

SHB 2614 - S COMM AMD

By Committee on Labor & Commerce

NOT ADOPTED 03/05/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 50A.05.010 and 2019 c 13 s 1 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this title.

7 (1) (a) "Casual labor" means work that:

8 (i) Is performed infrequently and irregularly; and

9 (ii) If performed for an employer, does not promote or advance
10 the employer's customary trade or business.

11 (b) For purposes of casual labor:

12 (i) "Infrequently" means work performed twelve or fewer times per
13 calendar quarter; and

14 (ii) "Irregularly" means work performed not on a consistent
15 cadence.

16 (2) "Child" includes a biological, adopted, or foster child, a
17 stepchild, a child's spouse, or a child to whom the employee stands
18 in loco parentis, is a legal guardian, or is a de facto parent,
19 regardless of age or dependency status.

20 ~~((2))~~ (3) "Commissioner" means the commissioner of the
21 department or the commissioner's designee.

22 ~~((3))~~ (4) "Department" means the employment security
23 department.

24 ~~((4))~~ (5)(a) "Employee" means an individual who is in the
25 employment of an employer.

26 (b) "Employee" does not include employees of the United States of
27 America.

28 ~~((5))~~ (6) "Employee's average weekly wage" means the quotient
29 derived by dividing the employee's total wages during the two
30 quarters of the employee's qualifying period in which total wages
31 were highest by twenty-six. If the result is not a multiple of one

1 dollar, the department must round the result to the next lower
2 multiple of one dollar.

3 ~~((6))~~ (7)(a) "Employer" means: (i) Any individual or type of
4 organization, including any partnership, association, trust, estate,
5 joint stock company, insurance company, limited liability company, or
6 corporation, whether domestic or foreign, or the receiver, trustee in
7 bankruptcy, trustee, or the legal representative of a deceased
8 person, having any person in employment or, having become an
9 employer, has not ceased to be an employer as provided in this title;
10 (ii) the state, state institutions, and state agencies; and (iii) any
11 unit of local government including, but not limited to, a county,
12 city, town, municipal corporation, quasi-municipal corporation, or
13 political subdivision.

14 (b) "Employer" does not include the United States of America.

15 ~~((7))~~ (8)(a) "Employment" means personal service, of whatever
16 nature, unlimited by the relationship of master and servant as known
17 to the common law or any other legal relationship performed for wages
18 or under any contract calling for the performance of personal
19 services, written or oral, express or implied. The term "employment"
20 includes an individual's entire service performed within or without
21 or both within and without this state, if:

- 22 (i) The service is localized in this state; or
- 23 (ii) The service is not localized in any state, but some of the
24 service is performed in this state; and

25 (A) The base of operations of the employee is in the state, or if
26 there is no base of operations, then the place from which such
27 service is directed or controlled is in this state; or

28 (B) The base of operations or place from which such service is
29 directed or controlled is not in any state in which some part of the
30 service is performed, but the individual's residence is in this
31 state.

32 (b) "Employment" does not include:

- 33 (i) Self-employed individuals;
- 34 (ii) Casual labor;
- 35 (iii) Services for remuneration when it is shown to the
36 satisfaction of the commissioner that:

37 (A)(I) Such individual has been and will continue to be free from
38 control or direction over the performance of such service, both under
39 his or her contract of service and in fact; and

1 (II) Such service is either outside the usual course of business
2 for which such service is performed, or that such service is
3 performed outside of all the places of business of the enterprises
4 for which such service is performed; and

5 (III) Such individual is customarily engaged in an independently
6 established trade, occupation, profession, or business, of the same
7 nature as that involved in the contract of service; or

8 (B) As a separate alternative:

9 (I) Such individual has been and will continue to be free from
10 control or direction over the performance of such service, both under
11 his or her contract of service and in fact; and

12 (II) Such service is either outside the usual course of business
13 for which such service is performed, or that such service is
14 performed outside of all the places of business of the enterprises
15 for which such service is performed, or the individual is
16 responsible, both under the contract and in fact, for the costs of
17 the principal place of business from which the service is performed;
18 and

19 (III) Such individual is customarily engaged in an independently
20 established trade, occupation, profession, or business, of the same
21 nature as that involved in the contract of service, or such
22 individual has a principal place of business for the work the
23 individual is conducting that is eligible for a business deduction
24 for federal income tax purposes; and

25 (IV) On the effective date of the contract of service, such
26 individual is responsible for filing at the next applicable filing
27 period, both under the contract of service and in fact, a schedule of
28 expenses with the internal revenue service for the type of business
29 the individual is conducting; and

30 (V) On the effective date of the contract of service, or within a
31 reasonable period after the effective date of the contract, such
32 individual has established an account with the department of revenue,
33 and other state agencies as required by the particular case, for the
34 business the individual is conducting for the payment of all state
35 taxes normally paid by employers and businesses and has registered
36 for and received a unified business identifier number from the state
37 of Washington; and

38 (VI) On the effective date of the contract of service, such
39 individual is maintaining a separate set of books or records that

1 reflect all items of income and expenses of the business which the
2 individual is conducting; (~~(iii)~~

3 ~~(iii))~~ (iv) Services that require registration under chapter
4 18.27 RCW or licensing under chapter 19.28 RCW rendered by an
5 individual when:

6 (A) The individual has been and will continue to be free from
7 control or direction over the performance of the service, both under
8 the contract of service and in fact;

9 (B) The service is either outside the usual course of business
10 for which the service is performed, or the service is performed
11 outside of all the places of business of the enterprise for which the
12 service is performed, or the individual is responsible, both under
13 the contract and in fact, for the costs of the principal place of
14 business from which the service is performed;

15 (C) The individual is customarily engaged in an independently
16 established trade, occupation, profession, or business, of the same
17 nature as that involved in the contract of service, or the individual
18 has a principal place of business for the business the individual is
19 conducting that is eligible for a business deduction for federal
20 income tax purposes, other than that furnished by the employer for
21 which the business has contracted to furnish services;

22 (D) On the effective date of the contract of service, the
23 individual is responsible for filing at the next applicable filing
24 period, both under the contract of service and in fact, a schedule of
25 expenses with the internal revenue service for the type of business
26 the individual is conducting;

27 (E) On the effective date of the contract of service, or within a
28 reasonable period after the effective date of the contract, the
29 individual has an active and valid certificate of registration with
30 the department of revenue, and an active and valid account with any
31 other state agencies as required by the particular case, for the
32 business the individual is conducting for the payment of all state
33 taxes normally paid by employers and businesses and has registered
34 for and received a unified business identifier number from the state
35 of Washington;

36 (F) On the effective date of the contract of service, the
37 individual is maintaining a separate set of books or records that
38 reflect all items of income and expenses of the business that the
39 individual is conducting; and

1 (G) On the effective date of the contract of service, the
2 individual has a valid contractor registration pursuant to chapter
3 18.27 RCW or an electrical contractor license pursuant to chapter
4 19.28 RCW;

5 (v) Individuals when serving as a member of a statutory board,
6 commission, council, committee, or other similar group classified as
7 a class two, three, four, or five group under RCW 43.03.230,
8 43.03.240, 43.03.250, or 43.03.265;

9 (vi) Individuals when serving as an elected commissioner, with a
10 per diem of two hundred fifty dollars or less per day, of a:

11 (A) Fire protection district under RCW 52.14.010, or a governing
12 board member of a regional fire protection service authority under
13 RCW 52.26.080;

14 (B) Water-sewer district under RCW 57.12.010;

15 (C) Cemetery district under RCW 68.52.220;

16 (D) Public hospital district under chapter 70.44 RCW;

17 (E) Special district under chapter 85.38 RCW;

18 (F) Park and recreation district or a joint park and recreation
19 district under chapter 36.69 RCW; or

20 (G) Port district under Title 53 RCW;

21 (vii) Volunteer firefighters compensated on per diem or nominal
22 sum basis consistent with the definition of volunteer contained in 29
23 C.F.R. Sec. 553.101, 553.104, and 553.106, as it exists on the
24 effective date of this section;

25 (viii) Individuals when serving as an elected director, with a
26 per diem of two hundred fifty dollars or less per day, of a:

27 (A) Weed district under chapter 17.04 RCW or an intercounty weed
28 district under chapter 17.06 RCW;

29 (B) Irrigation district under chapter 87.03 RCW or an irrigation
30 and rehabilitation district under chapter 87.84 RCW; or

31 (C) School district under chapter 28A.315 RCW;

32 (ix) Individuals when serving as an appointed director, with a
33 compensation limit of no more than one thousand dollars per year, of
34 an air pollution control authority under chapter 70.94 RCW; or

35 (x) Individuals when serving as an elected supervisor, with a per
36 diem of two hundred fifty dollars or less per day, of a conservation
37 district under chapter 89.08 RCW.

38 ~~((+8))~~ (9) "Employment benefits" means all benefits provided or
39 made available to employees by an employer, including group life

1 insurance, health insurance, disability insurance, sick leave, annual
2 leave, educational benefits, and pensions.

3 ~~((9))~~ (10) "Family leave" means any leave taken by an employee
4 from work:

5 (a) To participate in providing care, including physical or
6 psychological care, for a family member of the employee made
7 necessary by a serious health condition of the family member;

8 (b) To bond with the employee's child during the first twelve
9 months after the child's birth, or the first twelve months after the
10 placement of a child under the age of eighteen with the employee; or

11 (c) Because of any qualifying exigency as permitted under the
12 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
13 and 29 C.F.R. Sec. 825.126(b)(1) through ~~((9))~~ (11), as they
14 existed on October 19, 2017, for family members as defined in
15 subsection ~~((10))~~ (11) of this section.

16 ~~((10))~~ (11) "Family member" means a child, grandchild,
17 grandparent, parent, sibling, or spouse of an employee.

18 ~~((11))~~ (12) "Grandchild" means a child of the employee's child.

19 ~~((12))~~ (13) "Grandparent" means a parent of the employee's
20 parent.

21 ~~((13))~~ (14) "Health care provider" means: (a) A person licensed
22 as a physician under chapter 18.71 RCW or an osteopathic physician
23 and surgeon under chapter 18.57 RCW; (b) a person licensed as an
24 advanced registered nurse practitioner under chapter 18.79 RCW; or
25 (c) any other person determined by the commissioner to be capable of
26 providing health care services.

27 ~~((14))~~ (15) "Medical leave" means any leave taken by an
28 employee from work made necessary by the employee's own serious
29 health condition.

30 ~~((15))~~ (16) "Paid time off" includes vacation leave, personal
31 leave, medical leave, sick leave, compensatory leave, or any other
32 paid leave offered by an employer under the employer's established
33 policy.

34 (17) "Parent" means the biological, adoptive, de facto, or foster
35 parent, stepparent, or legal guardian of an employee or the
36 employee's spouse, or an individual who stood in loco parentis to an
37 employee when the employee was a child.

38 ~~((16))~~ (18) "Period of incapacity" means an inability to work,
39 attend school, or perform other regular daily activities because of a
40 serious health condition, treatment of that condition or recovery

1 from it, or subsequent treatment in connection with such inpatient
2 care.

3 ~~((17))~~ (19) "Premium" or "premiums" means the payments required
4 by RCW 50A.10.030 and paid to the department for deposit in the
5 family and medical leave insurance account under RCW 50A.05.070.

6 ~~((18))~~ (20) "Qualifying period" means the first four of the
7 last five completed calendar quarters or, if eligibility is not
8 established, the last four completed calendar quarters immediately
9 preceding the application for leave.

10 ~~((19))~~ (21)(a) "Remuneration" means all compensation paid for
11 personal services including commissions and bonuses and the cash
12 value of all compensation paid in any medium other than cash.

13 (b) Previously accrued compensation, other than severance pay or
14 payments received pursuant to plant closure agreements, when assigned
15 to a specific period of time by virtue of a collective bargaining
16 agreement, individual employment contract, customary trade practice,
17 or request of the individual compensated, is considered remuneration
18 for the period to which it is assigned. Assignment clearly occurs
19 when the compensation serves to make the individual eligible for all
20 regular fringe benefits for the period to which the compensation is
21 assigned.

22 (c) Remuneration also includes settlements or other proceeds
23 received by an individual as a result of a negotiated settlement for
24 termination of an individual written employment contract prior to its
25 expiration date. The proceeds are deemed assigned in the same
26 intervals and in the same amount for each interval as compensation
27 was allocated under the contract.

28 (d) Remuneration does not include:

29 (i) The payment of tips;

30 (ii) Supplemental benefit payments made by an employer to an
31 employee in addition to any paid family or medical leave benefits
32 received by the employee; or

33 (iii) Payments to members of the armed forces of the United
34 States, including the organized militia of the state of Washington,
35 for the performance of duty for periods not exceeding seventy-two
36 hours at a time.

37 ~~((20))~~ (22)(a) "Serious health condition" means an illness,
38 injury, impairment, or physical or mental condition that involves:

39 (i) Inpatient care in a hospital, hospice, or residential medical
40 care facility, including any period of incapacity; or

1 (ii) Continuing treatment by a health care provider. A serious
2 health condition involving continuing treatment by a health care
3 provider includes any one or more of the following:

4 (A) A period of incapacity of more than three consecutive, full
5 calendar days, and any subsequent treatment or period of incapacity
6 relating to the same condition, that also involves:

7 (I) Treatment two or more times, within thirty days of the first
8 day of incapacity, unless extenuating circumstances exist, by a
9 health care provider, by a nurse or physician's assistant under
10 direct supervision of a health care provider, or by a provider of
11 health care services, such as a physical therapist, under orders of,
12 or on referral by, a health care provider; or

13 (II) Treatment by a health care provider on at least one occasion
14 which results in a regimen of continuing treatment under the
15 supervision of the health care provider;

16 (B) Any period of incapacity due to pregnancy, or for prenatal
17 care;

18 (C) Any period of incapacity or treatment for such incapacity due
19 to a chronic serious health condition. A chronic serious health
20 condition is one which:

21 (I) Requires periodic visits, defined as at least twice a year,
22 for treatment by a health care provider, or by a nurse under direct
23 supervision of a health care provider;

24 (II) Continues over an extended period of time, including
25 recurring episodes of a single underlying condition; and

26 (III) May cause episodic rather than a continuing period of
27 incapacity, including asthma, diabetes, and epilepsy;

28 (D) A period of incapacity which is permanent or long term due to
29 a condition for which treatment may not be effective. The employee or
30 family member must be under the continuing supervision of, but need
31 not be receiving active treatment by, a health care provider,
32 including Alzheimer's, a severe stroke, or the terminal stages of a
33 disease; or

34 (E) Any period of absence to receive multiple treatments,
35 including any period of recovery from the treatments, by a health
36 care provider or by a provider of health care services under orders
37 of, or on referral by, a health care provider, either for: (I)
38 Restorative surgery after an accident or other injury; or (II) a
39 condition that would likely result in a period of incapacity of more
40 than three consecutive, full calendar days in the absence of medical

1 intervention or treatment, such as cancer, severe arthritis, or
2 kidney disease.

3 (b) The requirement in (a)(i) and (ii) of this subsection for
4 treatment by a health care provider means an in-person visit to a
5 health care provider. The first, or only, in-person treatment visit
6 must take place within seven days of the first day of incapacity.

7 (c) Whether additional treatment visits or a regimen of
8 continuing treatment is necessary within the thirty-day period shall
9 be determined by the health care provider.

10 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
11 subsection means circumstances beyond the employee's control that
12 prevent the follow-up visit from occurring as planned by the health
13 care provider. Whether a given set of circumstances are extenuating
14 depends on the facts. For example, extenuating circumstances exist if
15 a health care provider determines that a second in-person visit is
16 needed within the thirty-day period, but the health care provider
17 does not have any available appointments during that time period.

18 (e) Treatment for purposes of (a) of this subsection includes,
19 but is not limited to, examinations to determine if a serious health
20 condition exists and evaluations of the condition. Treatment does not
21 include routine physical examinations, eye examinations, or dental
22 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
23 continuing treatment includes, but is not limited to, a course of
24 prescription medication, such as an antibiotic, or therapy requiring
25 special equipment to resolve or alleviate the health condition, such
26 as oxygen. A regimen of continuing treatment that includes taking
27 over-the-counter medications, such as aspirin, antihistamines, or
28 salves, or bed rest, drinking fluids, exercise, and other similar
29 activities that can be initiated without a visit to a health care
30 provider, is not, by itself, sufficient to constitute a regimen of
31 continuing treatment for purposes of this title.

32 (f) Conditions for which cosmetic treatments are administered,
33 such as most treatments for acne or plastic surgery, are not serious
34 health conditions unless inpatient hospital care is required or
35 unless complications develop. Ordinarily, unless complications arise,
36 the common cold, the flu, ear aches, upset stomach, minor ulcers,
37 headaches other than migraines, routine dental or orthodontia
38 problems, and periodontal disease are examples of conditions that are
39 not serious health conditions and do not qualify for leave under this
40 title. Restorative dental or plastic surgery after an injury or

1 removal of cancerous growths are serious health conditions provided
2 all the other conditions of this section are met. Mental illness
3 resulting from stress or allergies may be serious health conditions,
4 but only if all the conditions of this section are met.

5 (g) (i) Substance abuse may be a serious health condition if the
6 conditions of this section are met. However, leave may only be taken
7 for treatment for substance abuse by a health care provider or by a
8 licensed substance abuse treatment provider. Absence because of the
9 employee's use of the substance, rather than for treatment, does not
10 qualify for leave under this title.

11 (ii) Treatment for substance abuse does not prevent an employer
12 from taking employment action against an employee. The employer may
13 not take action against the employee because the employee has
14 exercised his or her right to take medical leave for treatment.
15 However, if the employer has an established policy, applied in a
16 nondiscriminatory manner that has been communicated to all employees,
17 that provides under certain circumstances an employee may be
18 terminated for substance abuse, pursuant to that policy the employee
19 may be terminated whether or not the employee is presently taking
20 medical leave. An employee may also take family leave to care for a
21 covered family member who is receiving treatment for substance abuse.
22 The employer may not take action against an employee who is providing
23 care for a covered family member receiving treatment for substance
24 abuse.

25 (h) Absences attributable to incapacity under (a) (ii) (B) or (C)
26 of this subsection qualify for leave under this title even though the
27 employee or the family member does not receive treatment from a
28 health care provider during the absence, and even if the absence does
29 not last more than three consecutive, full calendar days. For
30 example, an employee with asthma may be unable to report for work due
31 to the onset of an asthma attack or because the employee's health
32 care provider has advised the employee to stay home when the pollen
33 count exceeds a certain level. An employee who is pregnant may be
34 unable to report to work because of severe morning sickness.

35 (~~(21)~~) (23) "Service is localized in this state" has the same
36 meaning as described in RCW 50.04.120.

37 (~~(22)~~) (24) "Spouse" means a husband or wife, as the case may
38 be, or state registered domestic partner.

1 (~~(23)~~) (25) "State average weekly wage" means the most recent
2 average weekly wage calculated under RCW 50.04.355 and available on
3 January 1st of each year.

4 (~~(24)~~) (26) "Supplemental benefit payments" means payments made
5 by an employer to an employee as salary continuation or as paid time
6 off. Such payments must be in addition to any paid family or medical
7 leave benefits the employee is receiving.

8 (27) "Typical workweek hours" means:

9 (a) For an hourly employee, the average number of hours worked
10 per week by an employee (~~(since the beginning of)~~) within the
11 qualifying period; and

12 (b) Forty hours for a salaried employee, regardless of the number
13 of hours the salaried employee typically works.

14 (~~(25)~~) (28) "Wage" or "wages" means:

15 (a) For the purpose of premium assessment, the remuneration paid
16 by an employer to an employee. The maximum wages subject to a premium
17 assessment are those wages as set by the commissioner under RCW
18 50A.10.030;

19 (b) For the purpose of payment of benefits, the remuneration paid
20 by one or more employers to an employee for employment during the
21 employee's qualifying period. At the request of an employee, wages
22 may be calculated on the basis of remuneration payable. The
23 department shall notify each employee that wages are calculated on
24 the basis of remuneration paid, but at the employee's request a
25 redetermination may be performed and based on remuneration payable;
26 and

27 (c) For the purpose of a self-employed person electing coverage
28 under RCW 50A.10.010, the meaning is defined by rule.

29 **Sec. 2.** RCW 50A.10.010 and 2019 c 13 s 19 are each amended to
30 read as follows:

31 (1) For benefits payable beginning January 1, 2020, any self-
32 employed person, including a sole proprietor, independent contractor,
33 partner, or joint venturer, may elect coverage under this title for
34 an initial period of not less than three years and subsequent periods
35 of not less than one year immediately following a period of coverage.
36 Those electing coverage under this section must elect coverage for
37 both family leave and medical leave and are responsible for payment
38 of one hundred percent of all premiums assessed to an employee under
39 RCW 50A.10.030. The self-employed person must file a notice of

1 election in writing with the department, in a manner as required by
2 the department in rule. The self-employed person is eligible for
3 family and medical leave benefits after working eight hundred twenty
4 hours in the state during the qualifying period following the date of
5 filing the notice.

6 (2) A self-employed person who has elected coverage may withdraw
7 from coverage within thirty days after the end of each period of
8 coverage, or at such other times as the commissioner may adopt by
9 rule, by filing a notice of withdrawal in writing with the
10 commissioner, such withdrawal to take effect not sooner than thirty
11 days after filing the notice with the commissioner.

12 (3) The department may cancel elective coverage if the self-
13 employed person fails to make required payments or file reports. The
14 department may collect due and unpaid premiums and may levy an
15 additional premium for the remainder of the period of coverage. The
16 cancellation shall be effective no later than thirty days from the
17 date of the notice in writing advising the self-employed person of
18 the cancellation.

19 (4) Those electing coverage are considered employers or employees
20 where the context so dictates.

21 (5) For the purposes of this section, "independent contractor"
22 means an individual excluded from employment under RCW
23 50A.05.010(~~((7))~~) (8)(b) (~~((ii) and)~~) (iii) and (iv).

24 (6) In developing and implementing the requirements of this
25 section, the department shall adopt government efficiencies to
26 improve administration and reduce costs. These efficiencies may
27 include, but are not limited to, requiring that payments be made in a
28 manner and at intervals unique to the elective coverage program.

29 (7) The department shall adopt rules for determining the hours
30 worked and the wages of individuals who elect coverage under this
31 section and rules for enforcement of this section.

32 **Sec. 3.** RCW 50A.10.040 and 2019 c 13 s 22 are each amended to
33 read as follows:

34 (1) An employer may file an application with the department for a
35 conditional waiver for the payment of family and medical leave
36 premiums, assessed under RCW 50A.10.030, for any employee who (~~(is)~~):

37 (a) (~~(Physically based)~~) Primarily performs work outside of the
38 state;

1 (b) Is employed in the state on a limited or temporary work
2 schedule; and

3 (c) Is not expected to be employed in the state for eight hundred
4 twenty hours or more in a ((qualifying)) period of four consecutive
5 completed calendar quarters.

6 (2) ~~((The department must approve an application that has been~~
7 ~~signed by))~~ Both the employee and employer must sign the application
8 verifying their belief that the conditions in ((this)) subsection (1)
9 of this section will be met ((during the qualifying period)).

10 (3) ~~If the ((employee exceeds the eight hundred twenty hours or~~
11 ~~more in a period of four consecutive complete calendar quarters))~~
12 department finds any of the conditions in subsection (1) of this
13 section are no longer satisfied, or were not satisfied at any point
14 after a conditional waiver was approved and is in effect, the
15 department will consider the conditional waiver ((expires)) expired
16 and the employer and employee will be responsible for their shares of
17 all premiums that would have been paid during this period had the
18 waiver not been granted. Upon payment of the missed premiums, the
19 employee will be credited for the hours worked and will be eligible
20 for benefits under this title as if the premiums were originally
21 paid.

22 **Sec. 4.** RCW 50A.15.020 and 2019 c 13 s 3 are each amended to
23 read as follows:

24 (1) ~~((a))~~ Beginning January 1, 2020, family and medical leave
25 are available and benefits are payable to a qualified employee under
26 this section.

27 (a) Following a waiting period consisting of the first seven
28 consecutive calendar days, benefits are payable when family or
29 medical leave is required. However, no waiting period is required for
30 leave for the birth or placement of a child, or for leave because of
31 any qualifying exigency as defined under RCW 50A.05.010(10)(c). The
32 waiting period begins the previous Sunday of the week when an
33 otherwise eligible employee takes leave for the minimum claim
34 duration under subsection (2)(c) of this section. Eligible employees
35 may satisfy the waiting period requirement while simultaneously
36 receiving paid time off for any part of the waiting period.

37 (b) Benefits may continue during the continuance of the need for
38 family ~~((and))~~ or medical leave, subject to the maximum and minimum
39 weekly benefits, duration, and other conditions and limitations

1 established in this title. (~~Successive periods of family and medical~~
2 ~~leave caused by the same or related injury or sickness are deemed a~~
3 ~~single period of family and medical leave only if separated by less~~
4 ~~than four months.~~)

5 (2) The weekly benefit shall be prorated by the percentage of
6 hours on leave compared to the number of hours provided as the
7 typical workweek hours as defined in RCW 50A.05.010.

8 (a) The benefits in this section, if not a multiple of one
9 dollar, shall be reduced to the next lower multiple of one dollar.

10 (b) Hours on leave claimed for benefits under this title, if not
11 a multiple of one hour, shall be reduced to the next lower multiple
12 of one hour.

13 (c) The minimum claim duration payment is for eight consecutive
14 hours of leave.

15 (3)(a) The maximum duration of paid family leave may not exceed
16 twelve times the typical workweek hours during a period of fifty-two
17 consecutive calendar weeks.

18 (b) The maximum duration of paid medical leave may not exceed
19 twelve times the typical workweek hours during a period of fifty-two
20 consecutive calendar weeks. This leave may be extended an additional
21 two times the typical workweek hours if the employee experiences a
22 serious health condition with a pregnancy that results in incapacity.

23 (c) An employee is not entitled to paid family and medical leave
24 benefits under this title that exceeds a combined total of sixteen
25 times the typical workweek hours. The combined total of family and
26 medical leave may be extended to eighteen times the typical workweek
27 hours if the employee experiences a serious health condition with a
28 pregnancy that results in incapacity.

29 (4) The weekly benefit for family and medical leave shall be
30 determined as follows: If the employee's average weekly wage is: (a)
31 Equal to or less than one-half of the state average weekly wage, then
32 the benefit amount is equal to ninety percent of the employee's
33 average weekly wage; or (b) greater than one-half of the state
34 average weekly wage, then the benefit amount is the sum of: (i)
35 Ninety percent of one-half of the state average weekly wage; and (ii)
36 fifty percent of the difference of the employee's average weekly wage
37 and one-half of the state average weekly wage.

38 (5)(a) The maximum weekly benefit for family and medical leave
39 that occurs on or after January 1, 2020, shall be one thousand
40 dollars. By September 30, 2020, and by each subsequent September

1 30th, the commissioner shall adjust the maximum weekly benefit amount
2 to ninety percent of the state average weekly wage. The adjusted
3 maximum weekly benefit amount takes effect on the following January
4 1st.

5 (b) The minimum weekly benefit shall not be less than one hundred
6 dollars per week except that if the employee's average weekly wage at
7 the time of family (~~and~~) or medical leave is less than one hundred
8 dollars per week, the weekly benefit shall be the employee's full
9 wage.

10 **Sec. 5.** RCW 50A.15.060 and 2019 c 13 s 8 are each amended to
11 read as follows:

12 (1) An employee is not entitled to paid family or medical leave
13 benefits under this title:

14 (a) For any absence occasioned by the willful intention of the
15 employee to bring about injury to or the sickness of the employee or
16 another, or resulting from any injury or sickness sustained in the
17 perpetration by the employee of an illegal act;

18 (b) For any family or medical leave commencing before the
19 employee becomes qualified for benefits under this title;

20 (c) For an employee who is on suspension from his or her
21 employment; or

22 (d) For any period of time during which an employee works for
23 remuneration or profit.

24 (2) An employer may offer supplemental benefit payments to an
25 employee on family or medical leave in addition to any paid family or
26 medical leave benefits the employee is receiving. (~~Supplemental
27 benefit payments include, but are not limited to, vacation, sick, or
28 other paid time off.~~)

29 (a) Supplemental benefit payments are not considered remuneration
30 under RCW 50A.05.010(21) and the department will not prorate or
31 reduce an employee's weekly benefit amount due to the receipt of
32 supplemental benefit payments.

33 (b) The choice to receive supplemental benefit payments lies with
34 the employee. Nothing in this section shall be construed as requiring
35 an employee to receive or an employer to provide supplemental benefit
36 payments.

37 (3) An individual is disqualified for benefits for any week he or
38 she has knowingly and willfully made a false statement or
39 representation involving a material fact or knowingly and willfully

1 failed to report a material fact and, as a result, has obtained or
2 attempted to obtain any benefits under the provisions of this title.
3 An individual disqualified for benefits under this subsection (3) for
4 the:

5 (a) First time is disqualified for an additional twenty-six weeks
6 beginning with the Sunday of the week in which the determination is
7 mailed or delivered, and is subject to an additional penalty of
8 fifteen percent of the amount of benefits overpaid or deemed
9 overpaid;

10 (b) Second time is also disqualified for an additional fifty-two
11 weeks beginning with the Sunday of the week in which the
12 determination is mailed or delivered, and is subject to an additional
13 penalty of twenty-five percent of the amount of benefits overpaid or
14 deemed overpaid;

15 (c) Third time and any time thereafter is also disqualified for
16 an additional one hundred four weeks beginning with the Sunday of the
17 week in which the determination is mailed or delivered, and is
18 subject to an additional penalty of fifty percent of the amount of
19 benefits overpaid or deemed overpaid.

20 (4) All penalties collected under this section must be deposited
21 in the family and medical leave enforcement account created under RCW
22 50A.05.080.

23 **Sec. 6.** RCW 50A.15.080 and 2019 c 13 s 10 are each amended to
24 read as follows:

25 (1) If ((~~an~~)) ~~the department determines an employee is qualified~~
26 for benefits and that the employee owes child support obligations
27 ((~~under RCW 50A.15.040 and~~)), ~~the department ((determines that the~~
28 employee is qualified for benefits, the department shall notify the
29 applicable state or local child support enforcement agency and deduct
30 and withhold an amount from benefits in a manner consistent with RCW
31 50.40.050.)) shall notify the applicable state or local child support
32 enforcement agency and deduct and withhold an amount from benefits in
33 a manner consistent with RCW 50.40.050.

34 (2) For the purposes of this section, "child support obligations"
35 means only those obligations that are being enforced pursuant to a
36 plan described in section 454 of the social security act which has
37 been approved by the secretary of health and human services under
38 Title IV-D of the social security act (42 U.S.C. Sec. 651 et seq.).

1 (3) Consistent with (~~(RCW 50A.15.040(1)(e))~~) chapter 50A.25 RCW,
2 the department may verify child support obligations with the
3 department of social and health services.

4 **Sec. 7.** RCW 50A.15.100 and 2019 c 13 s 38 are each amended to
5 read as follows:

6 (1) Leave from employment under this title is in addition to
7 leave from employment during which benefits are paid or are payable
8 under Title 51 RCW or other applicable federal or state industrial
9 insurance laws.

10 (~~(1F)~~) An employee is disqualified from receiving family or
11 medical leave benefits under this title for any week in which (~~(an)~~)
12 the employee is (~~(eligible to receive benefits)~~) receiving, has
13 received, or will receive compensation, as determined by the
14 governing state or federal agency under:

15 (a) Title 50 (~~(or 51)~~) RCW(~~(, or)~~);

16 (b) RCW 51.32.060;

17 (c) RCW 51.32.090; or

18 (d) Any other applicable federal (~~(or state)~~) unemployment
19 compensation, industrial insurance, or disability insurance laws(~~(~~
20 the employee is disqualified from receiving family or medical leave
21 benefits under this title)).

22 **Sec. 8.** RCW 50A.25.070 and 2019 c 13 s 76 are each amended to
23 read as follows:

24 (1) The department may enter into data-sharing contracts and may
25 disclose records and information deemed confidential to state or
26 local government agencies under this chapter only if permitted under
27 subsection (2) of this section and RCW 50A.25.090. A state or local
28 government agency must need the records or information for an
29 official purpose and must also provide:

30 (a) An application in writing to the department for the records
31 or information containing a statement of the official purposes for
32 which the state or local government agency needs the information or
33 records and specifically identify the records or information sought
34 from the department; and

35 (b) A written verification of the need for the specific
36 information from the director, commissioner, chief executive, or
37 other official of the requesting state or local government agency
38 either on the application or on a separate document.

1 (2) The department may disclose information or records deemed
2 confidential under this chapter to the following state or local
3 government agencies:

4 (a) To the department of social and health services to identify
5 child support obligations as defined in RCW 50A.15.080;

6 (b) To the department of revenue to determine potential tax
7 liability or employer compliance with registration and licensing
8 requirements;

9 (c) To the department of labor and industries to compare records
10 or information to detect improper or fraudulent claims;

11 (d) To the office of financial management for the purpose of
12 conducting periodic salary or fringe benefit studies pursuant to law;

13 (e) To the office of the state treasurer and any financial or
14 banking institutions deemed necessary by the office of the state
15 treasurer and the department for the proper administration of funds;

16 (f) To the office of the attorney general for purposes of legal
17 representation;

18 (g) To a county clerk for the purpose of RCW 9.94A.760 if
19 requested by the county clerk's office;

20 (h) To the office of administrative hearings for the purpose of
21 administering the administrative appeal process;

22 (i) To the department of enterprise services for the purpose of
23 agency administration and operations; and

24 (j) To the consolidated technology services agency for the
25 purpose of enterprise technology support.

26 **Sec. 9.** RCW 50A.30.010 and 2019 c 13 s 56 are each amended to
27 read as follows:

28 (1) An employer may apply to the commissioner for approval of a
29 voluntary plan for the payment of either family leave benefits or
30 medical leave benefits, or both. The application must be submitted on
31 a form and in the manner as prescribed by the commissioner in rule.
32 The fee for the department's review of each application for approval
33 of a voluntary plan is two hundred fifty dollars.

34 (2) The benefits payable as indemnification for loss of wages
35 under any voluntary plan must be separately stated and designated
36 separately and distinctly in the plan from other benefits, if any.

37 (3) Neither an employee nor his or her employer are liable for
38 any premiums for benefits covered by an approved voluntary plan.

1 (4) An employee may only receive payment of benefits for family
2 leave, medical leave, or both from one approved plan at a time. An
3 employee who qualifies for benefits and is simultaneously covered by
4 more than one plan under this title will receive benefits under the
5 plan for which the employee has worked the most hours during the
6 employee's qualifying period. The commissioner must adopt rules to
7 allow benefits or prevent duplication of benefits to employees
8 simultaneously covered by one or more approved voluntary plans and
9 the state program.

10 (5) The commissioner must approve any voluntary plan as to which
11 the commissioner finds that there is at least one employee in
12 employment and all of the following exist:

13 (a) The benefits afforded to the employees must be at least
14 equivalent to the benefits the employees are entitled to as part of
15 the state's family and medical leave program, including but not
16 limited to the duration of leave. The employer must offer at least
17 one-half of the length of leave as provided in RCW 50A.15.020(3) with
18 pay and provide a monetary payment in an amount equal to or higher
19 than the total amount of monetary benefits the employee would be
20 entitled to receive as part of the state-run program. The employer
21 may offer the same duration of leave and monetary benefits as offered
22 under the state program.

23 (b) The sick leave an employee is entitled to under RCW 49.46.210
24 is in addition to the employer's provided benefits and is in addition
25 to any family (~~and~~) or medical leave benefits.

26 (c) The plan is available to all of the eligible employees of the
27 employer employed in this state, including future employees.

28 (d) The employer has agreed to make (~~the~~) all required payroll
29 deductions (~~required, if any, and transmit the proceeds to the~~
30 ~~department for any portions not collected for the voluntary plan~~),
31 including that:

32 (i) In the case of plan termination or withdrawal, the employer
33 must remit to the department all required moneys under RCW 50A.30.045
34 and 50A.30.065(3); and

35 (ii) If the employer has an approved voluntary plan for either
36 medical leave or family leave but not both, the employer is still
37 obligated to remit to the department premiums owed to the state plan
38 for the portions not covered by the employer's approved voluntary
39 plan.

1 (e) The plan will be in effect for a period of not less than one
2 year and, thereafter, continuously unless the commissioner finds that
3 the employer has given notice of withdrawal from the plan in a manner
4 specified by the commissioner in rule. The plan may be withdrawn by
5 the employer on the date of any law increasing the benefit amounts or
6 the date of any change in the rate of employee premiums, if notice of
7 the withdrawal from the plan is transmitted to the commissioner not
8 less than thirty days prior to the date of that law or change. If the
9 plan is not withdrawn, it must be amended to conform to provide the
10 increased benefit amount or change in the rate of the employee's
11 premium on the date of the increase or change.

12 (f) The amount of payroll deductions from the wages of an
13 employee in effect for any voluntary plan may not exceed the maximum
14 payroll deduction for that employee as authorized under RCW
15 50A.10.030. The deductions may not be increased on other than an
16 anniversary of the effective date of the plan, except to the extent
17 that any increase in the deductions from the wages of an employee do
18 not exceed the maximum rate authorized under the state program.

19 (g) The voluntary plan provides that an employee of an employer
20 with a voluntary plan for either family leave or medical leave, or
21 both, is eligible for the plan benefits if the employee meets the
22 requirements of RCW 50A.15.010 and has worked at least three hundred
23 forty hours for the employer during the twelve months immediately
24 preceding the date leave will commence.

25 (h) The voluntary plan provides that an employee of an employer
26 with a voluntary plan for either family leave or medical leave, or
27 both, who takes leave under the voluntary plan is entitled to the
28 employment protection provisions contained in RCW 50A.35.010 if the
29 employee has worked for the employer for at least nine months and
30 nine hundred sixty-five hours during the twelve months immediately
31 preceding the date leave will commence.

32 (i) The voluntary plan provides that the employer maintains the
33 employee's existing health benefits as provided under RCW 50A.35.020.

34 (6) (a) The department must conduct a review of the expenses
35 incurred in association with the administration of the voluntary
36 plans during the first three years after implementation and report
37 its findings to the legislature.

38 (b) The review must include an analysis of the adequacy of the
39 fee in subsection (1) of this section to cover the department's
40 administrative expenses related to reviewing and approving or denying

1 the applications and administering appeals related to voluntary
2 plans. The review must include an estimate of the next year's
3 projected administrative costs related to the voluntary plans. The
4 legislature shall adjust the fee in subsection (1) of this section as
5 needed to ensure the department's administrative expenses related to
6 the voluntary plans are covered by the fee.

7 (c) If the current receipts from the fee in subsection (1) of
8 this section are inadequate to cover the department's administrative
9 expenses related to the voluntary plans, the department may use funds
10 from the family and medical leave insurance account under RCW
11 50A.05.070 to pay for these expenses.

12 **Sec. 10.** RCW 50A.30.035 and 2017 3rd sp.s. c 5 s 25 are each
13 amended to read as follows:

14 An employer with a voluntary plan must provide a notice prepared
15 by or approved by the commissioner regarding the voluntary plan
16 consistent with the provisions of RCW (~~50A.04.075~~) 50A.20.020.

17 **Sec. 11.** RCW 50A.40.010 and 2019 c 13 s 15 are each amended to
18 read as follows:

19 (1) It is unlawful for any employer to:

20 (a) Interfere with, restrain, or deny the exercise of, or the
21 attempt to exercise, any valid right provided under this title; or

22 (b) Discharge or in any other manner discriminate against any
23 employee for opposing any practice made unlawful by this title.

24 (2) It is unlawful for any person to discharge or in any other
25 manner discriminate against any employee because the employee has:

26 (a) Filed any complaint, or has instituted or caused to be
27 instituted any proceeding, under or related to this title;

28 (b) Given, or is about to give, any information in connection
29 with any inquiry or proceeding relating to any right provided under
30 this title; or

31 (c) Testified, or is about to testify, in any inquiry or
32 proceeding relating to any right provided under this title.

33 (3) As provided in RCW 50A.40.020 and 50A.40.030, the department
34 will investigate allegations of unlawful acts and determine damages,
35 as necessary.

36 **Sec. 12.** RCW 50A.40.020 and 2019 c 13 s 17 are each amended to
37 read as follows:

1 (1) An employee who alleges one or more unlawful acts under RCW
2 50A.40.010 have occurred may file a complaint with the department.
3 The department may not investigate any alleged violation of RCW
4 50A.40.010 that occurred more than three years before the date the
5 employee filed the complaint.

6 (2) Upon receipt of a complaint ((by an employee)) under
7 subsection (1) of this section, the commissioner shall investigate to
8 determine if ((there has been compliance with RCW 50A.40.010 and the
9 related rules. The department will issue a determination including
10 the findings of the investigation and whether a violation may have
11 occurred. Determinations are appealable under chapter 50A.50 RCW. If
12 the investigation indicates that a violation may have occurred, a
13 hearing may be held if requested by an interested party in accordance
14 with chapter 34.05 RCW. The commissioner must issue a written
15 determination including the commissioner's findings after the
16 hearing. A judicial appeal from the commissioner's determination may
17 be taken in accordance with chapter 34.05 RCW)) a violation occurred
18 and the amount of any liquidated damages, unless the employee
19 terminates the complaint under section 16 of this act.

20 (3) Upon completing an investigation, the commissioner shall
21 issue a determination, unless the complaint is otherwise resolved
22 upon agreement by all parties and in compliance with section 16(6) of
23 this act or withdrawn under section 16(5) of this act. If the
24 department determines a violation occurred, the department may order
25 the employer to pay liquidated damages under RCW 50A.40.030.

26 **Sec. 13.** RCW 50A.40.030 and 2019 c 13 s 18 are each amended to
27 read as follows:

28 (1) Any employer who violates RCW 50A.40.010 is liable for
29 damages ((equal to:

30 (1) The amount of:
31 (a))).

32 (2) Damages are owed to the employee and must be paid by the
33 employer to the employee directly.

34 (3) (a) Damages include:

35 (i) Any wages, salary, employment benefits, or other compensation
36 denied or lost to such employee by reason of the violation; or

37 ((b)) (ii) In a case in which wages, salary, employment
38 benefits, or other compensation have not been denied or lost to the
39 employee, any actual monetary losses sustained by the employee as a

1 direct result of the violation, such as the cost of providing care,
2 up to a sum equal to wages or salary for the employee for up to
3 sixteen weeks, or eighteen weeks if the employee experiences a
4 serious health condition with a pregnancy that results in incapacity.

5 ~~((2)(a) The interest on the amount described in subsection (1)~~
6 ~~of this section calculated at the prevailing rate; and))~~

7 (b) Any employer who violates RCW 50A.40.010 is also liable for
8 interest accrued on the damages assessed in this subsection.

9 (4) For a willful violation, the employer is also liable for an
10 additional amount as liquidated damages equal to the sum of the
11 amount described in subsection ~~((1))~~ (3)(a) of this section and the
12 interest described in ~~((this))~~ subsection ~~((2))~~ (3)(b) of this
13 section. For purposes of this section, "willful" means a knowing and
14 intentional action that is neither accidental nor the result of a
15 bona fide dispute. All liquidated damages are owed to the employee
16 and must be paid to the employee directly.

17 (5) Interest in this section is calculated at the prevailing
18 rate.

19 **Sec. 14.** RCW 50A.50.010 and 2018 c 141 s 3 are each amended to
20 read as follows:

21 (1) Any aggrieved ~~((person))~~ party may file an appeal from any
22 determination or redetermination with the commissioner within thirty
23 days after the date of notification or mailing, whichever is earlier,
24 of such determination or redetermination to the ~~((person's))~~ party's
25 last known address. If an appeal with respect to any determination is
26 pending as of the date when a redetermination is issued, such appeal,
27 unless withdrawn, shall be treated as an appeal from such
28 redetermination.

29 (2) Any appeal from a determination of denial of benefits shall
30 be deemed to be an appeal as to all weeks subsequent to the effective
31 date of the denial for which benefits have already been denied. If no
32 appeal is taken from any determination, or redetermination, within
33 the time allowed by the provisions of this section for appeal, the
34 determination or redetermination, as the case may be, shall be
35 conclusively deemed to be correct except as provided in respect to
36 reconsideration by the commissioner of any determination.

37 (3) Upon receipt of a notice of appeal, the commissioner shall
38 request the assignment of an administrative law judge under chapter

1 34.12 RCW to conduct a hearing in accordance with chapter 34.05 RCW
2 and issue a proposed order.

3 **Sec. 15.** RCW 26.23.060 and 2019 c 13 s 66 are each amended to
4 read as follows:

5 (1) The division of child support may issue a notice of payroll
6 deduction:

7 (a) As authorized by a support order that contains a notice
8 clearly stating that child support may be collected by withholding
9 from earnings, wages, or benefits without further notice to the
10 obligated parent; or

11 (b) After service of a notice containing an income-withholding
12 provision under this chapter or chapter 74.20A RCW.

13 (2) The division of child support shall serve a notice of payroll
14 deduction upon a responsible parent's employer or upon the employment
15 security department for the state in possession of or owing any
16 benefits from the unemployment compensation fund to the responsible
17 parent pursuant to Title 50 RCW or from the paid family and medical
18 leave program under Title 50A RCW:

19 (a) In the manner prescribed for the service of a summons in a
20 civil action;

21 (b) By certified mail, return receipt requested;

22 (c) By electronic means if there is an agreement between the
23 secretary and the person, firm, corporation, association, political
24 subdivision, department of the state, or agency, subdivision, or
25 instrumentality of the United States to accept service by electronic
26 means; or

27 (d) By regular mail to a responsible parent's employer unless the
28 division of child support reasonably believes that service of process
29 in the manner prescribed in (a) or (b) of this subsection is required
30 for initiating an action to ensure employer compliance with the
31 withholding requirement.

32 (3) Service of a notice of payroll deduction upon an employer or
33 employment security department requires the employer or employment
34 security department to immediately make a mandatory payroll deduction
35 from the responsible parent's unpaid disposable earnings or
36 (~~unemployment compensation~~) benefits paid by the employment
37 security department. The employer or employment security department
38 shall thereafter deduct each pay period the amount stated in the
39 notice divided by the number of pay periods per month. The payroll

1 deduction each pay period shall not exceed fifty percent of the
2 responsible parent's disposable earnings.

3 (4) A notice of payroll deduction for support shall have priority
4 over any wage assignment, garnishment, attachment, or other legal
5 process.

6 (5) The notice of payroll deduction shall be in writing and
7 include:

8 (a) The name and social security number of the responsible
9 parent;

10 (b) The amount to be deducted from the responsible parent's
11 disposable earnings each month, or alternate amounts and frequencies
12 as may be necessary to facilitate processing of the payroll
13 deduction;

14 (c) A statement that the total amount withheld shall not exceed
15 fifty percent of the responsible parent's disposable earnings;

16 (d) The address to which the payments are to be mailed or
17 delivered; and

18 (e) A notice to the responsible parent warning the responsible
19 parent that, despite the payroll deduction, the responsible parent's
20 privileges to obtain and maintain a license, as defined in RCW
21 74.20A.320, may not be renewed, or may be suspended if the parent is
22 not in compliance with a support order as defined in RCW 74.20A.320.

23 (6) An informational copy of the notice of payroll deduction
24 shall be mailed to the last known address of the responsible parent
25 by regular mail.

26 (7) An employer or employment security department that receives a
27 notice of payroll deduction shall make immediate deductions from the
28 responsible parent's unpaid disposable earnings and remit proper
29 amounts to the Washington state support registry within seven working
30 days of the date the earnings are payable to the responsible parent.

31 (8) An employer, or the employment security department, upon whom
32 a notice of payroll deduction is served, shall make an answer to the
33 division of child support within twenty days after the date of
34 service. The answer shall confirm compliance and institution of the
35 payroll deduction or explain the circumstances if no payroll
36 deduction is in effect. The answer shall also state whether the
37 responsible parent is employed by or receives earnings from the
38 employer or receives (~~unemployment compensation benefits~~) benefit
39 payments from the employment security department, whether the
40 employer or employment security department anticipates paying

1 earnings or (~~unemployment compensation~~) benefits and the amount of
2 earnings or benefit payments. If the responsible parent is no longer
3 employed, or receiving earnings from the employer, the answer shall
4 state the present employer's name and address, if known. If the
5 responsible parent is no longer receiving (~~unemployment compensation~~
6 ~~benefits~~) benefit payments from the employment security department,
7 the answer shall state the present employer's name and address, if
8 known.

9 The returned answer or a payment remitted to the division of
10 child support by the employer constitutes proof of service of the
11 notice of payroll deduction in the case where the notice was served
12 by regular mail.

13 (9) The employer may deduct a processing fee from the remainder
14 of the responsible parent's earnings after withholding under the
15 notice of payroll deduction, even if the remainder is exempt under
16 RCW 26.18.090. The processing fee may not exceed: (a) Ten dollars for
17 the first disbursement made to the Washington state support registry;
18 and (b) one dollar for each subsequent disbursement to the registry.

19 (10) The notice of payroll deduction shall remain in effect until
20 released by the division of child support, the court enters an order
21 terminating the notice and approving an alternate arrangement under
22 RCW 26.23.050, or until the employer no longer employs the
23 responsible parent and is no longer in possession of or owing any
24 earnings to the responsible parent. The employer shall promptly
25 notify the office of support enforcement when the employer no longer
26 employs the parent subject to the notice. For the employment security
27 department, the notice of payroll deduction shall remain in effect
28 until released by the division of child support or until the court
29 enters an order terminating the notice.

30 (11) The division of child support may use uniform interstate
31 withholding forms adopted by the United States department of health
32 and human services to take withholding actions under this section
33 whether the responsible parent is receiving earnings or unemployment
34 compensation in this state or in another state.

35 NEW SECTION. **Sec. 16.** A new section is added to chapter 50A.40
36 RCW to read as follows:

37 (1) If the department issues a determination under RCW 50A.40.020
38 that an employer owes liquidated damages, the employer must, within
39 thirty calendar days, either pay all damages owed or file an appeal

1 as provided in this title. Thereafter, all parties owed moneys may
2 initiate collection action against the employer by filing a warrant
3 with the clerk of any county within the state.

4 (a) The warrant may include all damages awarded to the employee
5 plus reasonable attorneys' fees for the collection action, reasonable
6 expert witness fees, and other reasonable costs of the action.

7 (b) For purposes of this section, thirty calendar days begins the
8 day the determination is issued.

9 (2) The department is not responsible for collection action
10 against an employer that has defaulted the payment of an award
11 established under RCW 50A.40.030.

12 NEW SECTION. **Sec. 17.** A new section is added to chapter 50A.40
13 RCW to read as follows:

14 (1) A private action to recover damages under RCW 50A.40.030 may
15 be brought against any employer by any one or more employees for and
16 on behalf of:

17 (a) The employee or employees; or

18 (b) The employees and other employees similarly situated.

19 (2) Any action under subsection (1) of this section must be filed
20 with a court of competent jurisdiction within the state. Any private
21 action for an alleged violation of RCW 50A.40.010 must be commenced
22 within three years of the date of the alleged violation.

23 (3) In an action under subsection (1) of this section the court
24 shall, in addition to any judgment awarded to a prevailing plaintiff,
25 award reasonable attorneys' fees, reasonable expert witness fees, and
26 other costs of the action to be paid by the defendant.

27 (4) A private right of action is only available to an employee
28 who either has not filed a complaint with the department, has
29 withdrawn a filed complaint under subsection (5) of this section, or
30 has resolved a complaint under subsection (6) of this section.

31 (5) An employee who has filed a complaint with the department
32 under RCW 50A.40.020 may elect to withdraw the complaint by providing
33 written notice to the department within ten business days after
34 filing the complaint with the department. Withdrawing a complaint
35 terminates the department's administrative action.

36 (6) A complaint may be resolved upon agreement by all parties.
37 Resolution of a complaint must be communicated to the department
38 prior to the department's issuance of a determination. Resolution of
39 a complaint terminates the department's administrative action.

1 (7) In the event the department's administrative action is
2 terminated under subsection (5) or (6) of this section:

3 (a) The department will immediately discontinue its investigation
4 and any action against the employer; and

5 (b) The determination, if already issued, along with any related
6 findings of fact and conclusions of law, and any payments or offers
7 of payment made by the employer including interest, are not
8 admissible in any court action or other judicial or administrative
9 proceeding.

10 (8) Nothing in this section shall be construed to limit or
11 affect:

12 (a) Except as provided in subsection (4) of this section, the
13 right of any employee to pursue any judicial, administrative, or
14 other action available with respect to an employer;

15 (b) The right of the department to pursue any judicial,
16 administrative, or other action available with respect to an employee
17 that is identified as a result of a complaint under RCW 50A.40.020;
18 or

19 (c) The right of the department to pursue any judicial,
20 administrative, or other action available with respect to an employer
21 in the absence of a complaint.

22 NEW SECTION. **Sec. 18.** A new section is added to chapter 50A.05
23 RCW to read as follows:

24 (1) In the discharge of the duties imposed by this title, the
25 appeal tribunal and any duly authorized representative of the
26 commissioner shall have power to administer oaths and affirmations,
27 take depositions, certify to official acts, and issue subpoenas to
28 compel the attendance of witnesses and the production of books,
29 papers, correspondence, memoranda, and other records deemed necessary
30 as evidence in connection with any dispute or the administration of
31 this title. It shall be unlawful for any person, without just cause,
32 to fail to comply with subpoenas issued pursuant to the provisions of
33 this section.

34 (2)(a) Any authorized representative of the commissioner may
35 apply for and obtain a superior court order approving and authorizing
36 a subpoena in advance of its issuance. The application may be made in
37 the county where the subpoenaed person resides or is found, or the
38 county where the subpoenaed records or documents are located, or in
39 Thurston county. The application must:

1 (i) State that an order is sought pursuant to this subsection;
2 (ii) Adequately specify the records, documents, or testimony; and
3 (iii) Declare under oath that an investigation is being conducted
4 for a lawfully authorized purpose related to an investigation within
5 the department's authority and that the subpoenaed documents or
6 testimony are reasonably related to an investigation within the
7 department's authority.

8 (b) Where the application under this subsection is made to the
9 satisfaction of the court, the court must issue an order approving
10 the subpoena. An order under this subsection constitutes authority of
11 law for the department to subpoena the records or testimony.

12 (c) Any authorized representative of the commissioner may seek
13 approval and a court may issue an order under this subsection without
14 prior notice to any person, including the person to whom the subpoena
15 is directed and the person who is the subject of an investigation.

16 (3) Subsection (2) of this section is intended to comply with the
17 holdings of *State v. Miles*, 160 Wn.2d 236 (2007) and *State v. Reeder*,
18 184 Wn.2d 805 (2015), and Article I, section 7 of the state
19 Constitution. These provisions collectively require judicial review
20 of investigative subpoenas under certain circumstances. The
21 department is not required to receive court approval under subsection
22 (2) of this section unless otherwise required by law.

23 NEW SECTION. **Sec. 19.** A new section is added to chapter 50A.10
24 RCW to read as follows:

25 (1) Any employee exempt from the rights and responsibilities of
26 this title under RCW 50A.05.090 may elect coverage. Elective coverage
27 lasts until the collective bargaining agreement, under RCW
28 50A.05.090, is reopened, renegotiated by the parties, or expired. An
29 employee who elects coverage under this section must elect coverage
30 for both family leave and medical leave and are responsible for
31 payment of one hundred percent of all premiums assessed to an
32 employee under RCW 50A.10.030. An employer may elect to pay all or
33 any portion of the employee's premium for family leave or medical
34 leave benefits, or both. The employee must file a notice of election
35 in writing with the department and their employer, in a manner as
36 prescribed by the department in rule.

37 (2) To be eligible for benefits, an employee electing coverage
38 under this section must have worked at least eight hundred twenty
39 hours during the qualifying period. If the employee's qualifying

1 period includes any quarter prior to the election of coverage, the
2 department will request the employee's qualifying period wages and
3 hours from the employer. The employer must provide the wages and
4 hours to the department within ten calendar days.

5 (3) For employee's electing coverage under this section, the
6 employer must collect the premiums and any surcharges provided under
7 RCW 50A.10.030 through payroll deductions and remit the amounts
8 collected to the department as part of the employer requirements
9 under RCW 50A.20.030(1).

10 (4) This section takes effect July 1, 2020.

11 NEW SECTION. **Sec. 20.** Section 1 of this act is necessary for
12 the immediate preservation of the public peace, health, or safety, or
13 support of the state government and its existing public institutions,
14 and takes effect immediately."

SHB 2614 - S COMM AMD
By Committee on Labor & Commerce

NOT ADOPTED 03/05/2020

15 On page 1, line 1 of the title, after "leave;" strike the
16 remainder of the title and insert "amending RCW 50A.05.010,
17 50A.10.010, 50A.10.040, 50A.15.020, 50A.15.060, 50A.15.080,
18 50A.15.100, 50A.25.070, 50A.30.010, 50A.30.035, 50A.40.010,
19 50A.40.020, 50A.40.030, 50A.50.010, and 26.23.060; adding new
20 sections to chapter 50A.40 RCW; adding a new section to chapter
21 50A.05 RCW; adding a new section to chapter 50A.10 RCW; providing an
22 effective date; and declaring an emergency."

EFFECT: The following classes of individuals are exempt from the
definition of employment for the purposes of the paid family and
medical leave statutes:

(1) Individuals when serving as a member of a statutory board,
commission, council, committee, or other similar group classified as
a class two, three, four, or five group;

(2) Individuals when serving as an elected member, on one of the
specified special purpose districts, who receive a per diem of two
hundred fifty dollars per day, or less;

(3) Individuals when serving as an appointed director, with a
compensation limit of no more than one thousand dollars per year, of
an air pollution control authority; and

(4) Volunteer firefighters compensated on per diem or nominal sum
basis consistent with the definition of volunteer contained in the
C.F.R.

Allows employees, who were not eligible for the paid family and medical leave program because they were under an existing collective bargaining agreement, to elect coverage under the program. The employees must elect coverage for both the family leave and medical leave and are responsible for one hundred percent of the premiums owed by the employee. An employer may elect to pay all or part of the premiums. The employees must have worked at least eight hundred twenty hours in the qualifying period to be eligible for benefits. If an employee elects coverage, the employer must collect the premiums and any surcharges through payroll deductions and remit the amounts collected to the department. The section takes effect on July 1, 2020.

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