
SUBSTITUTE HOUSE BILL 2613

State of Washington

66th Legislature

2020 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Sells and Mosbrucker; by request of Employment Security Department)

READ FIRST TIME 01/24/20.

1 AN ACT Relating to granting relief of unemployment benefit
2 charges when discharge is required by law and removing outdated
3 statutory language; amending RCW 50.12.200, 50.20.190, 50.29.021,
4 50.50.070, and 50A.05.070; creating a new section; and repealing RCW
5 50.29.020.

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

7 **Sec. 1.** RCW 50.12.200 and 1982 1st ex.s. c 18 s 1 are each
8 amended to read as follows:

9 (1) The commissioner shall appoint a state advisory council
10 composed of not more than nine men and women, of which three shall be
11 representatives of employers, three shall be representatives of
12 employees, and three shall be representatives of the general public.
13 Such council shall aid the commissioner in formulating policies and
14 discussing problems related to the administration of this title and
15 of assuring impartiality and freedom from political influence in the
16 solution of such problems. The council shall serve without
17 compensation. The commissioner may also appoint committees, and
18 industrial or other special councils, to perform appropriate
19 services. Advisory councilmembers shall be reimbursed for travel
20 expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as
21 now existing or hereafter amended.

1 (2) Beginning in 2021 and ending in 2030, the commissioner shall
2 annually report to the state advisory council the amount of benefits
3 that were not charged to employers as a direct consequence of RCW
4 50.29.021(3) (a) (viii).

5 **Sec. 2.** RCW 50.20.190 and 2013 c 189 s 4 are each amended to
6 read as follows:

7 (1) An individual who is paid any amount as benefits under this
8 title to which he or she is not entitled shall, unless otherwise
9 relieved pursuant to this section, be liable for repayment of the
10 amount overpaid. The department shall issue an overpayment assessment
11 setting forth the reasons for and the amount of the overpayment. The
12 amount assessed, to the extent not collected, may be deducted from
13 any future benefits payable to the individual: PROVIDED, That in the
14 absence of a back pay award, a settlement affecting the allowance of
15 benefits, fraud, misrepresentation, or willful nondisclosure, every
16 determination of liability shall be mailed or personally served not
17 later than two years after the close of or final payment made on the
18 individual's applicable benefit year for which the purported
19 overpayment was made, whichever is later, unless the merits of the
20 claim are subjected to administrative or judicial review in which
21 event the period for serving the determination of liability shall be
22 extended to allow service of the determination of liability during
23 the six-month period following the final decision affecting the
24 claim.

25 (2) The commissioner may waive an overpayment if the commissioner
26 finds that the overpayment was not the result of fraud,
27 misrepresentation, willful nondisclosure, or fault attributable to
28 the individual and that the recovery thereof would be against equity
29 and good conscience. When determining whether the recovery would be
30 against equity and good conscience, the department must consider
31 whether the employer or employer's agent failed to respond timely and
32 adequately to a written request of the department for information
33 relating to the claim or claims without establishing good cause for
34 the failure pursuant to RCW 50.29.021(~~(+6)~~) (5). An overpayment
35 waived under this subsection shall be charged against the
36 individual's applicable entitlement for the eligibility period
37 containing the weeks to which the overpayment was attributed as
38 though such benefits had been properly paid.

1 (3) Any assessment herein provided shall constitute a
2 determination of liability from which an appeal may be had in the
3 same manner and to the same extent as provided for appeals relating
4 to determinations in respect to claims for benefits: PROVIDED, That
5 an appeal from any determination covering overpayment only shall be
6 deemed to be an appeal from the determination which was the basis for
7 establishing the overpayment unless the merits involved in the issue
8 set forth in such determination have already been heard and passed
9 upon by the appeal tribunal. If no such appeal is taken to the appeal
10 tribunal by the individual within thirty days of the delivery of the
11 notice of determination of liability, or within thirty days of the
12 mailing of the notice of determination, whichever is the earlier, the
13 determination of liability shall be deemed conclusive and final.
14 Whenever any such notice of determination of liability becomes
15 conclusive and final, the commissioner, upon giving at least twenty
16 days' notice, using a method by which the mailing can be tracked or
17 the delivery can be confirmed, may file with the superior court clerk
18 of any county within the state a warrant in the amount of the notice
19 of determination of liability plus a filing fee under RCW
20 36.18.012(10). The clerk of the county where the warrant is filed
21 shall immediately designate a superior court cause number for the
22 warrant, and the clerk shall cause to be entered in the judgment
23 docket under the superior court cause number assigned to the warrant,
24 the name of the person(s) mentioned in the warrant, the amount of the
25 notice of determination of liability, and the date when the warrant
26 was filed. The amount of the warrant as docketed shall become a lien
27 upon the title to, and any interest in, all real and personal
28 property of the person(s) against whom the warrant is issued, the
29 same as a judgment in a civil case duly docketed in the office of
30 such clerk. A warrant so docketed shall be sufficient to support the
31 issuance of writs of execution and writs of garnishment in favor of
32 the state in the manner provided by law for a civil judgment. A copy
33 of the warrant shall be mailed within five days of its filing with
34 the clerk to the person(s) mentioned in the warrant using a method by
35 which the mailing can be tracked or the delivery can be confirmed.

36 (4) On request of any agency which administers an employment
37 security law of another state, the United States, or a foreign
38 government and which has found in accordance with the provisions of
39 such law that a claimant is liable to repay benefits received under
40 such law, the commissioner may collect the amount of such benefits

1 from the claimant to be refunded to the agency. In any case in which
2 under this section a claimant is liable to repay any amount to the
3 agency of another state, the United States, or a foreign government,
4 such amounts may be collected without interest by civil action in the
5 name of the commissioner acting as agent for such agency if the other
6 state, the United States, or the foreign government extends such
7 collection rights to the employment security department of the state
8 of Washington, and provided that the court costs be paid by the
9 governmental agency benefiting from such collection.

10 (5) Any employer who is a party to a back pay award or settlement
11 due to loss of wages shall, within thirty days of the award or
12 settlement, report to the department the amount of the award or
13 settlement, the name and social security number of the recipient of
14 the award or settlement, and the period for which it is awarded. When
15 an individual has been awarded or receives back pay, for benefit
16 purposes the amount of the back pay shall constitute wages paid in
17 the period for which it was awarded. For contribution purposes, the
18 back pay award or settlement shall constitute wages paid in the
19 period in which it was actually paid. The following requirements
20 shall also apply:

21 (a) The employer shall reduce the amount of the back pay award or
22 settlement by an amount determined by the department based upon the
23 amount of unemployment benefits received by the recipient of the
24 award or settlement during the period for which the back pay award or
25 settlement was awarded;

26 (b) The employer shall pay to the unemployment compensation fund,
27 in a manner specified by the commissioner, an amount equal to the
28 amount of such reduction;

29 (c) The employer shall also pay to the department any taxes due
30 for unemployment insurance purposes on the entire amount of the back
31 pay award or settlement notwithstanding any reduction made pursuant
32 to (a) of this subsection;

33 (d) If the employer fails to reduce the amount of the back pay
34 award or settlement as required in (a) of this subsection, the
35 department shall issue an overpayment assessment against the
36 recipient of the award or settlement in the amount that the back pay
37 award or settlement should have been reduced; and

38 (e) If the employer fails to pay to the department an amount
39 equal to the reduction as required in (b) of this subsection, the
40 department shall issue an assessment of liability against the

1 employer which shall be collected pursuant to the procedures for
2 collection of assessments provided herein and in RCW 50.24.110.

3 (6) When an individual fails to repay an overpayment assessment
4 that is due and fails to arrange for satisfactory repayment terms,
5 the commissioner shall impose an interest penalty of one percent per
6 month of the outstanding balance. Interest shall accrue immediately
7 on overpayments assessed pursuant to RCW 50.20.070 and shall be
8 imposed when the assessment becomes final. For any other overpayment,
9 interest shall accrue when the individual has missed two or more of
10 the individual's monthly payments either partially or in full.

11 (7) The department shall: (a) Conduct social security number
12 cross-match audits or engage in other more effective activities that
13 ensure that individuals are entitled to all amounts of benefits that
14 they are paid; and (b) engage in other detection and recovery of
15 overpayment and collection activities.

16 **Sec. 3.** RCW 50.29.021 and 2019 c 13 s 65 are each amended to
17 read 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
20 on 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
26 to make payments in lieu of contributions, based on existing records
27 of the employment security department.

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

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

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

4 (ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through
5 (x).

6 ~~((3))~~ (2) The legislature finds that certain benefit payments,
7 in whole or in part, should not be charged to the experience rating
8 accounts of employers except those employers described in RCW
9 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
10 payments in lieu of contributions, taxable local government employers
11 described in RCW 50.44.035, and those employers who are required to
12 make payments in lieu of contributions, as follows:

13 (a) Benefits paid to any individual later determined to be
14 ineligible shall not be charged to the experience rating account of
15 any contribution paying employer, except as provided in subsection
16 ~~((5))~~ (4) of this section.

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

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

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

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

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

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

37 (f) With respect to claims with an effective date on or after the
38 first Sunday following April 22, 2005, benefits paid that exceed the
39 benefits that would have been paid if the weekly benefit amount for
40 the claim had been determined as one percent of the total wages paid

1 in the individual's base year shall not be charged to the experience
2 rating account of any contribution paying employer. This subsection
3 (~~((3))~~) (2)(f) does not apply to the calculation of contribution
4 rates under RCW 50.29.025 for rate year 2010 and thereafter.

5 (g) The forty-five dollar increase paid as part of an
6 individual's weekly benefit amount as provided in RCW 50.20.1201 and
7 the twenty-five dollar increase paid as part of an individual's
8 weekly benefit amount as provided in RCW 50.20.1202 shall not be
9 charged to the experience rating account of any contribution paying
10 employer.

11 (h) With respect to claims where the minimum amount payable
12 weekly is increased to one hundred fifty-five dollars pursuant to RCW
13 50.20.1201(3), benefits paid that exceed the benefits that would have
14 been paid if the minimum amount payable weekly had been calculated
15 pursuant to RCW 50.20.120 shall not be charged to the experience
16 rating account of any contribution paying employer.

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

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

25 (~~((4))~~) (3)(a) A contribution paying base year employer, except
26 employers as provided in subsection (~~((6))~~) (5) of this section, not
27 otherwise eligible for relief of charges for benefits under this
28 section, may receive such relief if the benefit charges result from
29 payment to an individual who:

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

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

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

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

8 (v) Continues to be employed on a regularly scheduled permanent
9 part-time basis by a base year employer and who qualified for two
10 consecutive unemployment claims where wages were attributable to at
11 least one employer who employed the individual in both base years.
12 Benefit charge relief ceases when the employment relationship between
13 the employer requesting relief and the claimant is terminated. This
14 subsection does not apply to shared work employers under chapter
15 50.60 RCW;

16 (vi) Was hired to replace an employee who is a member of the
17 military reserves or National Guard and was called to federal active
18 military service by the president of the United States and is
19 subsequently laid off when that employee is reemployed by their
20 employer upon release from active duty within the time provided for
21 reemployment in RCW 73.16.035; (~~(e)~~)

22 (vii) Worked for an employer for twenty weeks or less, and was
23 laid off at the end of temporary employment when that employee
24 temporarily replaced a permanent employee receiving family or medical
25 leave benefits under Title 50A RCW, and the layoff is due to the
26 return of that permanent employee. This subsection (~~((4))~~) (3)
27 (a)(vii) applies to claims with an effective date on or after January
28 1, 2020; or

29 (viii) Was discharged because the individual was unable to
30 satisfy a job prerequisite required by law or administrative rule.

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

38 (~~((5))~~) (4) When a benefit claim becomes invalid due to an
39 amendment or adjustment of a report where the employer failed to
40 report or inaccurately reported hours worked or remuneration paid, or

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

9 ~~((+6))~~ (5) An employer's experience rating account may not be
10 relieved of charges for a benefit payment and an employer who
11 reimburses the trust fund for benefit payments may not be credited
12 for a benefit payment if a benefit payment was made because the
13 employer or employer's agent failed to respond timely or adequately
14 to a written request of the department for information relating to
15 the claim or claims without establishing good cause for the failure
16 and the employer or employer's agent has a pattern of such failures.
17 The commissioner has the authority to determine whether the employer
18 has good cause under this subsection.

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

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

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

30 (B) Twenty percent of the total current claims against the
31 employer.

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

35 **Sec. 4.** RCW 50.50.070 and 2001 1st sp.s. c 11 s 9 are each
36 amended to read as follows:

37 Unless specifically addressed in this chapter, Indian tribes or
38 their tribal units are subject to the same terms and conditions as
39 are other employers subject to contributions under (~~RCW 50.29.020~~)

1 50.29.021 or other units of government under RCW 50.44.030 that make
2 payments in lieu of contributions.

3 **Sec. 5.** RCW 50A.05.070 and 2019 c 13 s 34 are each amended to
4 read as follows:

5 (1) The family and medical leave insurance account is created in
6 the custody of the state treasurer. All receipts from premiums
7 imposed under this title must be deposited in the account.
8 Expenditures from the account may be used only for the purposes of
9 the family and medical leave program. Only the commissioner or the
10 commissioner's designee may authorize expenditures from the account.
11 The account is subject to the allotment procedures under chapter
12 43.88 RCW. An appropriation is required for administrative expenses,
13 but not for benefit payments.

14 (2) Money deposited in the account shall remain a part of the
15 account until expended pursuant to the requirements of this title or
16 transferred in accordance with subsection (3) of this section. The
17 commissioner shall maintain a separate record of the deposit,
18 obligation, expenditure, and return of funds so deposited. Any money
19 so deposited which either will not be obligated within the period
20 specified by the appropriations act or remains unobligated at the end
21 of the period, and any money which has been obligated within the
22 period but will not be expended, shall be returned promptly to the
23 family and medical leave insurance account.

24 (3) Money shall be transferred from the family and medical leave
25 insurance account and deposited in the unemployment trust fund solely
26 for the repayment of benefits not charged to employers as defined in
27 RCW 50.29.021(~~((4))~~) (3)(a)(vii). The commissioner shall direct the
28 transfer, which must occur on or before the cut-off date as defined
29 in RCW 50.29.010.

30 (4) Money transferred as provided in subsection (3) of this
31 section for the repayment of benefits not charged to employers shall
32 be deposited in the unemployment compensation fund and shall remain a
33 part of the unemployment compensation fund until expended pursuant to
34 RCW 50.16.030. The commissioner shall maintain a separate record of
35 the deposit, obligation, expenditure, and return of funds so
36 deposited. Any money so deposited which either will not be obligated
37 within the period specified by the appropriation law or remains
38 unobligated at the end of the period, and any money which has been
39 obligated within the period but will not be expended, shall be

1 returned promptly to the account of this state in the unemployment
2 trust fund.

3 NEW SECTION. **Sec. 6.** RCW 50.29.020 (Experience rating accounts—
4 Benefits not charged—Claims with an effective date before January 4,
5 2004) and 2004 c 110 s 3 & 2003 2nd sp.s. c 4 s 20 are each repealed.

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

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