
HOUSE BILL 2977

State of Washington

65th Legislature

2018 Regular Session

By Representatives Shea, McCabe, and Holy

Read first time 01/31/18. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to unemployment insurance benefits for
2 individuals required by law to be terminated from employment and the
3 unemployment insurance experience rating for affected employers; and
4 amending RCW 50.04.294, 50.20.066, and 50.29.021.

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

6 **Sec. 1.** RCW 50.04.294 and 2006 c 13 s 9 are each amended to read
7 as follows:

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

10 (1) "Misconduct" includes, but is not limited to, the following
11 conduct by a claimant:

12 (a) Willful or wanton disregard of the rights, title, and
13 interests of the employer or a fellow employee;

14 (b) Deliberate violations or disregard of standards of behavior
15 which the employer has the right to expect of an employee;

16 (c) Carelessness or negligence that causes or would likely cause
17 serious bodily harm to the employer or a fellow employee; or

18 (d) Carelessness or negligence of such degree or recurrence to
19 show an intentional or substantial disregard of the employer's
20 interest.

1 (2) The following acts are considered misconduct because the acts
2 signify a willful or wanton disregard of the rights, title, and
3 interests of the employer or a fellow employee. These acts include,
4 but are not limited to:

5 (a) Insubordination showing a deliberate, willful, or purposeful
6 refusal to follow the reasonable directions or instructions of the
7 employer;

8 (b) Repeated inexcusable tardiness following warnings by the
9 employer;

10 (c) Dishonesty related to employment, including but not limited
11 to deliberate falsification of company records, theft, deliberate
12 deception, or lying;

13 (d) Repeated and inexcusable absences, including absences for
14 which the employee was able to give advance notice and failed to do
15 so;

16 (e) Deliberate acts that are illegal, provoke violence or
17 violation of laws, or violate the collective bargaining agreement.
18 However, an employee who engages in lawful union activity may not be
19 disqualified due to misconduct;

20 (f) Violation of a company rule if the rule is reasonable and if
21 the claimant knew or should have known of the existence of the rule;
22 or

23 (g) Violations of law by the claimant while acting within the
24 scope of employment that substantially affect the claimant's job
25 performance or that substantially harm the employer's ability to do
26 business.

27 (3) "Misconduct" does not include:

28 (a) Inefficiency, unsatisfactory conduct, or failure to perform
29 well as the result of inability or incapacity;

30 (b) Inadvertence or ordinary negligence in isolated instances; or

31 (c) Good faith errors in judgment or discretion.

32 (4) "Gross misconduct" means:

33 (a) A criminal act in connection with an individual's work for
34 which the individual has been convicted in a criminal court, or has
35 admitted committing(~~(, or)~~);

36 (b) Conduct connected with the individual's work that
37 demonstrates a flagrant and wanton disregard of and for the rights,
38 title, or interest of the employer or a fellow employee; or

39 (c) A criminal act for which the individual has been convicted in
40 a criminal court or a finding of fact has been entered, that, due to

1 local, state, or federal law, requires the employer to immediately
2 terminate the individual from employment.

3 **Sec. 2.** RCW 50.20.066 and 2006 c 13 s 13 are each amended to
4 read as follows:

5 With respect to claims that have an effective date on or after
6 January 4, 2004:

7 (1) An individual shall be disqualified from benefits beginning
8 with the first day of the calendar week in which he or she has been
9 discharged or suspended for misconduct connected with his or her work
10 and thereafter for ten calendar weeks and until he or she has
11 obtained bona fide work in employment covered by this title and
12 earned wages in that employment equal to ten times his or her weekly
13 benefit amount. Alcoholism shall not constitute a defense to
14 disqualification from benefits due to misconduct.

15 (2) An individual terminated for gross misconduct related to a
16 criminal act for which the employer is required, under local, state,
17 or federal law, to terminate the individual, is disqualified for all
18 unemployment insurance benefits in connection with employment with
19 that employer.

20 (3) An individual who has been discharged from his or her work
21 because of gross misconduct shall have all hourly wage credits based
22 on that employment or six hundred eighty hours of wage credits,
23 whichever is greater, canceled.

24 ~~((3))~~ (4) The employer shall notify the department of a felony
25 or gross misdemeanor of which an individual has been convicted, or
26 has admitted committing to a competent authority, not later than six
27 months following the admission or conviction. If the individual is
28 terminated due to a criminal conviction, or a finding of fact, that
29 constitutes gross misconduct under this act, the employer shall
30 notify the department within seven days of terminating the
31 individual's employment.

32 ~~((4))~~ (5) The claimant shall disclose any conviction of the
33 claimant of a work-connected felony or gross misdemeanor occurring in
34 the previous two years to the department at the time of application
35 for benefits.

36 ~~((5))~~ (6) All benefits that are paid in error based on this
37 section are recoverable, notwithstanding RCW 50.20.190 or 50.24.020
38 or any other provisions of this title.

1 **Sec. 3.** RCW 50.29.021 and 2017 3rd sp.s. c 5 s 83 are each
2 amended to read 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
5 on 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, 50.44.030, and 50.50.030 who have properly elected to make
9 payments in lieu of contributions, taxable local government employers
10 as described in RCW 50.44.035, and those employers who are required
11 to make payments in lieu of contributions, based on existing records
12 of the employment security department.

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

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

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

27 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
28 (x).

29 (3) The legislature finds that certain benefit payments, in whole
30 or in part, should not be charged to the experience rating accounts
31 of employers except those employers described in RCW 50.44.010,
32 50.44.030, and 50.50.030 who have properly elected to make payments
33 in lieu of contributions, taxable local government employers
34 described in RCW 50.44.035, and those employers who are required to
35 make payments in lieu of contributions, as follows:

36 (a) Benefits paid to any individual later determined to be
37 ineligible shall not be charged to the experience rating account of
38 any contribution paying employer, except as provided in subsection
39 (5) of this section.

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

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

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

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

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

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

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

29 (g) The forty-five dollar increase paid as part of an
30 individual's weekly benefit amount as provided in RCW 50.20.1201 and
31 the twenty-five dollar increase paid as part of an individual's
32 weekly benefit amount as provided in RCW 50.20.1202 shall not be
33 charged to the experience rating account of any contribution paying
34 employer.

35 (h) With respect to claims where the minimum amount payable
36 weekly is increased to one hundred fifty-five dollars pursuant to RCW
37 50.20.1201(3), benefits paid that exceed the benefits that would have
38 been paid if the minimum amount payable weekly had been calculated
39 pursuant to RCW 50.20.120 shall not be charged to the experience
40 rating account of any contribution paying employer.

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

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

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

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

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

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

24 (iv) Continues to be employed on a regularly scheduled permanent
25 part-time basis by a base year employer and who at some time during
26 the base year was concurrently employed and subsequently separated
27 from at least one other base year employer. Benefit charge relief
28 ceases when the employment relationship between the employer
29 requesting relief and the claimant is terminated. This subsection
30 does not apply to shared work employers under chapter 50.60 RCW;

31 (v) Continues to be employed on a regularly scheduled permanent
32 part-time basis by a base year employer and who qualified for two
33 consecutive unemployment claims where wages were attributable to at
34 least one employer who employed the individual in both base years.
35 Benefit charge relief ceases when the employment relationship between
36 the employer requesting relief and the claimant is terminated. This
37 subsection does not apply to shared work employers under chapter
38 50.60 RCW;

39 (vi) Was hired to replace an employee who is a member of the
40 military reserves or National Guard and was called to federal active

1 military service by the president of the United States and is
2 subsequently laid off when that employee is reemployed by their
3 employer upon release from active duty within the time provided for
4 reemployment in RCW 73.16.035; ((~~or~~))

5 (vii) Worked for an employer for twenty weeks or less, and was
6 laid off at the end of temporary employment when that employee
7 temporarily replaced a permanent employee receiving family or medical
8 leave benefits under this chapter, and the layoff is due to the
9 return of that permanent employee. This subsection (4)(a)(vii)
10 applies to claims with an effective date on or after January 1, 2020;
11 or

12 (viii) Was terminated from employment due to pending charges of a
13 criminal act for which the employer is required, under local, state,
14 or federal law, to terminate the individual.

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

22 (5) When a benefit claim becomes invalid due to an amendment or
23 adjustment of a report where the employer failed to report or
24 inaccurately reported hours worked or remuneration paid, or both, all
25 benefits paid will be charged to the experience rating account of the
26 contribution paying employer or employers that originally filed the
27 incomplete or inaccurate report or reports. An employer who
28 reimburses the trust fund for benefits paid to workers and who fails
29 to report or inaccurately reported hours worked or remuneration paid,
30 or both, shall reimburse the trust fund for all benefits paid that
31 are based on the originally filed incomplete or inaccurate report or
32 reports.

33 (6) An employer's experience rating account may not be relieved
34 of charges for a benefit payment and an employer who reimburses the
35 trust fund for benefit payments may not be credited for a benefit
36 payment if a benefit payment was made because the employer or
37 employer's agent failed to respond timely or adequately to a written
38 request of the department for information relating to the claim or
39 claims without establishing good cause for the failure and the
40 employer or employer's agent has a pattern of such failures. The

1 commissioner has the authority to determine whether the employer has
2 good cause under this subsection.

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

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

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

14 (B) Twenty percent of the total current claims against the
15 employer.

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

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