.021 and 2011 c 4 s 14 are each amended to read
17 as follows:

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

21 (2)(a) An experience rating account shall be established and
22 maintained for each employer, except employers as described in RCW
23 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
24 payments in lieu of contributions, taxable local government employers
25 as described in RCW 50.44.035, and those employers who are required to
26 make payments in lieu of contributions, based on existing records of
27 the employment security department.

28 (b) Benefits paid to an eligible individual shall be charged to the
29 experience rating accounts of each of such individual's employers
30 during the individual's base year in the same ratio that the wages paid
31 by each employer to the individual during the base year bear to the
32 wages paid by all employers to that individual during that base year,
33 except as otherwise provided in this section.

34 (c) When the eligible individual's separating employer is a covered
35 contribution paying base year employer, benefits paid to the eligible
36 individual shall be charged to the experience rating account of only

1 the individual's separating employer if the individual qualifies for
2 benefits under:

3 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became
4 unemployed after having worked and earned wages in the bona fide work;
5 or

6 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
7 (x).

8 (3) The legislature finds that certain benefit payments, in whole
9 or in part, should not be charged to the experience rating accounts of
10 employers except those employers described in RCW 50.44.010, 50.44.030,
11 and 50.50.030 who have properly elected to make payments in lieu of
12 contributions, taxable local government employers described in RCW
13 50.44.035, and those employers who are required to make payments in
14 lieu of contributions, as follows:

15 (a) Benefits paid to any individual later determined to be
16 ineligible shall not be charged to the experience rating account of any
17 contribution paying employer(~~(. However, when a benefit claim becomes~~
18 ~~invalid due to an amendment or adjustment of a report where the~~
19 ~~employer failed to report or inaccurately reported hours worked or~~
20 ~~remuneration paid, or both, all benefits paid will be charged to the~~
21 ~~experience rating account of the contribution paying employer or~~
22 ~~employers that originally filed the incomplete or inaccurate report or~~
23 ~~reports. An employer who reimburses the trust fund for benefits paid~~
24 ~~to workers and who fails to report or inaccurately reported hours~~
25 ~~worked or remuneration paid, or both, shall reimburse the trust fund~~
26 ~~for all benefits paid that are based on the originally filed incomplete~~
27 ~~or inaccurate report or reports)), except as provided in subsection (5)
28 of this section.~~

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

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

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

36 (c) Benefits paid which represent the state's share of benefits
37 payable as extended benefits defined under RCW 50.22.010(6) shall not

1 be charged to the experience rating account of any contribution paying
2 employer.

3 (d) In the case of individuals who requalify for benefits under RCW
4 50.20.050 or 50.20.060, benefits based on wage credits earned prior to
5 the disqualifying separation shall not be charged to the experience
6 rating account of the contribution paying employer from whom that
7 separation took place.

8 (e) Benefits paid to an individual who qualifies for benefits under
9 RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as
10 applicable, shall not be charged to the experience rating account of
11 any contribution paying employer.

12 (f) With respect to claims with an effective date on or after the
13 first Sunday following April 22, 2005, benefits paid that exceed the
14 benefits that would have been paid if the weekly benefit amount for the
15 claim had been determined as one percent of the total wages paid in the
16 individual's base year shall not be charged to the experience rating
17 account of any contribution paying employer. This subsection (3)(f)
18 does not apply to the calculation of contribution rates under RCW
19 50.29.025 for rate year 2010 and thereafter.

20 (g) The forty-five dollar increase paid as part of an individual's
21 weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five
22 dollar increase paid as part of an individual's weekly benefit amount
23 as provided in RCW 50.20.1202 shall not be charged to the experience
24 rating account of any contribution paying employer.

25 (h) With respect to claims where the minimum amount payable weekly
26 is increased to one hundred fifty-five dollars pursuant to RCW
27 50.20.1201(3), benefits paid that exceed the benefits that would have
28 been paid if the minimum amount payable weekly had been calculated
29 pursuant to RCW 50.20.120 shall not be charged to the experience rating
30 account of any contribution paying employer.

31 (i) Upon approval of an individual's training benefits plan
32 submitted in accordance with RCW 50.22.155(2), an individual is
33 considered enrolled in training, and regular benefits beginning with
34 the week of approval shall not be charged to the experience rating
35 account of any contribution paying employer.

36 (j) Training benefits paid to an individual under RCW 50.22.155
37 shall not be charged to the experience rating account of any
38 contribution paying employer.

1 (4)(a) A contribution paying base year employer, except employers
2 as provided in subsection (6) of this section, not otherwise eligible
3 for relief of charges for benefits under this section, may receive such
4 relief if the benefit charges result from payment to an individual who:

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

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

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

14 (iv) Continues to be employed on a regularly scheduled permanent
15 part-time basis by a base year employer and who at some time during the
16 base year was concurrently employed and subsequently separated from at
17 least one other base year employer. Benefit charge relief ceases when
18 the employment relationship between the employer requesting relief and
19 the claimant is terminated. This subsection does not apply to shared
20 work employers under chapter ((50.06-[50.60])) 50.60 RCW; or

21 (v) Was hired to replace an employee who is a member of the
22 military reserves or National Guard and was called to federal active
23 military service by the president of the United States and is
24 subsequently laid off when that employee is reemployed by their
25 employer upon release from active duty within the time provided for
26 reemployment in RCW 73.16.035.

27 (b) The employer requesting relief of charges under this subsection
28 must request relief in writing within thirty days following mailing to
29 the last known address of the notification of the valid initial
30 determination of such claim, stating the date and reason for the
31 separation or the circumstances of continued employment. The
32 commissioner, upon investigation of the request, shall determine
33 whether relief should be granted.

34 (5) When a benefit claim becomes invalid due to an amendment or
35 adjustment of a report where the employer failed to report or
36 inaccurately reported hours worked or remuneration paid, or both, all
37 benefits paid will be charged to the experience rating account of the
38 contribution paying employer or employers that originally filed the

1 incomplete or inaccurate report or reports. An employer who reimburses
2 the trust fund for benefits paid to workers and who fails to report or
3 inaccurately reported hours worked or remuneration paid, or both, shall
4 reimburse the trust fund for all benefits paid that are based on the
5 originally filed incomplete or inaccurate report or reports.

6 (6) An employer's experience rating account may not be relieved of
7 charges for a benefit payment and an employer who reimburses the trust
8 fund for benefit payments may not be credited for a benefit payment if
9 a benefit payment was made because the employer or employer's agent
10 failed to respond timely or adequately to a written request of the
11 department for information relating to the claim or claims without
12 establishing good cause for the failure and the employer or employer's
13 agent has a pattern of such failures. The commissioner has the
14 authority to determine whether the employer has good cause under this
15 subsection.

16 (a) For the purposes of this subsection, "adequately" means
17 providing accurate information of sufficient quantity and quality that
18 would allow a reasonable person to determine eligibility for benefits.

19 (b)(i) For the purposes of this subsection, "pattern" means a
20 benefit payment was made because the employer or employer's agent
21 failed to respond timely or adequately to a written request of the
22 department for information relating to a claim or claims without
23 establishing good cause for the failure, if the greater of the
24 following calculations for an employer is met:

25 (A) At least three times in the previous two years; or

26 (B) Twenty percent of the total current claims against the
27 employer.

28 (ii) If an employer's agent is utilized, a pattern is established
29 based on each individual client employer that the employer's agent
30 represents.

31 NEW SECTION. Sec. 4. If any part of this act is found to be in
32 conflict with federal requirements that are a prescribed condition to
33 the allocation of federal funds to the state or the eligibility of
34 employers in this state for federal unemployment tax credits, the
35 conflicting part of this act is inoperative solely to the extent of the
36 conflict, and the finding or determination does not affect the
37 operation of the remainder of this act. Rules adopted under this act

1 must meet federal requirements that are a necessary condition to the
2 receipt of federal funds by the state or the granting of federal
3 unemployment tax credits to employers in this state.

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

8 NEW SECTION. **Sec. 6.** This act takes effect October 20, 2013.

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